

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1202 of 2018

Sri Niwas Sharma son of Late Hari Nandan Singh, resident of village - Bana,
Anchal - Khizarsarai, Police Station - Khizarsarai, District - Gaya.

... .. Opposite Party/Petitioner.

Versus

1. Smt. Urmila Devi @ Mado w/o Late Hari Nandan Singh resident of village -
Nuranga, Tola Jagdishpur, Police Station Muffasil, District - Gaya at present
r/o Mohalla Lala Babu Road, New Godown, Police Station - Kotwali,
District – Gaya.

Applicant/Respondent 1st Set.

2. Manjeet Kumar Singh
3. Ranjeet Kumar Singh
4. Santosh Kumar
5. Sheela Devi w/o Jawahir Sharma d/o Late Hari Nandan Singh
6. Kamla Kumari w/o Tapeswar Sharma d/o Late Hari Nandan Singh
7. Sandheya Singh w/o Viveka Nand Singh d/o late Hari Nandan Singh
8. Swati Kumari w/o Ashwini Kumar Singh d/o Late Hari Nandan Singh

All 2 to 8 are residents of village - Nuranga Tola Jagdishpur, Police Station
Muffasil, District - Gaya.

9. Ranjan Singh son of late Jago Devi @ Rani Devi (Nati of Hari Nandan
Singh), resident of village - Nuranga, Tola Jagdishpur, Police Station
Muffasil, District – Gaya.

Opposite party/Respondent 2nd Set.

10. Smt. Vijay Lakshmi Devi w/o Vijay Singh resident of village - Belaganj,
Police Station - Belaganj, District - Gaya.
11. Smt. Syama Devi W/o Sri B.K. Singh resident of Village - Khanpura, Police
Station - Nalanda, District Nalanda.
12. Smt. Sheela Devi w/o Sunil Sharma resident of village - Morgaun, Police
Station - Hulaspur, District - Jehanabad.
13. Dharmendra Singh



14. Jeetendra Kumar
15. Rajesh Kumar
16. Manoj Kumar

All 13 to 16 are sons of Late Ashu Devi Nati of Late Hari Nandan Singh all are resident of village - Tulsipur, Police Station - Jehanabad, District Jehanabad.

Opposite Party/Respondent 3rd Set.

17. Siyaram Singh son of Late Hari Nandan Singh, resident of village - Bana Anchal P.S. Khizersarai, District – Gaya.

Opposite Party/Respondent 4th Set.

Appearance :

For the Petitioner : Mr.Arvind Kumar Pandey, Advocate
For the Respondent : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 26-04-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 05.06.2018 passed by the learned District-Judge, Gaya in Probate Case No.62 of 2015 by which he has rejected the prayer of the petitioner to accept the death certificate of deceased testator, namely, Hari Nandan Singh as a documentary evidence of the proceeding.

3. Learned counsel appearing for the petitioner submitted that while passing the impugned order, the court below has failed to appreciate the pleading of the petitioner that the will



is forged and fabricated one and, therefore, in order to prove the same, the death certificate is a very relevant piece of evidence, which could not have been ignored assigning the reason that the death is not denied by the petitioner in his objection petition. He submitted that the court below ought to have allowed the death certificate to be taken in evidence as the same would have caused no prejudice to the applicant respondent 1st set. On the basis of aforesaid submissions, he contended that the order impugned is unsustainable in law.

4. The facts, in brief, are that the Probate Case No. 62 of 2015 was filed by the applicant on 05.12.2015. The applicant in his application had contended that the testator Hari Nandan Singh died on 20.08.1996. The petitioner appeared in the case and filed his written statement. In para-4 of his written statement, he did not deny the statement made by the applicant regarding date of death of the testator. Thus, while filing the written statement, the petitioner explicitly admitted that the testator died on 20.08.2016. After settlement of the issues, six witnesses were examined and, thereafter, the petitioner filed an application seeking leave of the court for adducing death certificate of the testator issued by the Panchayat Secretary in evidence in which the date of death was recorded as 20.08.1995.



5. After considering the rival submissions of the parties, the court below, vide impugned order dated 05.06.2018, dismissed the application filed by the petitioner whereby she wanted the death certificate to be adduced in evidence.

6. The court below has passed the order taking into consideration the provisions prescribed under Order 8 Rule 1 A(3) of the Code of Civil Procedure, which reads as under :-

“1-A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.—(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.



(4) Nothing in this rule shall apply to documents-

(a) produced for the cross-examination of the plaintiff's witnesses, or

(b) handed over to a witness merely to refresh his memory.”

7. It would be evident that as per sub-rule 3 of Rule 1-A of the Order 8 a defendant cannot file a document, which is not produced at the time of filing of the written statement, without the leave of the court. This provision is with an object. The object is to save time. The defendant is required to file his documents at the time of presentation of the written statement. The court below has refused to grant leave taking into consideration the fact that the applicant had stated in his application the date of death of the deceased-testator in para-1 as 20.08.1996, which fact was explicitly admitted by the petitioner in his written statement in para-4. The court below held that once the petitioner had admitted the date of death of the testator, after long delay, he cannot be permitted to withdraw his own admission by way of filing a death certificate, which was obtained after 22 years of death of the testator containing a different date of death.

8. The power conferred to the Court under Order 8, Rule 1-A(3) is discretionary in nature. There cannot be a



mechanical grant of leave by the court as and when an application under the aforesaid provision is made. There is no reasonable ground as to why, in the written statement, firstly, the petitioner admitted the date of death of the testator as given in the application by the applicant and, subsequently, after examination of six witnesses, a death certificate containing a different date of death was obtained after 22 years of death of the testator, keeping in mind the very object of Order 8 Rule 1-A(3) CPC and requirement of filing documents along with the written statement with a view to secure expeditious adjudication of the dispute, if the court below has rejected the prayer of the petitioner, no illegality can be found in the order under challenge.

9. The discretion of the court below can not be upset by this Court merely because it is a superior Court.

10. In **Subodh Kumar Gupta vs. Alpana Gupta**, since reported in **(2005) 11 SCC 578**, the Supreme Court has held that discretionary orders of the trial court in the course of proceeding of a case ought not to be interfered with where such orders are supported by good grounds and reasons.

11. Since the order passed by the trial court is neither perverse nor without jurisdiction, I am not inclined to



interfere with the same in supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

12. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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