

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8821 of 2015

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1. Jaya Rani Roy w/o Sri Manoj Roy
 2. Rahul Kumar son of Late Dinesh Sharma Both are resident of village - Dahuni, Police Station- Ghosi , District- Jehanabad , at present residing at Mohalla- New Colony , Samir Takiya, P.S.- Civil Line, Gaya.

... .. Petitioner/s

Versus

1. Laxami Sharma wife of Suresh Kumar Sharma resident of Mohalla New Colony , Kaliwari, P.S. - Civil Line , District - Gaya.
2. Ravi Anand son of Late Dinesh Sharma resident of village- Dahuni, P.S. Ghosi, District- ehanabad, presently residing at Mohalla - New Colony, Samir Takiya , P.S.- Civil Lines, District- Gaya

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

3 01-12-2023 Heard the parties.

2. The present application has been filed for quashing of the order dated 02.05.2015 passed by learned Munsif-1st, Gaya in Title Suit No. 166 of 2014 by which the application of the petitioners under Order 8 Rule 1-A(3) read with Section 151 of Code of Civil Procedure bringing on record certain documents in evidence as the same was obtained by them under right to Information Act on 30.4.2015.

3. Learned counsel for the petitioners submits that the plaintiff/respondent IInd set filed a Title Suit before the learned Munsif-Ist Gaya for declaration of right, title and interest over the land in question which was purchased in the



name of Late Sushila Sharma who was the mother of the petitioners.

4. He further submits that the said land was purchased by a registered sale deed in the name of Late Sushila Sharma and Laxami Sharma after paying a consideration amount of Rs. 15,000/- and in the sale deed it has been stated that both parties would have their half share each over the suit land since 1976. After purchase of the said land both parties came in joint possession of the land because both of them are their own *gotnis*. Both the parties constructed their residential house and have been living in peaceful possession over the same.

5. In 2005, Sushila Devi, mother of the plaintiff and the petitioners died. The plaintiff has asserted that the property was purchased from the income of joint family property in the name of Sushila Devi and Laxmi on 20.7.1976 after issuance of notice, the defendant no. 1 appeared in the court below and filed her written statement controverting the statements made in the plaint by the plaintiff. The defendant no.1 averred in her written statement that the property was not purchased from the income of joint family property rather Sushila Devi and the defendant no. 1 purchased the property



separately after paying the consideration amount separately to the tune of Rs. 7500/- each. The defendant no.1 purchased the land of Plot no. 278 which is different from Plot no. 275. Plot no. 278 is land locked and there is no way to go to the land from the road. As per the agreement between the defendant no. 1 and the vendor at the time of execution of sale deed, path has been left in plot no. 275 in northern side so that the defendant no.1 may go to her land at plot no. 278. After purchase of the said land on 20.7.1976 both parties lived separately and came in possession over the suit land. So far as the question of execution of one sale deed for both plot is concerned, for convenience of the parties this was done because both are *gotnis* but two maps were appended with the sale deed earmarking separate title, ownership and possession of the parties. The defendant no.1 further averred in her written statement that she constructed her house over plot no. 278 from her own resources and she even obtained a separate Electricity connection in her name and this will clinch the issue of separate possession of the parties.

6. Learned counsel for respondents submits that the defendants has filed their separate written statements supporting the case of the plaintiff. On the basis of the pleadings made by the parties the court below framed the issues. The Suit



was fixed for recording evidence of the plaintiff. On 2.2.2015 an application was filed on behalf of the petitioners under Order 8 Rule 1-A (3) read with section 151 of the Code of Civil Procedure for bringing on record certain documents in evidence as the same was obtained by them under right to Information Act on 30.4.2015 and the document is essential and necessary for coming to a judicial and judicious decision in the Title Suit. The plaintiff/respondent 2nd set did not oppose the application filed by the petitioners but the defendant no.1 /respondent Ist Set opposed the application of the petitioner asserting therein that the documents which are being brought on record as evidence by the petitioners has in fact not been received by them under right to Information Act. The petitioners are proforma defendants and they are supporting the cause of plaintiff.

7. Learned counsel for the respondent 1st set further submits that the trial progressed and the plaintiff has put in his efforts to linger the trial which would be apparent from the proceedings and the application filed by the petitioners has been done at the instance of the plaintiff. In fact the defendant no. 1 would be prejudiced by the documents and the defence of the proforma defendants. After hearing the parties the learned



court below passed the impugned order and rejected the application of the petitioners illegal grounds though the learned court below has taken note of the procedure laid down under Order 8 Rule 1-A (3) of the Code of Civil Procedure. The court below is conscious of the fact that if any party would lay hand upon the documents which was not in possession but surfaced after filing of the suit and after framing of issues and filing of documents, the same may be brought on record by way of evidence.

8. Learned counsel for the respondents has opposed the prayer of the petitioner and has supported the impugned order passed by learned Munsif.

9. Order 8 Rule 1-A(3) of Code of Civil Procedure reads as follow:-

“3. A document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.”

10. It is not in dispute that the documents in question have come in the possession of the petitioners under the Right to Information Act on 30.04.2015. Therefore, considering the provisions of Order 8 Rule 1-A(3) read with Section 151 of Code of Civil Procedure, I am of the view that



the application of the petitioners should have been allowed by the Court below. The impugned order dated 02.05.2015 passed by learned Munsif-1st, Gaya in Title Suit No. 166 of 2014 is hereby quashed and the application of the petitioners filed under Order 8 Rule 1-A(3) read with Section 151 of Code of Civil Procedure is allowed. The Court below is directed to proceed in the Title Suit.

11. With the aforesaid observation and direction, this application is disposed of.

(Sandeep Kumar, J)

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