

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1657 of 2019

1. Smt. Aruna Devi W/o of late Ram Shanker Choudhary, Resident of Village- Sahora, P.O. Anandpur, P.S. Ashok Paper Mill (Pator O.P.), District- Darbhanga.
2. Sri Paras Nath Choudhary, Son of late Ram Shanker Choudhary, Resident of Village- Sahora, Ward No. 04, P.O. Anandpur, P.S. Ashok Paper Mill (Pator O.P.), District- Darbhanga.

... .. Appellant/s

Versus

1. Pandit Vishwanath Jha Son of Sri Krishna Chandra Jha, Resident of Village- Sahora, P.O. Anandpur, P.S. Ashok Paper Mill , District- Darbhanga.
2. Sri Manoj Kumar Choudhary, Son of late Ram Shanker Choudhary, Resident of Village- Sahora, P.O. Anandpur, P.S. Ashok Paper Mill (Pator O.P.), District- Darbhanga.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Kaushalesh Choudhary

For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 29-11-2019

The present writ petition has been filed “*for quashing the order dated 30.08.2019 passed by learned Sub Judge II, Darbhanga in Title Suit No. 135 of 2006*”.

2. Learned counsel for the defendants-petitioners submits that the suit has been filed for declaration of title of the plaintiff over the suit land mentioned in schedule-III of the plaint and other reliefs. Such title has been claimed on the basis of a gift deed dated 13.09.1994. However, no issue was framed with regard to the said gift deed dated 13.09.1994 on which the claim of the plaintiff-respondent (1st set) was based. Accordingly, the



defendants-petitioners filed a petition on 19.06.2019 with a prayer to recast the issues with regard to genuineness of the said gift deed and the plaintiff-respondent's possession over the suit land. By the impugned order however the learned Court below has not acceded to the prayer of the defendants-petitioners.

3. It is submitted that the learned Court below has acted in illegal exercise of jurisdiction in not allowing the defendants-petitioners' prayer for recasting the issues and has failed to appreciate that genuineness of the gift deed was a foundational fact for the purpose of deciding title over the suit land as it is on that basis that the entire claim of the respondent-plaintiff (1st set) was based. As such, the issues for recasting as proposed by the defendants-petitioners went to the root of the matter and the petition ought to have been allowed.

4. Heard learned counsel for the petitioners and considered the materials on record. The learned Court below has taken note that the suit was filed in the year 2006 and issues were framed in the year 2010. The defendants-petitioners did not take any steps for recasting of the issues for more than eight long years during which evidence of the parties was closed and arguments were at the final stage. Moreover, the learned Court below has observed that the prayer of the defendants-petitioners would be considered at the time of judgment and issues may be recast if deemed necessary. It is therefore apparent that the



prayer of the defendants-petitioners has not been rejected outright, rather consideration has been postponed for the time being.

5. In the above view of the matter, no interference is called for. The petition stands dismissed.

(Vikash Jain, J)

Chandran/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.12.2019
Transmission Date	NA

