

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.276 of 2024**

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1. Sushil Jha, son of Late Chunchun Jha, resident of Village-Adhgaon, Hanuman Nagar, Post Office-Saura, Anchal and Police Station-Nanpur, District-Sitamarhi.
 2. Ashok Kumar Jha alias Ashok Jha, Son of Late Chunchun Jha, resident of Village-Adhgaon, Hanuman Nagar, Post Office-Saura, Anchal and Police Station-Nanpur, District-Sitamarhi.

... .. Petitioner/s

Versus

Fudan Kumar Jha son of Bindeswar Jha, resident of Village-Adhgaon, Hanuman Nagar, Post Office-Saura, Anchal and Police Station-Nanpur, District-Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Amit Kumar Jha, Advocate
For the Respondent/s	:	Respondent (in person)

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

CAV JUDGMENT

Date : 13-09-2024

The instant petition has been filed under Article 227 of the Constitution of India against the order dated 10.01.2024 passed by learned Sub Judge 1st, Pupri, Sitamarhi in Title Suit No. 38 of 2019 whereby and whereunder the application filed by the defendants/petitioners under Order VIII Rule I-A(3) of the Code of Civil Procedure (in short “the Code”) was rejected.

02. The conspectus of the case is that the petitioners are defendants in Title Suit No. 38 of 2019 filed by the plaintiff/respondent for recovery of possession of part of survey Plot No. 1226 having an area of 1300 sq. link (Kari), situated in the



Village- Adhgaon, Hanuman Nagar, Post Office-Saura, Anchal and Police Station-Nanpur, District-Sitamarhi from the defendants petitioners and for *mesne profit* and for other reliefs. It transpires that the plaintiff has filed the suit claiming that he is the owner of above noted suit land and has got the land is his share after partition among his ancestors and brother. His brother has built his house on his share in Khata No. 479, Khesra No. 1226 from south side and he also constructed his house in the year 1987 on the part of the aforesaid land from south side and kept the land vacant from the north side. The defendants encroached upon the land demolishing the pillars and beams erected over the suit property by the plaintiff and also demolished the temporary house built by uncle of the plaintiff on Khesra No. 1224 and built a wall on the aforesaid plots. The defendants appeared and filed their written statement controverting the claim of the plaintiff. One of the contentions in the written statement of the defendants is that the ancestors of the defendants had title and possession over C.S. Plot Nos. 509 and 508 and corresponding plots are Revisional Survey Plot Nos. 1225 and 1224, respectively. However, C.S. Plot Nos. 508 and 509 were running obliquely in the north east direction and likewise the northern ridge of C.S. Plot No. 505 was obliquely running somewhat in the north east direction and there was difficulty in the



construction of straight walls being constructed by ancestors of both the parties. So the ancestors of the defendants gave $\frac{1}{2}$ decimal of south western portion of the C.S. Plot No. 508 to ancestors of plaintiff and in lieu thereof, the ancestors of the plaintiff had given 9 links wide and 25 links long land from north eastern portion of C.S. Plot No. 505 i.e., northern portion of R.S. Plot No. 1226 to the ancestors of the defendants in exchange and accordingly, the ancestors of both the parties of the suit had been coming into possession with perfect title thereon. Thus, the defendants claimed their title and possession over the suit land of Plot No. 1226 on the basis of oral exchange. It has also been submitted that south western portion of C.S. Plot No. 508 given in change to the ancestor of the plaintiff has been included in the map of R.S. Plot Nos. 1227 and 1184 recorded in the names of ancestors of the plaintiff and they have constructed house over the said portion of C.S. Plot No. 508.

03. The defendants filed a petition on 08.11.2023 under Order VIII Rule 1-A(3) of the Code for permission to produce the comparative case map of C.S. Plot Nos. 508 and 509 and their corresponding R.S. Plot Nos. with the help of R.S. and C.S. map and report prepared by the Survey Knowing Advocate and for recording the evidence of the said witnesses to prove the comparative case map and report. A reply to the said application



was filed on 22.11.2023. After hearing the parties, the learned Sub Judge 1st, Pupri rejected the petition of the defendants and the said order is under challenge before this Court.

04. Learned counsel for the defendants/petitioners submitted that the learned trial court has rejected the petition on erroneous ground and failed to appreciate the fact that the defendants have a right to adduce evidence in support of their defence and if the same is denied to them, then it would amount to denial of justice to the defendants. Learned counsel further submits that it goes without saying that such denial would cause irreparable loss and severely prejudice the defendants. The learned counsel further submitted that the learned trial court failed to consider that leave to file the document was prayed in view of specific defence taken by the defendants. The learned trial court further failed to appreciate the fact that the northern portion of R.S. Plot No. 1226 which is the subject matter of dispute had come in possession of ancestors of the defendants on the basis of oral exchange. The learned counsel referred to the contention in written statement about giving ½ decimal of south western portion of C.S. Plot No. 508 to the ancestors of the plaintiff and the ancestors of the plaintiff giving 9 links wide and 25 links long land from north eastern portion of C.S. Plot No. 505, i.e., northern portion of R.S. Plot No. 1226 in exchange.



