

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1497 of 2016

1. Dewanti Devi Wife of Suresh Tiwary
2. Suresh Tiwary Son of Late Jang Bahadur Tiwary
Both resident of village+post- Chandawa P.s.-ara Nawada, District - Bhojpur

... .. Appellants

Versus

1. Radheshyam Tiwary
2. Ghanshyam Tiwari Both
Sons of Late Chhotan tiwary
3. Mosmat Basanti Devi Wife of Late Jai Siyaram Tiwary
4. Manoj Kumar Tiwary Son of Late Jai Siyaram Tiwary
5. Baliram Tiwary
6. Narayan Tiwary
Both Sons of Late Chhotan Tiwary a
All resident of village +post- Chandwa P.S. Ara Nawada, District-Bhojpur

Plaintiffs-Respondents

7. Mosmat Indrasan devi Wife of Late Ram Pujan Tiwary
8. Vijay Tiwary
9. Ajay Tiwary
10. Sanjay Tiwary
11. Anand Tiwary
All son of Late Ram Pujan Tiwary
12. Babloo Tiawry Son of Late Deo pujan Tiwary
13. Saraswati Devi Wife of Late Deopujan Tiwary
14. Kamlesh Tiwary
15. Sri Ram Tiwary
16. Abhiram Tiwary @ Chhote
All sons of Late Satya Deo Tiwary

17. Jitendra Tiwary Son Of Late Sahdeo Tiwary
All Resident of village+post Chandawa P.S -Ara Nawada, District Bhojpur

Defendants 1st Set/Respondents

18. Suryamukhi Devi Wife Of Late Satyadeo Tiwary resident of Village+ Post-
Chandawa P.S.- Ara Nawada, District Bhojpur

Defendant 2nd Set/Respondent



19. Mosmat Mina Kunwar Wife Of Late Ramashankar Tiwary

20. Baijnath Tiwary

21. Vishwamitra Tiwary

Both sons of late Rama Shanker Tiwary

22. Shiv Shankar Tiwary Son of late Sri Kishun Tiwary

All Resident of Village+P.O. Chandawa, P.S. Ara Nawada, District- Bhojpur.

... .. Defendant 4th Set/ Respondents

Appearance :

For the Appellant/s : Mr.Ashok Kumar Mishra, Advocate
Mr. Varun Kumar, Advocate
For the Respondent/s : Manoj Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 04-01-2019

Heard learned counsel for the petitioners and learned counsel for the respondents.

2. This application under Article 227 of the Constitution of India has been filed by the petitioners for quashing the order dated 24.06.2015 passed by learned Sub-Judge-12, Ara in Title Suit No. 576 of 2004 whereby an application filed by the petitioners (defendant 3rd set) under Order 8 Rule 1A(3) read with Section 151 of the Code of Civil Procedure (for short 'CPC') has been rejected.

3. Mr. Ashok Kumar Mishra, learned counsel for the petitioners submitted that the application filed by the petitioner (defendant no. 8) for marking Tirjiya Khatiyani in evidence has erroneously been rejected by the court below, as those documents



are certified copy of Khatiyan and, during course of evidence, the plaintiffs-respondents would get an opportunity to cross-examine the petitioner (defendant no.8). He contended that the proposed documents were not in possession of the petitioners and it came to their knowledge belatedly pursuant to which the application was filed.

4. On the other hand, learned counsel appearing for the respondents submitted that there is no error in the order passed by the court below whereby the application filed by the petitioner under Order 8 Rule 1A(3) of the CPC has been rejected. He contended that the suit was filed in the year 2004 by the plaintiffs for declaring that the suit land is not an ancestral land of the plaintiffs rather it is their purchased property and they are in possession of the same since 1911 and further they are in adverse possession. Their case is that wrongly the names of defendant 1st set and 2nd set have been entered into the records of rights, which should be declared null and void.

5. From pleadings of the parties, it would appear that defendants have appeared and contested the suit by filing their written statements. The defendant nos. 1, 2 and 4 filed their written statement jointly, whereas a separate written statement was filed on behalf of respondent nos. 3 and 6. Respondent nos. 7 and 8



have also filed their separate written statements. The evidences of plaintiffs and defendant 1st and 2nd set have already been completed. On 11.06.2007, an application under Order 8 Rule 1A(3) of the CPC was filed on behalf of some of the defendants along with a list of documents praying therein to mark certified copy of Tirjiya Khatian of Khata no. 167, Plot no. 1 and certified copy of Khatian of Khata No. 5 as exhibits. On 28.05.2012, similar application was filed on behalf of certain other defendants. The plaintiffs had also filed rejoinder to petition dated 11.06.2007 and 28.05.2012. After hearing the parties, vide order dated 27.08.2012, learned Sub Judge-12, Ara dismissed the application of the defendants on the ground that documents in question sought to be exhibited by the defendants were filed much after settlement of issue and no permission to admit the same in evidence had been taken. Thereafter, some of the defendants filed another petition on 11.10.2012 praying therein to admit the aforesaid documents in evidence along with an application for granting leave. However, on 01.12.2012, the plaintiffs filed rejoinder to the petition dated 11.10.2012. After hearing the parties, vide order dated 09.10.2014, the court below dismissed the application filed by the defendants on the ground of delay as also that an identical prayer was dismissed earlier vide order dated 27.08.2012. Thereafter, once



again the defendant-petitioners filed an identical application under Order 8 Rule 1A(3) of the CPC to admit those documents in evidence.

6. Order 8 Rule 1A(3) of the CPC provides that the documents, which have not been produced along with the written statement, cannot be produced to the court later on without the leave of the court. Thus, if a document is to be produced by a defendant, the same is to be produced with the written statement. Subsequent production of document can be done only if the court is satisfied with the grounds explained for non-production of the documents at the time of filing of the written statement.

7. In the instant case, from the application filed by the petitioners before the court below it does not appear as to why the proposed documents, which the petitioners intend to be taken into evidence, were not produced earlier. Similar applications filed by other defendants were dismissed by the court below on 27.08.2012 and 09.10.2014. The repeated applications being filed by the separate sets of defendants for admitting common documents one after another is nothing but a ploy to delay the disposal of the suit.

8. In such circumstances, if the court was not satisfied with the grounds explained for non-production of the documents



earlier, no illegality can be found with the order impugned passed by the court below.

9. In that view of the matter, I see no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.01.2019
Transmission Date	

