

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1146 of 2017

Yamuna Pandey, son of Late Kanhaiya Pandey, Resident of Village- Sikraur,
P.S.- Shivsgar, District- Rohtas.

... .. Petitioner/s

Versus

1. Ramraj Tiwary
2. Rajbans Tiwary, both are sons of Late Ram Keshwar Tiwary, Resident of Village- Ram Kekai, P.S.- Shivsagar, District- Rohtas.
3. Vindhyachal Devi, Wife of Ajay Shankar Pandey, Daughter of Ramraj Tiwary, resident of Village- Thakurhat, P.S.- Sabar, District- Kaimur.
4. Usha Devi, wife of Manoj Pandey @ Vinod Pandey, Daughter of Ramraj Tiwary, resident of Village- Khudhiya, P.S.- Baddi Shivsagar, District- Rohtas.
5. Asha Devi, wife of Ashutosh Pandey, Daughter of Ramraj Tiwary, resident of Village- Jigana, P.S.- Mohaniya, District- Kaimur.
6. Tara Muni Devi, wife of Sanjeev Kumar Shukla, Daughter of Rajbansh Tiwary, resident of Village- Mitanda, P.S.- Baddi Shivsagar, District- Rohtas.
7. Anirudh Dubey, son of Late Kameshwar Dubey, resident of Village- Tetari, P.S.- Sasaram, District- Rohtas.
8. Madhu Devi, wife of Sri Mahesh Pandey, resident of Village- Dumduma, P.S.- Dudhani, District- Kaimur.
9. Rambayi Devi, wife of Dudhnath Pandey, Daughter of Late Kanhaiya Pandey, resident of Village- Damodarpur, P.S.- Sabar, District- Kaimur.
10. Nirmala Devi, wife of Vindhyachal Pandey, Daughter of Late Kanhaiya Pandey, resident of Village- Bhadaula, P.S.- Kudra, District- Kaimur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jitendra Prasad Singh, Advocate Mr. Rajeev Kumar, Advocate Mr. Sripriya Sinha, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 19-01-2024

Heard learned counsel for the petitioner on the point
of admission and I intend to dispose of the matter at the stage of
admission itself.



2. The petitioner is aggrieved by the order dated 1st of October, 2016, passed by learned Sub-Judge-X, Sasaram, in Title Suit No. 352 of 2011, allowing the prayer of the defendant/respondent 1st set to keep the certificate of genealogical table on record.

3. Learned counsel for the petitioner submits that the plaintiff has filed Title Suit No. 352 of 2011 in the Court of learned Sub-Judge, Sasaram for partition of his 1/4th share by appointing Pleader Commissioner and the said suit is pending adjudication before the Court of learned Sub-Judge-X, Sasaram. In the said title suit, plaintiff furnished a genealogical table, which was disputed by the defendants. According to the said genealogical table, Ram Keshwar Tiwary had two sons, namely Ramraj Tiwary and Rajbans Tiwary as well as two daughters, namely, Reshma Kuer and Shiv Kumari Devi. The plaintiff claims himself to be the son of Reshma Kuer and as such entitled for 1/4th share. This fact is disputed by the defendants who claims that Ram Keshwar Tiwary has only two sons and he had no daughter. During pendency of the case, defendant nos. 2 to 6 filed a petition on 26.04.2016 praying therein that a genealogical certificates issued by the Mukhiya after recommendation of Ward Member as well as member of Zila



Parishad be kept on record for evidence. The prayer of the defendants was opposed by the plaintiff, who filed a rejoinder contending that similar certificate issued by the same Mukhiya on recommendation of same Ward Member and produced by the plaintiff on 30.03.2016 for keeping the same on record, has been rejected by learned Trial Court vide order dated 08.04.2016. It has also been submitted that genealogy was the main issue in this case since defendants denied the claim of the plaintiff that their ancestor Late Ram Keshwar Tiwary was having any daughter. Learned Trial Court after hearing the parties, allowed the prayer of the defendants vide impugned order dated 01.10.2016 with a direction to keep the certificates on record for proper adjudication.

4. Learned counsel further submits that in the present case, main controversy is with regard to genealogical table as pleaded by the plaintiff in his plaint seeking partition of 1/4th share and therefore, certificates produced by the defendants should not be accepted for evidence because the similar certificate issued by the same Mukhiya and furnished by the plaintiff/petitioner was earlier refused to be brought on record. It is further submitted that the evidence of the plaintiff has been going on and the order of the learned Trial Court to keep the



certificate on record on behalf of the defendants will prejudice the rights of the plaintiff. Learned counsel further submits that the order impugned is not based on the correct appreciation of the legal as well as factual aspect of the matter and as such, the same is fit to be set aside.

5. Perused the record.

6. Perusal of the impugned order shows the learned Trial Court has mentioned that earlier it has rejected the petition filed by the plaintiff on 8th of April, 2016, so it could not be said not that it was not aware about its previous order while passing the impugned order. Further, it has specifically mentioned in its order that the said order was only for the purpose of keeping the certificate on record and the issue upon its relevancy and its admissibility have been left open.

7. Having regard to the contents of the impugned order and submissions made on behalf of the petitioner, I am of the view that merely keeping some certificate on record should not cause prejudice to the plaintiff/petitioner for the simple reason that it has neither been exhibited nor has been held to be admissible. Merely taking certain document on record does not mean, it has been treated admissible as evidence. Relevancy of the document is another issue to be decided by the Court after



due consideration. It is also much surprising that the trial court refused to take on record similar document filed by the plaintiff. Since the rejection order is not on record, no comments on merit could be made. At the same time, the rejection order dated 08.04.2016 has not been challenged. But the trial courts should not adopt different yardsticks while dealing with similar type of issue.

8. Further, Order VIII Rule 1-A confers power upon the trial court to admit a document as evidence even after filing of written statement and during hearing of the suit. So, the learned Trial Court has not exceeded its jurisdiction while passing the impugned order.

Since the application for keeping the document has been allowed by the learned Trial Court exercising its discretionary power under Order VIII, Rule 1-A during recording of the evidence of the plaintiff, it would be in fitness of thing that the plaintiff is given ample opportunity to assail the document, if he so desires and the plaintiff would be at liberty to take all objection regarding relevancy and admissibility of the said document during the course of the trial.

9. In view of discussions made here-in-before, I do not think, the instant petition has got any merit and the same is



dismissed with liberty as aforesaid. However, learned Trial Court is directed to expedite the trial and conclude the same within next six months from the date of receipt/production of a copy of this order. All contentions on merit are kept open.

(Arun Kumar Jha, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
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Transmission Date	N/A