Learned counsel made further submission about R.S. Plot Nos. 1227 and 1184 being included in the map of C.S. Plot No. 508 recorded in the name of ancestors of the plaintiff and the plaintiff having constructed a house over the said portion of C.S. Plot No. 508. Learned counsel further submitted that the learned trial court rejected the petition of the defendants on completely erroneous ground that it was not relevant and admissible to show which new plot no. came into being from the old survey plot no. and the report of Survey Knowing Pleader Commissioner was not an important and admissible document. This is completely erroneous appreciation of fact and the law applicable in the case.

05. The learned counsel further submitted that even if there is some delay, the trial court could not have dismissed the petition and refused to take the documents on record and disallow the defendants to adduce the evidence on the aforesaid point. In this regard, learned counsel placed his reliance on the decision of Hon'ble Supreme Court in **Civil Appeal No. 4096 of 2022** in the case of **Levaku Pedda Reddamma & Ors. Vs. Gottumukkala Venkata Subbamma & Anr.** dated 17.5.2022 reported in **2022 LiveLaw (SC) 533**. Learned counsel for the defendant submitted that in the above cited case, learned trial court dismissed the application filed by the defendants in the year 2020 under Order VIII Rule 1-A(3) of the Code to file certified copies of registered



deed of sale and the copies of revenue records on the ground that said documents were always available and could have been obtained even earlier by the defendants and filed along with the written statement and the written statement was filed in the year 2014. The order of the learned trial court was upheld by the learned Single Judge of Andhra Pradesh High Court. The said orders came to be challenged before the Hon'ble Supreme Court. The Hon'ble Supreme Court held that the rules of procedure are hand maid of justice and, therefore, even if there is some delay, the trial court should have imposed some cost rather than to decline the production of the documents itself and allowed the appeal setting aside the orders passed by learned trial court permitting the defendants to file the documents and to prove the same in accordance with law. Thus, the learned counsel submitted that the impugned order is not sustainable and the same needs to be set aside.

06. The respondent appearing in person vehemently opposed the contention of the learned counsel for the petitioners. The respondent submitted that the father of the defendants purchased Khesra No. 1225 measuring 2 decimal only in 1970 and there is no whisper of exchange of the land in the sale deed of the petitioners/defendants. The respondent/plaintiff submitted that the petition by the defendants is not maintainable as evidence



have been concluded by the plaintiff and defendants have also examined them along with their witnesses. Order VIII Rule 1 (A) (i) of the Code provides that documents relied upon by the defendants should be presented at the time of filing of written statement. But the defendants did not file the same at the time of filing of their written statement. The defendants further failed to state that the documents were not in their possession at the time of filing of written statement. Even during cross examination of plaintiff and during evidence of defendants, these documents were not produced. The documents have been produced at the late state of the trial only to delay the proceeding and the same cannot be permitted. The respondents took the Court through the facts of the case and submitted that the Anchal Amin gave a report after carrying out measurements of the suit land of 19.02.2018 that 1300 sq. links (Kari) has been fenced by the defendants. As the defendants did not show their willingness to vacate the land, a case was filed before learned DCLR under Section 4(1)(h) of Bihar Land Dispute Resolution Act, 2009 for removal of the defendants from the encroached portion of the respondents land. The respondent further submitted that the defendants did not dispute the ownership of the respondent but made a false submission that there was exchange of plot by their ancestors and the same defence was taken in the written



statement. Respondent further submitted that after filing of the suit in 2019, the defendants avoided the notice and appeared before the learned trial court on 22.07.2019 though the suit has been filed on 19.02.2019. The defendants took 19 adjournments and filed a written statement on 16.01.2020 but did not file any document in terms of Order VIII Rule 1 A (i) of the Code. The issue was framed on 23.02.2022. The evidence of the plaintiff was closed on 27.04.2022. Thereafter, the evidence of the defendants started and petitioner no. 1 was examined as D.W.-6 on 27.06.2022 and was finally cross examined on 11.10.2023. Thereafter, in order to further delay the matter the petition dated 08.11.2023 has been filed under Order VIII Rule 1-A(3) of the Code only to delay the matter. The application is completely bereft of any reason as to what prevented the petitioners from filing the documents mentioned in the application along with written statement or prior to conclusion of evidence. No certificate has been produced to show that the person claiming to be a Survey Knowing Pleader Commissioner had been certified to be competent person under any law to prepare such a map. Further, there is no relevance of the said documents.

07. Respondent further submitted that the order of the learned trial court is a well reasoned order and the learned trial court has rightly rejected the application of the defendants as the



documents in evidence sought to be brought on record are not relevant for the purpose of adjudication of the matter. The respondent again reiterated that due to recalcitrant approach of the defendants, the matter has been adjourned 79 times over a period of six years and the filing of the instant petition is one more instance to delay the adjudication of the matter of the defendants. Learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Gayathri Vs. M. Girish*** reported in ***(2016) 14 SCC 142***, wherein the Hon'ble Supreme Court deprecated the tendency of the petitioner-defendant to seek adjournment on one or other pretext and approaching the Supreme Court against orders rejecting repeated application for recall and cross examination of witnesses of plaintiff. Respondent further submitted that the approach of the defendants is somewhat similar.

