

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1550 of 2017

=====

Ram Charitar Gope @ Chaita Gope S/o Late Ram Prasad Gope, Resident of Village- Kumhrar, Walis Khan Ka Talab, P.S.- Sultanganj Agamkuan, Distt- Patna.

... .. Petitioner/s

Versus

Kuldip Gope S/o Late Mangal Gope, Resident of Village- Illahibagh, P.S.- Phulwari Sharif Parsa Bazar, Distt- Patna at present resident of Village- Kumhrar, P.S.- Sultanganj Agamkuan, Distt- Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Amarendra Narayan, Advocate Mr. Deepak Kumar, Advocate
For the Respondent/s	:	Mr. Abinash Kumar, Advocate Mr. Kumar Satya Kirti, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 19-09-2024

Heard learned counsel for the parties.

2. The petitioner is aggrieved by order dated 06.08.2013 passed by learned Sub Judge-IV, Patna City in Title Suit No. 68 of 1999 whereby and whereunder it refused to mark the original copy of Cess Return called from the office of the Collector, Patna through the messenger as exhibit and marked the said document as 'X' for identification and further quashing of orders dated 18.10.2016 and 05.05.2017 passed by learned Sub Judge-III, Patna City in Title Suit No. 68 of 1999 whereby and whereunder the application of the petitioner for marking the Cess Return (marked 'X' for identification) exhibit in the case and review order dated 06.08.2013 have been refused.



3. Learned counsel for the petitioner submits that the impugned order is not sustainable in the light of facts that document is of the year 1928 and it has been produced before the Court from the side of the public authority. It is not a document of the petitioner. Still the learned trial court refused to mark it as an exhibit. Learned counsel further submits that merely on the objection of the respondent that the document was forged and fabricated and it could not be exhibited under provisions of Section 90 of the Evidence Act, learned trial court went on to reject the prayer of the petitioner for marking the document exhibit. Learned counsel further submits that the reliance placed by the learned trial court in the decision of ***Haradhan Mahatha and Ors. vs. Dukhu Mahatha*** reported in ***AIR 1993 Pat 129-135*** is not relevant for the purpose of the present case since the facts are quite different. Learned counsel further submits that the peon from the office of the Collector produced the document before the learned trial court and the office of the Collector is the custodian of Cess Return and it was sent upon requisition of the Court of learned Sub Judge. Learned counsel further submits that the document sought to be marked exhibit is more than 80 years old and under the provision of Section 90 of the Evidence Act, there is presumption of its genuineness and proper execution. Learned counsel further submits that after passing of the impugned order dated 06.08.2013,



the petitioner moved before the learned trial court seeking recall/review of the order and the learned trial court refused both the prayer of the petitioner. Learned counsel further submits that the respondent has unnecessarily disputed the documents and raised question over its veracity though the same document was marked exhibit in Title Suit No. 238 of 1978 and the respondent was defendant no. 1 in the said suit. Learned counsel submits that the orders of the learned trial court suffers from illegality and irregularity and therefore are not sustainable.

4. Learned counsel appearing on behalf of the respondent vehemently opposes the submission made on behalf of the petitioner. Learned counsel for the respondent submits that the present petition is not maintainable as three orders have been challenged in a single petition which is barred under Rule 6 of Chapter III A of Patna High Court rules. Learned counsel further submits that the learned trial court has rightly rejected the applications since the respondent had challenged the genuineness of the document and if a dispute has been raised over the authenticity of document, the same could not be marked exhibit by waiving the formal proof of the same under Section 90 of the Evidence Act. Learned counsel further submits that the petitioner has already been examined in the learned trial court and the petitioner did not say anything about this document in his evidence



and did not introduce the same. Since the documents are forged and fabricated, the learned trial court rejected the prayer of the petitioner and dismissed the application in a perfectly valid manner. The learned counsel relied on the decision of ***Haradhan Mahatha (supra)***, in support of his contention.

5. I have given my thoughtful consideration to the rival submission of the parties and the facts of the case. So far as objection of the learned counsel of the respondents about three orders being challenged in one petition is concerned, I do not think there is much material since the orders have been passed in same transaction. First order is with regard to rejection of petition filed for marking exhibit some document, second petition was for its recall and third petition was for review. So these orders have not been passed in different transaction and are part of same transaction and could be challenged in one miscellaneous petition.

The learned trial court rejected the application mainly on the ground of objection by the respondent that document was forged and fabricated and hence, its admissibility being barred under Section 90 of the Evidence Act but when the document has been produced from custody of a public authority and the respondent challenge its veracity saying it to be forged and fabricated, such allegation should be supported with cogent reasons. Merely saying any document to be forged and fabricated



would not suffice. Further, so far as the reliance placed on ***Haradhan Mahatha*** (*supra*), is concerned learned Division Bench has clearly held that when witnesses are present who could prove the execution of documents and when the veracity and genuineness of the document is challenged such document should not be marked exhibit waiving the formal proof since persons are present who could prove the execution of such documents. But in the present case, the document is dated 1928 and it is a receipt of Cess Revenue issued by the said *Zamindar*. It has been submitted that there is no person alive to prove the Cess receipt of 1928.

6. Under the circumstances, I am of the view that the learned trial court ought to have allowed the application for marking said document exhibit and ought not to have marked the said document 'X' for identification. Documents have been produced from proper custody and it is more than 30 year old document. It has also been submitted during arguments that the official who brought the document has also been examined but his further cross-examination was deferred and it appears that he was not cross-examined and discharged and for this reason his evidence was perhaps not considered. In any case, the fact that the document is more than 80 years old and has been produced from the custody of Collector, the presumption under Section 90 of the Evidence Act could not be brushed aside in casual manner.



Moreover, it has also been submitted that the same document was also marked exhibit in Title Suit No. 238 of 1978. In the light of the discussion made so far, I think the impugned orders dated 06.08.2013, 18.10.2016 and 05.05.2017 could not be sustained and hence, the same are set aside. The application dated 21.08.2013 for marking the Cess Return document exhibit is allowed.

However, the petitioner is still required to satisfy the Court with regard the admissibility of the document in accordance with Section 90 of the Evidence Act.

7. Since, it is a suit of 1999, the learned trial court is directed to expedite the process and try to dispose of the suit within six months from the date of receipt/production of copy of this order. The learned counsel for the plaintiff undertakes to produce the witnesses on each and every date of the Court without fail.

8. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	23.09.2024
Transmission Date	N/A

