

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.460 of 2020

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Vinoda Nand Tiwari @ Binoda Nand Tiwary Son of Late Jawahar Tiwary,
Resident of Bhabhua Town, Ward No.18, P.S. and P.O.-Bhabhua, District-
Kaimur. Petitioner/s

Versus

1. Dewa Nand Tiwary Son of Late Jawahar Tiwary, Resident of Bhabhua Town, Ward No. 18, P.S. and P.O.-Bhabhua, District-Kaimur.
 2. Sabita Devi Wife of Krishna Prasad Chaurasia, Resident of Village-Betari, P.O. and P.S.-Bhabhua, District-Kaimur.
 3. Viveka Nand Tiwary, Resident of Bhabhua Town, Ward No. 18, P.O. and P.S.-Bhabhua, District-Kaimur.
 4. Abhay Nand Tiwary, Resident of Bhabhua Town, Ward No. 18, P.O. and P.S.-Bhabhua, District-Kaimur.
 5. Ram Prakash Tiwary, Resident of Bhabhua Town, Ward No. 18, P.O. and P.S.-Bhabhua, District-Kaimur. Respondent/s
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Appearance :

For the Petitioner/s : Mr.Akhouri Vipin Bihari Shrivastava
For the Respondent/s : Mr.Anshu Raj Singh

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**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV ORDER

7 16-05-2022 The learned counsel for the petitioner is directed to

remove all the defects pointed out by the office within one

month.

I have already heard the learned counsel for the
petitioner as well as the learned counsel for the respondents.

Being aggrieved by the order dated 18.10.2019 passed
by Sub-Judge-I, Kaimur at Bhabhua in Title Suit No. 165 of 2017,
this civil miscellaneous petition has been filed, by the impugned
order, a petition dated 07.07.2018 filed by defendant no. 1 under
Order VII Rule 11 (a) of the Code of Civil Procedure (herein after
referred to as 'the Code') was rejected.



During pendency of Title Suit No. 165 of 2017, a petition dated 07.07.2018 was filed by the defendants with a prayer to reject the plaint under Order VII Rule 11 (a) of the Code, as it does not disclose the cause of action. It has been mentioned in the petition that the plaintiff has filed the above-mentioned suit for declaration of his right and title regarding the disputed land appertaining to khata No. 638, plot Nos. 182 and 183, area 3.25 decimals. The basis of his title is unregistered gift deed dated 12.03.2008. As per provisions of Section 123 of the Transfer of Property Act, 1882 (hereinafter referred to as 'the Act'), a gift deed of an immovable property must be compulsorily registered. No any immovable property can be alienated through an unregistered gift deed, as Section 123 of the Act mandatorily requires it to be registered. He has submitted that in the instant case, admittedly the gift deed executed in favour of the plaintiff was unregistered, as such, he does not disclose the cause of action and on this score, a plaint should have been rejected under the provisions of Order VII Rule 11 (a) of the Code. The learned court below, as per submission, committed gross illegality in not rejecting the plaint.

On the other hand, the learned counsel for the respondents has submitted that the above-mentioned suit was filed also with a prayer to declare the sale deed in favour of the



defendants as null and void and in paragraph No. 8 of the plaint, it has specifically been mentioned that no partition had taken place between the plaintiff and his brothers. The defendants have already admitted the title of the plaintiff on Schedule-A property. The property in dispute, as per paragraph No. 8 of the plaint, was not only self earned property, rather it was jointly ancestral and earned property. The learned counsel for the respondents has submitted further that these facts have categorically been mentioned in the plaint, which shows that the plaint discloses categorically the cause of action.

Although, the plaintiff is claiming his right on the basis of an unregistered sale deed, but at the same time, he also made a prayer for relief to cancel the sale deed executed by defendant No.1 in favour of defendant No. 2. In paragraph No. 8, as mentioned in the impugned order itself, the plaintiff has categorically stated that no partition had taken place between the plaintiff and his brothers and the disputed property is not only self earned but also ancestral.

As discussed above-mentioned, it cannot be said that the plaint does not disclose the cause of action. I do not find any reason to interfere with the impugned order.

Accordingly, this civil miscellaneous petition is being dismissed.



Office shall ensure that all defects are removed by the petitioner within the stipulated time mentioned hereinabove, failing which, the matter shall be brought to the notice of this Court.

(Nawneet Kumar Pandey, J)

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