

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.323 of 2022

1. Vinod Sah S/o Late Bishwanath Sah R/o Village Sipah, PS Basantpur, District Siwan.
2. Santosh Sah S/o Late Bishwanath Sah R/o Village Sipah, PS Basantpur, District Siwan.
3. Om Prakash Sah S/o Late Bishwa Nath Sah R/o Village Sipah, PS Basantpur, District Siwan.
4. Most. Gayanti Kumari W/o Late Manju Sah R/o Village Sipah, PS Basantpur, District Siwan.
5. Mikki Kumari D/o Late Manju Sah R/o Village Sipah, PS Basantpur, District Siwan.
6. Krishna Kumari Minor Daughter of Late Manju Sah represented through mother natural guardian, R/o Village Sipah, PS Basantpur, District Siwan.
7. Ragini Kumari D/o Late Manju Sah R/o Village Sipah, PS Basantpur, District Siwan.
8. Baiju Prasad Son of Late Manju Sah represented through mother natural guardian, R/o Village Sipah, PS Basantpur, District Siwan.

... .. Petitioner/s

Versus

1. Sailesh Singh S/o Late Bhola Singh R/o Village Sipah, PS Basantpur, District Siwan.
2. Harihar Singh S/o R/o Village Sipah, PS Basantpur, District Siwan.
3. Prahalad Singh S/o R/o Village Sipah, PS Basantpur, District Siwan.
4. Vinod Singh S/o Late Hira Singh R/o Village Nagauli, PS Basantpur, District Siwan.
5. Sri Kant Singh S/o R/o Village Badkagaon, PS Bhagwanpur Hat, District Siwan.
6. Vijay Singh S/o R/o Village Badkagaon, PS Bhagwanpur Hat, District Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Chandra Kant, Advocate
For the Respondent/s : Mr. Ranjan Kumar Dubey, Advocate.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 08-12-2022

I.A. No. 1 of 2022:-



This Interlocutory Application has been filed for expunging the name of respondent No. 3 and for substituting his legal heirs and representatives whose details are mentioned in paragraph-2 of this Interlocutory Application. The respondent No. 3 died on 8.7.2022.

2. Taking into consideration the nature of prayer made in the Interlocutory Application, the same is allowed and the respondent No. 3 is directed to be deleted from the array of the parties and his legal heirs and representative are directed to be substituted in his place, details of whom, are mentioned in paragraph-2 of the Interlocutory Application.

3. Since the main contesting respondent has already been appeared and other respondents did not contest the matter before the learned Appellate Court. Therefore, with consent of the parties, this matter is being heard.

Civil Miscellaneous 323 of 2022:-

4. Heard Mr. Chandra Kant, learned counsel for the petitioners and Mr. Ranjan Kumar Dubey, learned counsel for the respondents.

5. The petitioners are the plaintiffs/respondents in Title Appeal No. 176/2013 arising out of Title Suit No. 12 of 2001. The petitioners filed Title Suit No. 12 of 2001 for declaration of title



and confirmation of possession inter alia on the fact that one Kishun Rai was the khatiani raiyat of a piece of land situated in Khata No. 69, Tauzi No. 1690 having an area of 2 Kattha 15 Dhors. He sold the land in favour of one Ayodhya for Rs.50/- and Ayodhya in turn sold it to grandmother of the plaintiff namely, Most. Shahodri Devi on 8.11.1939 for Rs.90/-. According to the petitioners Jamabandi was created bearing Jamabandi No. 149 but no details viz; date and jamabandi case number has been provided by the petitioners. It is further case of the petitioners that mutation was done, however, the defendfant/appellant got the mutation done in their favour and started interfering with the title and possession of the petitioners/plaintiffs upon the suit land. Hence, there was necessity to file the Title Suit by the petitioners. The further fact of this case is that the defendant also filed their counter claim in the suit claiming their right, title and interest upon the suit property on the basis of the fact that the suit land was purchased in the auction sale held by the Court in the Rent Suit No. 46/8 of 1932-33. Another person claimed legal interest in the suit property and, accordingly, it was admitted position that he was impleaded as defendant in the suit. The suit was decided against the plaintiffs and the counter claim filed by the defendant was



also disbelieved by the learned Trial Court and the claim of all the three i.e. plaintiffs/defendants' counter claim and intervenor was rejected by the learned Trial Court. Against the judgment and decree, three appeals were filed by the plaintiffs/petitioners, defendant/respondent and intervenor/defendant bearing Title Appeal No. 172/2013, 176/2013 and 182/2013 respectively.

6. At the stage of Title Appeal, a petition under Order XLI, Rule 27 was filed by the respondent No. 1 herein who is appellant in Title Appeal No. 176 of 2013 for bringing on record (a) the register 41 of records of the estate of Kishunpur Pargana, Baraj Case No. 46/8 of 1932-33 (b), sale certificate of Case No. 46/8 of 1932-33 and (c) delivery of possession in Case No. 46/8 of 1932-33 by way of additional evidence.

