

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.714 of 2022

1. Asraf Ali Son of Sheikh Abdul Gaffar Mataufa Resident of Village Surhiya, P.S.- Barhariya, P.O.- Barhariya, District- Siwan.
2. Ahmad Alam, Son of Jamaluddin Mataufa Resident of Village Surhiya, P.S.- Barhariya, P.O.- Barhariya, District- Siwan.

... .. Petitioner/s

Versus

1. Laxman Rai Son of Gaina Choudhary Resident of Village Tethali Dakhin Tola, P.S.- Barhariya, P.O.- Barhariya, District- Siwan.
2. Vijay Chandra Rai, Son of Laxman Rai Resident of Village Tethali Dakhin Tola, P.S.- Barhariya, P.O.- Barhariya, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Amir Alam

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 24-11-2022 Heard learned counsel for the petitioners.

Petitioners-plaintiffs have filed Title Suit No. 939 of 2018 against the respondents-defendants for declaration of title and recovery of possession over the suit land situated in Khata No. 61, Khesra No. 2248 having an area of 05 Katha situated at Mauza Tithali, P.S.- Barhariya, District – Siwan.

The petitioners are claiming their title on the basis of sale deed dated 18.07.1959. The defendants- respondents filed their written statement claiming their right upon the suit land on the basis of sale deed dated 24.04.1922 executed by one Sheikh Walayat in favour of Janki Kumari, who is ancestor of the



defendants. They have also claimed their title based upon the registered gift deed executed by Sheikh Walayat on 29/06/1923. Copy of the registered sale deed has been filed by the defendants in the suit.

After filing of the written statement petitioners -plaintiffs filed a petition for amendment of the plaint challenging the sale deed dated 24.04.1922 and the same was allowed by the trial court *vide* its order dated 25/08/2022. After framing of issues, the trial court directed the petitioners-plaintiffs to produce their witnesses but instead of producing their witnesses, the petitioners filed a petition for calling the sale deed dated 24.04.1922 from the Registry Office, Siwan and the gift deed dated 29.06.1923. The aforesaid petition filed by the petitioners has been dismissed by the impugned order dated 03.09.2022 passed by the learned trial court on the ground that the petitioners have to prove their case on the strength of their own evidence and not on the basis of the stand taken by the defendants in the written statement and accordingly directed the petitioners to produce their witnesses / evidences.

Learned counsel for the petitioners submits that the learned trial court while rejecting the petition filed by the petitioners has failed to appreciate that these documents are necessary for adjudication of dispute between the parties. The trial court has



rejected the petition on two counts. Firstly that the documents are very old and secondly on the ground that the plaintiffs want to delay the disposal of the suit. According to the plaintiffs this finding of the trial court is erroneous.

I have heard learned counsel for the petitioners and have perused the materials on record. The suit has been filed by the petitioners for declaration of title and recovery of possession. It is settled legal principle that the plaintiffs have to prove their case on the strength of their own evidence. The suit is fixed for production of evidence on behalf of the petitioners-plaintiffs. At this stage the petitioners instead of producing their own evidence have filed a petition for calling the documents relied upon by the defendants-respondents, which according to me, is not permissible at this stage particularly when the case is fixed for production of evidence by the plaintiffs-petitioners. Accordingly, I do not find any reason to interfere with the impugned order.

In the result, this application is dismissed.

(Anil Kumar Sinha, J)

praful/-

U			
---	--	--	--

