

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.536 of 2019

=====

Saroj Kumar Singh, aged about 47 years, Male Son of Dheerya Singh @
Dheeraj Kumar Singh, Residents of Village- Utari, P.O. Akorhi, P.S. Mohania,
District- Kaimur.

... .. Petitioner/s

Versus

1. Most. Malti Kuer, aged about 70 years, Female, Wife of Late Nathuni Singh,
Resident of Village- Utari, Police Station- Mohania, District- Kaimur.
2. Akhilesh Kumar Singh, aged about 42 years, Male Son of Late Sant Kumar
Singh, P.S. Mohaniya, District- Kaimur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Arvind Nath Pandey, Advocate Mr. Satyendra Pandey, Advocate
For the Respondent/s	:	Mr. Viveka Nand Singh, Advocate Mr. Dhananjay Kumar Upadhyay, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 26-07-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India against the order dated 20.11.2018 passed by the learned Sub-Judge 1st, Kaimur at Bhabua in Title Suit No. 554 of 2013 whereby and whereunder the petition dated 19.08.2016 filed on behalf of the plaintiff/petitioner for verification and examination of thumb impression of defendant no. 1 and petition dated 05.07.2018 filed on behalf of the plaintiff/petitioner for marking as exhibit of the report of non Survey Knowing Pleader Commissioner have been rejected.



3. Brief facts of the case are that the plaintiff/petitioner filed a title suit being Title Suit No. 554 of 2013 for declaration of title and possession over the suit property and also for declaration that registered Beyanama Deed No. 11294 of 2011 dated 29.11.2011 is null and void and also for restraining the defendants to interfere in the peaceful possession of the plaintiff. The defendants/respondents filed their written statement. The case of the plaintiff is that father of the petitioner purchased the suit property from defendant no. 1/respondent no. 1 on 11.04.1986 vide unregistered deed (Yadast Kewala) and also paid the consideration money and the petitioner and his family members are in peaceful possession of the suit property since 11.04.1986. On 11.09.2013, respondent no. 2 told the petitioner that the suit property has been purchased by him from respondent no. 1 so the delivery of possession should be given to him. Accordingly, the dispute arose between the petitioner and the respondents.

4. The petitioner filed the petition dated 19.08.2016 in the suit with a prayer to direct respondent no. 1 to give her writing and thumb impression so that the same can be compared by the expert with disputed and admitted document. It is claimed by the petitioner that defendant no. 1, had executed the unregistered sale deed in favour of the petitioner's father marked as Exhibit-1 on



behalf of plaintiffs and she also admittedly executed the registered sale deed with regard to the suit property in favour of respondent no. 2. Accordingly, it is necessary that expert opinion be taken with respect to writing and the thumb impression of the defendant no. 1 on disputed Yadast Kewala. The petition dated 05.07.2018 also filed on behalf of the petitioner to mark exhibit non Survey Knowing Advocate Commissioner report. Both the petitions have been dismissed by the learned Court below vide the impugned order.

5. Learned counsel for the petitioner submits that the learned Court below without considering the entire facts and law passed the impugned order which is illegal and liable to be set aside. He has further submitted that the report of non Survey Knowing Advocate Commissioner on appointment and taking the report of thumb impression of respondent no. 1 by an expert were necessary for proper adjudication of the suit and liable to be allowed and the same shall cause no prejudice to the respondents.

6. Per Contra, learned counsel for the respondents submits that report of non-survey knowing Pleader Commissioner is not part of record and without adducing evidence of said commissioner it would not be proper to mark it as an exhibit. Further it has been submitted that Yadast Kewala dated 11.04.1986



is a fake document and sale deed based on memory has no meaning and existence in the eyes of law and there is no requirement of examination by the expert. Therefore, the learned Court below has rightly rejected the said petitions of the petitioner which requires no interference by this Court.

7. Having heard the learned counsel for the parties and perused the material on record, it appears from the impugned order that the learned Court below had observed that plaintiff has option to mark the exhibit through examination of non Survey Knowing Pleader Commissioner and further observed that Yadast Kewala has no meaning and existence in the eyes of law. Therefore there is no need to entertain the petition for examining the writing and thumb impression of respondent no. 1 Most. Malti Kuer by expert.

8. In the present case the Yadast Kewala is an unregistered document and the law is well settled that unregistered agreement to sale is not admissible in the evidence. It is true that in a given case, an unregistered document can be used and/or considered for collateral purpose. In the facts and circumstances verification and examination of writing and thumb impression of respondent no. 1 on such document is liable to be rejected.

9. In view of the aforesaid facts and circumstances and submission of learned counsel for the parties and considering the



limited scope of jurisdiction vested in this Court by Article 227 of the Constitution of India, this Court does not find any jurisdictional error or illegality in the impugned order passed by the learned Court below.

10. Accordingly, this Civil Miscellaneous Application is dismissed with no order as to costs.

11. Needless to say that the learned trial Court shall decide the suit on its own merit in accordance with law without prejudice to the observation made in deciding these petitions.

(Sunil Dutta Mishra, J)

Anand Kr.

AFR/NAFR	NAFR
CAV DATE	11.05.2023
Uploading Date	26.07.2023
Transmission Date	