7. The prayer of additional evidence on behalf of the respondents has been allowed by the learned District Appellate Court vide its order dated 14.12.2021 with liberty to the petitioner to rebut the claim of the respondent/appellant in Title Appeal No. 176 of 2013.

8. By the aforesaid order, the Court also called for a report from the Collectorate, Chapra, for verification of the certified copy of the aforesaid three documents brought by the respondent by way of additional evidence. It is important to note



here that the verification report has come from Chapra Collectorate stating therein that the documents produced by the respondents by way of additional evidence was genuine.

9. By the impugned order dated 19.4.2022, the learned District Appellate Court has rejected the prayer of the petitioner to call for the record of Trial No. 17 of 1941 of Gopalganj from the record room of Chapra Collectorate.

10. Learned counsel for the petitioners while assailing the impugned order submits that the learned District Appellate Court had given liberty to the petitioners to rebut the claim of the respondents. Accordingly, by way of rebuttal, the petitioners filed the petition for calling the record of Trial No. 17 of 1941 from the Chhapra Samaharnalaya which has wrongly been rejected by the learned Appellate Court. Learned counsel further submits that documents which have been exhibited as additional evidence are fake and fabricated on the face of it inasmuch as from perusal of the document at Annexure-4, it appears that these documents were filed in Trial No. 17 of 1941 and from perusal of the document on the face of it gives the impression that the document in question is a fake one inasmuch as the signature of the Presiding Officer of the Court and the case number are missing in the document. The further argument of the learned



counsel is that the case number and signature of the Presiding Officer is required under Civil Court Rules.

11. On the other hand, learned counsel appearing for the respondents submits that the petitioners have not brought the correct fact before this Court and in order to delay the disposal of the appeal, the present petition for calling of original record of Trial No. 17 of 1941 has been filed. He referred to Annexure-D to the counter affidavit and submits that after the additional evidence of the respondents was accepted, by way of rebuttal, the petitioners filed three documents which are as follows:-

(a) Letter No. 445 dated 4.5.2022 issued from the office of the B.D.O., Basantpur, Distt. Siwan.

(b) Xerox attested copy of registered deed of Jarpeshgi Deed No. 2134 dated 28.02.1934 executed by Mangaleshwar Prasad Narayan Singh @ Satrughna Prasad Narayan Singh and others in favour of Smt. Prabhawati Devi and others obtained from Sudhir Prasad Narayan Singh, and

(c) Information letter No. 33 dated 22.02.2022 received to appellant Om Prakash Sah @ Om Prakash Gupta from Public Information Officer cum



*record room in Charge Collectorate,
Saran.*

12. The prayer of the petitioners was considered by the learned Appellate Court and out of three documents, the documents at Sl. No. 1 and 3 have been accepted by way of an additional evidence on the ground that these documents, are necessary in order to arrive at just and effective decision of the case. The document No. 2 which is the xerox copy of the deed cannot be marked on the ground that it was the photocopy and cannot be exhibited. Thus, submission of learned counsel for the respondent is that the chance of rebuttal has already been given to the petitioners and by way of rebuttal, the counter documents have been accepted. He also submits that admissibility of the evidence and analysis of the same, can be done by the learned Appellate Court at the time of final disposal of the appeal after hearing. Learned counsel also pointed out that Annexure-6 is the petition filed by the petitioners for calling the records of Trial No. 17 of 1941, but the documents produced by the respondents are not related with Trial No. 17 of 1941 and on the contrary, all these documents are part of Case No. 46/8 of 1932-33.

13. I have heard learned counsel for the parties and have gone through the records including the impugned order.



14. From perusal of the impugned order, it transpires that the learned District Appellate Court has come to the conclusion that the appellant/respondent has filed the certified copy of the document and the same has already been verified by the Court by calling a report from the District Collectorate. Accordingly, there is no need to call for the original record of Trial No. 17 of 1941. The Court has also taken note of the fact that there is a difference between the record of the case and the documents/orders and even if the records of the case is destroyed, the documents/orders/judgment are not destroyed. The additional evidence brought by the appellant/respondents is part of the order/document. The learned Trial Court has also recorded that the appeal is nine years old and the same is at the final stage. The documents produced by the appellant/respondent has already been verified. As such, at this stage, if the prayer of the petitioners is allowed, it will unnecessary delay disposal of the appeal.

15. From perusal of Annexure-4 which are the documents marked by way of additional evidence by the learned Appellate Court, it appears that all the documents produced by the respondents/appellants is related to Case No. 46/8 of 1932-33 and not the Trial No. 17 of 1941. The rebuttal documents filed by



the petitioners have also been marked as exhibits by the learned Appellate Court. It is settled principle of law that whenever an objection is raised regarding the admissibility of any material or item or documentary evidence, the Court may make note of such objection and if the Court finds at final stage that objection so raised is sustainable, the Court may keep such evidence excluded from consideration.

16. In view of the aforesaid discussion and findings arrived at by the District Appellate Court, in my opinion, the impugned order does not require any interference by this Court.

17. Accordingly, this application stands dismissed.

(Anil Kumar Sinha, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	14.12.2022
Transmission Date	N.A.

