

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.360 of 2019

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Asha Devi Wife of Sri Ravindra Kr. Sharma Resident of Village Sitakund
Hasanpur, Police Station Moffasil, P.O. Dariyapur, District Munger.

... .. Petitioner

Versus

Indu Devi Wife of Jogendra Prasad Sharma Resident of Village- Sitakund-
Hasanpur, Police Station Moffasil, Post Office Dariyapur, District Munger.

... .. Respondent

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Appearance :

For the Petitioner : Mr. Harshwardhan Sahay, Advocate
For the Respondent : Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 21-06-2019

Heard learned counsel for the petitioner and perused the
record.

2. This application under Article 227 of the
Constitution of India has been filed by the petitioner challenging
the order dated 10.12.2018 passed by learned Sub-Judge-1st,
Munger in Title Suit No. 110 of 2008 by which the application
dated 12.07.2018 filed by the petitioner for taking into evidence
the photostat copy of the sale deed dated 22.04.2018 has been
rejected.

3. Learned counsel appearing for the petitioner
submitted that in view of the provisions prescribed under Section
65 of the Evidence Act, the court below ought to have taken the
photostat copy of the sale deed executed on 22.04.2008 on record



and marked the same as exhibit. He contended that by rejecting the application filed by the petitioner the trial court has committed gross illegality.

4. On perusal of the plaint as contained in Annexure-1 to this application, I find that Title Suit No. 110 of 2008 has been filed by the petitioner for the following reliefs:-

“(a) On adjudicating of facts and circumstances of the case, the court be pleased to pass a decree in favour of the plaintiff directing the defendant 1st party to appear before the Sub-Register, Muger and duly present the sale deed and admit the execution within reasonable time and at the same time, defendant no. 2 may be directed to join the sale deed in case defendant fails to do so, the court may direct any officer of the court to admit the execution of the sale deed and thereafter the original sale deed may be handed over to the plaintiff and at the same time the defendants may be directed to give vacant possession of the suit property to the plaintiff, failing which the plaintiff may be put in possession of the suit property by ejecting the defendants or anybody else who may be found to be in possession through the process of the court and in case, if the suit property is found locked the plaintiff may be put in possession by breaking open the lock.

(b) The defendants may be restrained by an order of permanent injunction from withdrawing the sale deed from registry office, Munger and alienating



the suit property in any manner or changing the physical feature of the suit property till the possession is handed over to the plaintiff.

(c) Full cost of the suit be awarded to the plaintiff.

(d) Any other relief or reliefs which the court may deem fit and proper be passed in favour of the plaintiff.”

5. It is the case of the petitioner that during the pendency of the suit, the defendant 1st party sold the suit property in favour of the present defendant through registered sale deed dated 27.09.2008 whereafter the petitioner filed an application under Order 1 Rule 10 of the Code of Civil Procedure for impleading the respondent Indu Devi as defendant 2nd party. The said petition was allowed, subsequently, the defendant 1st party died and now Indu Devi is the only defendant in the case.

6. On 29.01.2013, the petitioner filed an application before the trial court wherein it was contended that sale deed executed by the defendant 1st party is in custody of defendant 2nd party and, therefore, defendant no. 2 be directed to produce the sale deed dated 22.04.2008 in the court. The said application was contested by the defendant 2nd party. She filed an affidavit on 07.02.2014 wherein it was contended that no sale deed was executed on 22.04.2008 by the defendant no. 1. She further



contended that she had purchased the property in dispute from defendant no. 1 on 01.10.2008. If any sale deed was executed on 22.04.2008, the same should have been in possession of the plaintiff. It was further pleaded that just in order to mislead the court a photostat copy of a purported sale deed was produced by the plaintiff, which cannot be taken into evidence. She completely denied custody of document in her possession and made a prayer to reject the application of the petitioner.

7. Having considered the submissions made on behalf of the parties, vide order dated 29.04.2014, the trial court held that no sale deed was executed on 22.04.2008. Hence, no direction can be given to the defendant 2nd party to produce original sale deed in the court.

8. Having held so, the trial court rejected the application of the petitioner dated 20.09.2013.

9. The said order dated 29.04.2014 was never challenged by the petitioner. Thus, the same has attained finality.

10. Subsequently, the petitioner filed an application on 12.07.2018 before the trial court wherein she made a request that the xerox copy of the sale deed dated 22.04.2008 may be marked as exhibit. The said application of the petitioner



has been rejected by the trial court vide impugned order dated 10.12.2018.

11. Being aggrieved by the aforesaid order dated 10.12.2018, the petitioner has filed the instant application before this Court.

12. It would be relevant to note that the contents of document may be proved either by primary or secondary evidence. Primary evidence would mean the document itself produced for inspection of the court. Section 64 of the Evidence Act provides that documents must be proved by primary evidence.

13. However, there are certain exceptions whereby secondary evidence relating to documents may be given. They have been described in Section 65 of the Evidence Act.

14. In order to enable a party to produce secondary evidence, it is necessary for the party to prove existence and execution of the original document. Unless the conditions laid down in Section 65 of the Evidence Act is fulfilled, secondary evidence can not be admitted.

15. It is well settled position in law that in order to lead secondary evidence, the party must prove that there is or was a document in existence capable of being proved by secondary evidence. In absence of establishing the foundation led for



establishment of the right to give secondary evidence, no document can ever be lead into evidence.

16. Here, in the present case, the mandatory requirement of proving the existence and execution of original document on 22.04.2008 was not fulfilled.

17. Under such circumstances, the court could not have allowed the xerox copy submitted by the petitioner to be taken into evidence and marked as exhibit. Hence, the court below has rightly rejected the application filed by the petitioner, vide order dated 10.12.2018.

18. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.06.2019
Transmission Date	NA

