

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.140 of 2017

Ahmad Mian Son of Ainul Mian, Resident of Village- Bijbania, Post Office- Mushahari, Police Station- Chanpatia Sanichari, District- West Champaran.

... .. Petitioner/s

Versus

1. Serajul Mian, son of Subedar Mian
2. Manzoor Alam, son of Serajul Mian
3. Mansoor Alam, son of Serajul Mian All are Residents of Village- Bijbania, P.O.- Mushahri, Police Station- Chanpatia Sanichari, District- West Champaran.
4. Ishaqul Mian, son of Adalat Mian
5. Kalam Mian, son of Ishahaque Mian
6. Allauddin Mian, son of Ishahaque Mian
7. Reena Khatoon, Daughter of Ishahaque Mian, All are Residents of Village- Bathuwaria, Police Station- Chanpatia, District- West Champaran.
8. Idani Khatoon, Daughter of Ishahaque Mian, Wife of Ali Hussain, Resident of Village- Puraina, Police Station- Jogapatti, District- West Champaran.
9. Maimulla Khatoon, Daughter of Late Subedar Mian, Wife of Jalil Mian,
10. Jalil Mian, son of Sahabuddin Mian Both Residents of Village- Majhauwa, Post- Office- Parsauni, Police Station- Chautarwa, District- West Champaran.
11. Ash Mohammad Mian, son of Wakil Mian
12. Ahmad Mian, son of Wakil Mian Both 11 and 12 Resident of Village- Bathuwaria, Post Office- Makari, Police Station- Chhautarwa, District- West Champaran.
13. Doabni, Daughter of Wakil Mian, Wife of Allauddin Mian, Resident of Village- Machhargawa Darwalia, Post Office- Machhargawa, Police Station- Jogapatti, District- West Champaran.
14. Saibun, Daughter of Late Wakil Mian, Wife of Wakil Mian, Resident of Village- Parsauni, Post Office- Makari, Police Station- Chautarwa, District- West Champaran.
15. Marchhia Khatoon, Daughter of Ash Mohammad, Wife of Islam, Resident of Village- Karamwa, Post Office- Sugauli, Police Station- Majhauia, District- West Champaran.
16. Rasool Bano, Daughter of Ash Mohammd, Wife of Nazir Mian, Resident of Village- Bhogadi Surahi Tola, Post Office- Harpur, Police Station- Majhauia, District- West Champaran.
17. Thag Mian, son of Jawahir Mian null
18. Rahim Mian, son of Jawahir Mian Both 17 and 18 Resident of Village- Majhauwa, Post Office- Parsauni, Police Station- Chautarwa, District- West Champaran.
19. Roop Rano Khatoon, wife of Gaffur Mian, Resident of Village- Bathuwaria,



Post Office- Makari, Police Station- Chhautarwa, District- West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Shiv Kumar Dwivedy, Advocate

For the Respondent Nos. 1 to 4 : Mr. Lalan Kumar Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT

Date : 23-08-2022

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

2. Petitioner is aggrieved by the order dated 12.08.2016 passed by the learned Sub Judge-VI, Bettiah, West Champaran, in Partition Suit No. 269/04, by which, the application for recall of PW-4 for marking the sale deed executed in favour of the petitioner/plaintiff, which is the basis of the suit, has been rejected.

3. Learned counsel for the petitioner submits that the petitioner is the purchaser of a piece of land belonging to one Sankesha Khatoon by way of a registered sale deed dated 25.6.2003. On the basis of registered sale deed, the petitioner/plaintiff filed a suit for partition. At the time of filing the plaint, certified copy of the sale deed dated 25.6.2003 was also filed by the plaintiff. Learned counsel next submits that the witnesses were produced on behalf of the Plaintiff and PW-4, who is the son of the vendor of the plaintiff Sankesh Khatoon, was examined on behalf of the plaintiff and he identified the



photograph of her mother pasted on the sale deed as well as his thumb impression in the sale deed, which was put by him as a witness to the deed. On the basis of his deposition, the thumb impression and photograph, both were marked as Exhibit 'X'. Subsequently, the petitioner, on the basis of legal advise, filed a petition before the learned Trial Court for marking the contents of the whole of the documents as Exhibit No. 2, which was rejected by the Trial Court vide order dated 2.5.2016. The petitioner/plaintiff filed a petition for recall of PW-4 for the purpose of marking the contents of the sale deed, which is the basis of he suit, as exhibit, has been rejected by the impugned order on the ground of delay.

4. On the other hand, learned counsel for the respondents submits that there is inordinate delay on behalf of the petitioner and the petitioner was negligent inasmuch as when the sale deed was already on record and PW-4 was examined as a witness, he did not take any step for marking the contents of the sale deed as exhibit. He next submits that when all the witnesses were examined and final argument of the plaintiff has been closed, the petitioner has filed the application for recalling of PW-4 as Plaintiff witness. The learned Trial Court has rightly rejected the prayer of the petitioner on the ground of delay and laches.



5. I have heard learned counsel for the parties. From perusal of the material on record, it appears that the basis of the suit was a registered sale deed dated 25.6.2003, though, the PW-4 was examined by the plaintiff and thumb impression and photograph were marked as Exhibit 'x' on behalf of the plaintiff, but, due to inadvertence, the contents of the sale deed, which forms the basis of the suit, was not marked as exhibit by the plaintiff. Since the argument of the defendant has not started and the sheat anchor of the case of the plaintiff is the registered sale deed, therefore, in my opinion, depriving the plaintiff to mark the contents of the sale deed, will amount to miscarriage of justice.

6. Accordingly, the impugned order dated 12.08.2016 is set aside and the petitioner is permitted to recall and to examine PW-4 for the purpose of marking the sale deed dated 25.6.2003 as exhibit in accordance with law.

7. The application stands disposed of.

(Anil Kumar Sinha, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25.08.2022
Transmission Date	N.A.

