

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.278 of 2009

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Smt. Ginia Devi @ Ginia Devi Sah, w/o Sri Shyam Sunder Sah, r/o Mohalla- Bara Bazar, Katihar, P.S.- Katihar, District- Katihar. At present residing at Sarat Bose Road, Kolkata (West Bengal), represented through power of Attorney Holder, Kameshwar Singh, s/o Late Baleshwar Singh, r/o Mohalla- Gaushala, P.S.- Katihar, District- Katihar.

... .. Petitioner/s

Versus

1. Smt. Bimla Devi, w/o Mahendra Chaudhary, r/o Durgapur Gaushala near Chamari Hospital, Katihar, P.S. & P.O.- Katihar, District- Katihar.
2. Smt. Kavita Devi, w/o Sri Raja Babu Singh, r/o Mohalla- Gaushala Katihar, P.O. & P.S.- Katihar, District- Katihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ratna Das, Advocate Mr. S.K.Das, Advocate
For the Respondent/s	:	None

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 24-01-2019

Heard learned counsel for the petitioner.

2. No one appears on behalf of opposite party, though appearance has already been filed. No one had appeared on behalf of opposite party on 02.11.2017, when the matter was before the Bench.

3. This civil revision has been preferred, under Section 115 of the Code of Civil Procedure, against the order dated 01.12.2008, passed by the learned Sub-Judge-I, Katihar in Title Suit No.96 of 2006

4. Petitioner is plaintiff of Title Suit No.96 of 2006.

5. By the impugned order dated 01.12.2008, the learned Sub-Judge-I, Katihar rejected the prayer of the plaintiff for taking



evidence of *Bimla Devi* on commission. The petitioner is not concerned in this application with the aforesaid rejection order.

6. However, by the same order the learned trial court has dismissed the suit on the ground that it is not maintainable for the reason that suit has been filed by the holder of power of attorney of *Ginia Devi @ Ginia Devi Sah*, namely, *Kameshwar Singh*, whereas two powers of attorney executed by same *Ginia Devi @ Ginia Devi Sah* were brought on the record and another power of attorney was in favour of *Manoj Agrawal*. The power of attorney in favour of *Manoj Agrawal* was 25.06.2002, subsequent to power of attorney given by *Ginia Devi @ Gini Devi Sah* in favour of *Kameshwar Singh*.

7. The court concluded that if the power of attorney would have been prior to the execution of the sale deed in favour of the defendants, the suit was maintainable at the hands of *Kameshwar Singh*.

8. Submission of learned counsel for the petitioner is that the learned court below has wrongly exercised its jurisdiction against the law and facts and material available on the record. In fact the suit was filed by *Ginia Devi @ Ginia Devi Sah* through her attorney *Kameshwar Singh*. It was subject matter of the suit, as to whether *Ginia Devi @ Ginia Devi Sah* had executed any power of attorney in favour of *Kameshwar Singh* or not or whether she had executed any subsequent power of attorney in favour of *Manoj Agrawal* and this disputed fact could have been decided only after evidence on the



record in course of trial of the suit. The suit should not have been thrown away at the threshold, especially when the issues were already framed in the suit. No doubt impugned order reveal that no preliminary issue has been framed by the learned court below, nor the issue decided by the court below, which was an issue of fact could have been decided as preliminary issue, vide Order XIV Rule 2 of the Civil Procedure Code.

9. It is evident that since *Ginia Devi @ Ginia Devi Sah* was herself the plaintiff of the suit through her attorney, it could not have been decided at the initial stage of the suit, as to whether his attorney, *Kameshwar Singh* was competent to pursue the plaint on behalf of *Ginia Devi @ Ginia Devi Sah* or not, especially in view of the issues involved for adjudication in the suit as discussed above. Therefore, in my view, the learned court below has acted with illegality and with material irregularity while exercising the jurisdiction. Hence, the impugned order is not sustainable in law.

10. Accordingly, the impugned order is set aside and this civil revision stands allowed.

(Birendra Kumar, J)

abhishek/-

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