

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.248 of 2024

1. Ramashish Pandit Son of Nand Kumar Pandit Resident of Village and P.O.- Tolaha, P.S.- Ramnagar, District- West Champaran.
2. Smt. Minta Devi W/o Ramashish Pandit Resident of Village and P.O.- Tolaha, P.S.- Ramnagar, District- West Champaran.

... .. Petitioners

Versus

1. Deepak Prasad S/o Late Babulal Prasad Resident of Village- Hardiaya Chauk, Narkatiyaganj, P.O.- Narkatiyaganj, P.S.- Sikarpur, District- West Champaran.
2. Shambhu Prasad S/o Late Babulal Prasad Resident of Village- Hardiaya Chauk, Narkatiyaganj, P.O.- Narkatiyaganj, P.S.- Sikarpur, District- West Champaran.
3. Shivji Prasad S/o Late Babulal Pd. Resident of Haradiya Chauk, P.S.- Sikarpur, District- West Champaran.
4. Kripa Devi W/o Gobardhan Sah Resident of Haradiya Chauk, P.S.- Sikarpur, District- West Champaran.
5. Meena Devi W/o Late Shesh Nath Sah Resident of Haradiya Chauk, P.S.- Sikarpur, District- West Champaran.
6. Sandhaya Devi W/o Arvind Kumar Resident of Haradiya Chauk, P.S.- Sikarpur, District- West Champaran.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Chandra Kant, Advocate Mr. Navind Kumar, Adocate Mr. Shashank Shekhar, Advocate
For the Respondent/s	:	Mr. Pankaj Kumar Jha, Advocate Mr. Umesh Kumar Gupta, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 02-09-2024

Heard learned counsel for the petitioners as well as learned counsel for the respondents and I intend to dispose of the present petition at the stage of admission itself.

02. The instant petition has been filed under Article 227 of the Constitution of India for setting aside order dated 16.01.2024 passed by the learned Munsif, Narakatiyaganj in



Title Suit No. 05 of 2013 whereby and whereunder the application filed by the petitioner under Section 151 of the Code of Civil Procedure, 1908 read with Section 74 and 77 of the Indian Evidence Act for marking a map exhibit has been rejected.

03. Learned counsel for the petitioners submits that the impugned order is not sustainable as the petition of the petitioners has been rejected by a cryptic order merely saying that the document is not relevant for the present case and also on erroneous ground that the same document was being sought to be exhibited twice. Learned counsel further submits that respondents-1st set have filed the suit for recovery of possession of Schedule-3 land of the plaint. The defendants contested the claim of the plaintiffs on the suit land mainly on the ground that on 19.07.1967 a sale deed was executed by one Usaman Mian in favour of Babulal Prasad with respect to 02 *Kattha* 05 *dhur* land but in reality Babulal got only 01 *Kattha* 02 *dhur* land in possession as rest of the land was acquired by the Public Works Department for construction of road and the said road is still in existence. The land for the purpose of construction of the road was acquired in the year 1965. Earlier the petitioners filed true copy of map of the land acquired and the same was marked Exhibit-E. However, the said exhibit depicted the upper part of



the map showing the position of the plots which were to be acquired. In the lower portion the map area of different plots were mentioned for which acquisition proceeding took place. The petitioners could not obtain the certified copy of the complete Map, which has been issued by the District Record Room. The document sought to be brought on record shows the complete picture and includes the map as well as the area which was acquired and under the portion of the acquired area, Survey Plot Nos. 14 and 14/A are relevant for the purpose of the present suit since Schedule-2 land pertains to Plot No. 14 and from the document, it could be seen that from Plot No. 14 and 14/A, area 10 decimal and 5 decimal land, respectively were acquired. Learned counsel further submits that the learned trial court did not consider the fact that the Map filed subsequently by the petitioners is with respect to the area acquired by the department for construction of the road and hence, the document is relevant for just decision of the case as it is a vital piece of evidence. Learned counsel further submits that the said facts have been brought on record in the written statement filed by the petitioners before the learned trial court and proper foundation has already been made. Learned counsel further submits that the document sought to be exhibited is a public document as the same is certified copy of Map with respect to land acquired for



Dhumnagar Maldahia Road in the then District of Champaran and the same is true copy of record maintained by a Government Authority regarding land acquisition made in the year 1965. Thus, the learned counsel submits that the impugned order is not sustainable and the same be set aside and the Map be ordered to be taken on record by allowing the application filed by the petitioners.

04. Learned counsel appearing on behalf of the respondents-1st set vehemently opposes the submission made on behalf of the petitioners. Learned counsel for the respondents submits that the learned trial court has rightly held that the document was not admissible as evidence and has also correctly held that the same document was earlier marked Exhibit-E and the document could not be marked twice as exhibit. Learned counsel further submits that the document is not relevant as it is not clear from the document that which portion was acquired from the plot nos. 14 and 14/A. Learned counsel further submits that the contention of the learned counsel for the petitioners is contrary to the report of the Pleader Commissioner which shows excess land is in possession of the defendants. The Pleader Commissioner has held that the land in question, was not acquired by the PWD rather it was the petitioners who encroached upon the land of the respondents. Learned counsel



further submits that suit has been filed in the year 2013 and due to dilatory tactics of the petitioners/defendants, the matter has been dragged on till date and the learned trial court should be directed to dispose of the suit in time bound manner.

05. Perused the record.

06. Having regard to the rival submission of the parties and taking into account the facts and circumstances of the case, I am of the view that the learned trial court erred on the point when it recorded its finding that the document was not admissible and the same document could not be exhibited twice. The position has been made clear that the Exhibit-E and the Map being sought to be brought on record as exhibit are not the same documents, as Exhibit-E is only a part of the complete document which the petitioners are trying to exhibit. There is no dispute over this fact. Further, the learned trial court has not given any reason for recording the finding that the document was not admissible. When there is pleading of the defendants about the fact of acquisition of land, any document having the details of such acquisition becomes a relevant document since the said document is certified copy of Map with respect to land acquired for Dhumnagar Maldahia Road in the erstwhile District of Champaran and a certified copy of a Map issued by District Record Room would fall under the category of public document



under Section 74 (2) of the Evidence Act. Further, Section 77 of the Indian Evidence Act provides for the production of certified copy of a public document as secondary evidence in proof of contents of its original, therefore, the learned trial court should not have rejected the petition on this count.

07. In the light of the aforesaid discussion, I am of the considered opinion that the impugned order dated 16.01.2024 could not be sustained and hence, the same is set aside. In the result, the application 18.08.2023 filed by the defendants/petitioners stands allowed.

08. Accordingly, the present petition stands allowed.

09. However, the learned trial court is directed to expedite the matter and try to dispose of the matter within next six months from the date of receipt/production of a copy of this order.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.09.2024
Transmission Date	NA

