

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.82 of 2022

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Kesho Tanti @ Kesho Tati Son of Late Dukhan Tanti @ Lakhan Tati Resident
of Village - Phulwariya, Tola Kasarhat, P.S. - Barhat, District- Jamui.

... .. Petitioner/s

Versus

Chaman Tanti Son of Late Dukhan Tanti Resident of Village - Phulwariya,
Tola Kasarhat, P.S. - Barhat, District- Jamui.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Mishra

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 20-06-2022 The petitioner has filed the present civil

miscellaneous application being aggrieved by the order dated
07.01.2022 passed in Title Suit No. 50 / 2013 by which the
petition filed by the defendant dated 20/12/2019 has been
allowed and the defendant has been permitted to bring the
certified copy of affidavit as secondary evidence.

Learned counsel for the petitioner submits that the
petitioner - plaintiff had filed a Title Suit bearing Title Suit No.
50 of 2013 before the learned Sub Judge 1st, Jamui for
declaration of Title upon the half portion of the suit land as well
as declaration that the order passed by Collector, Jamui in
correction of Jamabandi Appeal No. 01 / 2002-03 dated 14-11-
2003 with respect to the suit land cannot override the judgment



passed by learned Munsif, Jamui in Title Suit No. 25 of 1979. Learned counsel also submits that by order dated 23.07.2019 the learned court below has called for the original copy of the affidavit from the office of Executive Magistrate, Jamui but in the impugned order there is no discussion regarding the same and without taking into notice the earlier order dated 23/07/2019 kept at Annexure- 2 to this civil miscellaneous application by the impugned order the court below has allowed the defendant to bring the certified copy of affidavit by way of secondary evidence.

I have heard learned counsel for the petitioner and have perused the impugned order. It appears that the learned court below has taken note of the fact that notice was issued to the concerned authority to produce the original affidavit in the court on 07-09-2019 and 25-10-2019 however the original copy of the affidavit was not produced by the concerned authority. Accordingly, in view of the provision contained in Section 65 of the Evidence Act the court below has allowed the petition dated 20-12-2019 filed by defendant to mark / prove the certified copy of the affidavit by way of secondary evidence.

Considering the provision of law enshrined under Section 65 of the Evidence Act and the fact that original



affidavit was not produced by the concerned authority despite demand made by the court below, I find no infirmity in the order impugned.

Accordingly, this civil miscellaneous application is dismissed.

(Anil Kumar Sinha, J)

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