

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.107 of 2017

1. Radha Pandit, S/o Late Dukhit Pandit
2. Santosh Pandit @ Santosh Kumar Pandit, S/o Radha Pandit, Both residents of Village - Sadisopur, P.S. - Bihta, District - Patna.
3. Kanchan Devi D/o - Radha Pandit, W/o Dilip Pandit, Resident of Mohalla - Purandarpur, P.S. - Jakkanpur, District - Patna.

... .. Petitioner/s

Versus

1. Surya Kant Pandit, S/o Radha Kant
2. Sonu Kumar
3. Dipak Kumar, Both minor sons of Surya Kant Pandit through father Surya Kant Pandit All residents of Village - Sadisopur, P.S. - Bihta, District - Patna.
4. Manorma Devi, W/o Raj Kishore Pandit, D/o Radha Pandit, Resident of Village - Balipakar, P.S. - Paliganj, District - Patna.
5. Ganauri Pandit, S/o Late Dukhit Pandit, Resident of Village - Sadisopur, P.S. - Bihta, District - Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	: Mr. Pramod Kumar Singh, Advocate Mr. Ranjay Kumar, Advocate
For the Respondent Nos. 1 to 3	: Mr. Rakesh Kumar, Advocate Mr. Rikesh Sinha, Advocate
For the Respondent No. 4	: Mr. Deovind Kumar Singh, Advocate Mr. Utpal Kant, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

5 24-07-2023 Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed against the order dated 19.12.2016 passed in Title Suit No. 343 of 2010 by learned Sub Judge III, Danapur, Patna whereby and whereunder the petition of defendant No. 3 / respondent No. 4 for filing separate written statement has been allowed.

3. Brief facts of the case are that the plaintiffs /



respondent Nos. 1 to 3 filed the Title Suit for partition of their share in the suit property and also declaration of sale deed dated 06.07.2010 executed in favour of defendant No. 2 / petitioner No. 2 by defendant Nos. 1, 3 and 4 (petitioner No. 1, respondent No. 5 and petitioner No. 3) as illegal, invalid and not binding on the plaintiffs. Defendant Nos. 1 to 4 jointly filed their written statement denying the averments made in the plaint.

4. Respondent Manorma Devi claimed that she lived in Ludhiyana (Punjab) with her husband and family members for her livelihood and she had no knowledge about the Title Suit No. 343 of 2010 instituted by her brother Surya Kant Pandit and others and she came to know that a joint written statement has been filed on behalf of her alongwith her father and brother Santosh Pandit then she filed a petition on 24.08.2016 before the learned Court below to give her opportunity to file her separate written statement which was allowed vide impugned order dated 19.12.2016.

5. Learned counsel for the petitioners submits that impugned order is contrary to Order 8 Rule 1 C.P.C. and illegal and the same requires interference of this Court in its supervisory jurisdiction. He submits that defendant No. 3 has signed on *Vakalatnama* and written statement and now



defendant No. 3 Manorma Devi has joined hands with plaintiffs and defendant No. 5 and she cannot take plea that her father and brother Santosh Pandit has taken her signature on plain and printed documents. The learned Court below without enquiry as to whether fraud has been played on her or not permitted to file separate written statement. He further submits that there is no provision in C.P.C. for filing separate written statement once it is filed jointly with other defendants.

6. Per contra, learned counsel for the respondent No. 4 supports the impugned order and submits that a fraud was played on her who is admittedly resides in Ludhiyana with her husband for livelihood and without her knowledge and consent the joint written statement was filed which has no meaning in law and when she came to know the said fact she filed petition for filing separate written statement and the Court has ample power to allow the same in the interest of justice and facts and circumstances of the case. There is no illegality in the impugned order and it is not required to be interfered by this Court in its supervisory jurisdiction.

7. The learned Court below in the impugned order observed that with written statement filed on behalf of defendant Nos. 1 to 4 affidavit had been given by defendant No.



2 Santosh Pandit and not by defendant No. 3 who does not support the filing of joint written statement. It is a partition suit and without knowing the case of defendant No. 3, the correct adjudication seems to be not justified and in the interest of justice to bring the true fact on record, permission for filing separate written statement was allowed.

8. Order 8 Rule 9 of C.P.C. confers wide discretion in the Court to require a written statement of any of the parties. The Court shall exercise discretionary powers vested in it only to advance the cause of justice. The defendant has special and adequate reasons.

9. When a fraud is played on a party, it is the duty of the Court to consider all facts and circumstances of the case and should consider the application in that perspective. The fact that previously the written statement was filed jointly which is denied by the party will always remain on record and on this aspect the Court is free to consider the same. It is not a case wherein admission was sought to be withdrawn by filing another written statement.

10. In this case, the learned trial Court has exercised judicial discretion assigning the reason, I do not find any jurisdictional illegality or error for interference in the



supervisory jurisdiction of this Court under Article 227 of the Constitution.

11. This Civil Miscellaneous Application is, accordingly, dismissed.

(Sunil Dutta Mishra, J)

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