08. Respondent referred to another decision of the Hon'ble Supreme Court in the case of ***State of Himachal Pradesh Vs. Jai Lal and Ors.***, reported in ***(1999) 7 SCC 280*** to stress the point that the learned advocate who prepared the report about comparative map could not be stated to be an expert. The respondent further submitted that the said person is not an expert within the meaning of Section 45 of the Indian Evidence Act, 1872. Thus, the respondent submitted that in the aforesaid facts



and circumstances, the instant Civil Misc. application is fit to be dismissed being devoid of any merit.

09. I have given my thoughtful consideration to the rival submission of the parties. Order VIII Rule 1-A of the Code reads as under:-

“1A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.

(1) Where the defendant bases his defence upon a document or relies upon any document in his possession or power, in support of his defence or claim for set off or counter claim, he shall enter such document in a list, and shall produce it in court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, wherever possible, state in whose possession or power it is.

(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.

(4) Nothing in this rule shall apply to documents-

- (a) produced for the cross-examination of the plaintiff's witnesses, or
- (b) handed over to a witness merely to refresh his memory.”

From perusal of the aforesaid provision, it is apparent that a document which the defendants failed to produce when the written statement was presented, the said document could not be



received in evidence without the leave of the Court.

10. In the present case, the document was produced at the fag end of the evidence of the defendants. The learned trial court observed that in the suit it was not proper to admit the report of the Survey Knowing Pleader Commissioner about the comparative maps of old and new survey to establish the identity of the plots and the report of the Survey Knowing Pleader Commissioner was not an important and admissible document. This finding does not appear to be correct in the light of facts and circumstances. When there is specific case of the defendants that some exchange has taken place due to oblique running of the land and there has been carving out of different new Revisional Survey plots out of old Cadestral Survey plots, the defendants have a right to bring the evidence in support of their claim and the said claim could not be rejected *in limine*.

Documents which are sought to be brought on record are to be necessarily proved in accordance with law. But refusal to entertain the application for bringing such document/evidence on record does not appear to be a correct approach on part of the learned trial court. The relevance of the documents could be examined by the learned trial court on the basis of the evidence to be led but a party could not be deprived to file documents even at later stage of trial.



11. So far as contention of the respondent about defendants trying to deliberately delay the matter is concerned, it is not the case of the respondent that the defendants have been filing interlocutory applications at the drop of the hat. The respondent has failed to show other instances of like nature when the defendants tried to obstruct the cause of justice by filing frivolous applications. So far as adjournments are concerned, the matter needs to be looked into by the learned trial court that unnecessary adjournments are not granted to either of the parties. The tendency of seeking adjournments should be severely curtailed and it is not in interest of litigating parties or in the interest of general public so as to maintain their faith in the system. However, the adjournments are not the issue before this Court in the present matter which is concerned only with the order passed by the learned trial court under Order VIII Rule 1-A(3) of the Code.

12. Another objection of the respondent is with regard to the competence of the Survey Knowing Pleader Commissioner. The credentials of such person could be assailed and challenged by the respondent, but such person should not even be allowed to be examined, is altogether a different matter. Every party should get an opportunity to lead his best evidence and as discussed earlier, this opportunity could not be denied



because it would lead to denial of justice.

13. In the light of the discussion made hereinabove, I do not find that the authorities relied on by the respondent are of any help to the cause of the respondent.

14. Therefore, having regard to the facts and circumstances and placing my reliance on the case of *Levaku Pedda Reddamma* (supra), I come to the conclusion that even though the documents/evidences have been sought to be brought on record at a late stage of trial, the learned trial court ought to have allowed the application of the petitioners/defendants as rules of procedure are handmaid of justice and a party could not be deprived to bring the documents on record. Hence, the impugned order dated 10.01.2024 is set aside and the application dated 08.11.2023 is allowed subject to payment of cost of Rs.1,000/- to be paid to the respondent on the first date before the learned trial court after receipt/production of copy of this order.

15. The defendants are permitted to file the documents and to prove the same in accordance with law. At the same time, the respondent/plaintiff is at liberty to lead additional evidence, if any, in rebuttal of the documents so produced by the defendants, before the defendants are given an opportunity to lead evidence to rebut the evidence of the plaintiff/respondent.

16. Accordingly, the present petition stands allowed



with the aforesaid directions.

17. It is made clear that the Court has not made any observation on the merits of the case and whatsoever has been observed is only for the purpose of disposal of the present petition.

(Arun Kumar Jha, J)

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AFR/NAFR	AFR
CAV DATE	13.08.2024
Uploading Date	13.09.2024
Transmission Date	N/A

