

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.476 of 2020

Basisth Singh @ Bashishth Singh @ Vashishtha Singh Son of Late Jokhu Singh Resident of Village- Shambhu Chak, P.S.- Shambhu Chak, P.S.- Kalyanpur, District- East Champaran.

... .. Petitioner/s

Versus

1. Manu Kumari W/o Brajesh Kumar Singh, D/o Late Sitaram Singh Resident of Village- Kuahi, P.S.- Baruraj
2. Kumari Archana W/o Subhash Kumar, D/o Late Sitaram Singh Resident of Village- Sahdulepur, P.S.- Sahebganj, District- Muzaffarpur.
3. Pramod Singh S/o Late Sitaram Singh P.O.- Shambhu Chak, P.S.- Kalyanpur, District- East Champaran.
4. Sanjay Singh S/o Late Sitaram Singh P.O.- Shambhu Chak, P.S.- Kalyanpur, District- East Champaran.
5. Mithilesh Kumar Singh S/o Late Sitaram Singh P.O.- Shambhu Chak, P.S.- Kalyanpur, District- East Champaran.
6. Sunaina Devi D/o Seodhar Singh Resident of Village and P.O.- Shambhu Chak, P.S.- Kalyanpur, District- East Champaran.
7. Arvind Kumar S/o Shambhu Singh Resident of Village and P.O.- Shambhu Chak, P.S.- Kalyanpur, District- East Champaran.
8. Deepak Kumar S/o Shambhu Singh Resident of Village and P.O.- Shambhu Chak, P.S.- Kalyanpur, District- East Champaran.
9. Rupash Kumar S/o Shambhu Singh Resident of Village and P.O.- Shambhu Chak, P.S.- Kalyanpur, District- East Champaran.
10. Sudhir Kumar Singh S/o Shambhu Singh Resident of Village and P.O.- Shambhu Chak, P.S.- Kalyanpur, District- East Champaran.
11. Arun Singh S/o Basisth Singh @ Bashishth Singh @ Vashishtha Singh Resident of Village and P.O.- Shambhu Chak, P.S.- Kalyanpur, District- East Champaran.
12. Ratnesh Singh S/o Basisth Singh @ Bashishth Singh @ Vashishtha Singh Resident of Village and P.O.- Shambhu Chak, P.S.- Kalyanpur, District- East Champaran.
13. Ajay Singh S/o Badri Singh Resident of Village and P.O.- Shambhu Chak, P.S.- Kalyanpur, District- East Champaran.
14. Anil Singh S/o Badri Singh Resident of Village and P.O.- Shambhu Chak, P.S.- Kalyanpur, District- East Champaran.
15. Ajit Singh S/o Badri Singh Resident of Village and P.O.- Shambhu Chak, P.S.- Kalyanpur, District- East Champaran.
16. Bachcha Singh S/o Late Satyanarayan Singh Resident of Village- Madheiya Math, P.S.- Sahebganj, District- Muzaffarpur.
17. Kisundeo Singh S/o Late Satyanarayn Singh Resident of Village- Madheiya Math, P.S.- Sahebganj, District- Muzaffarpur.



18. Ajay Singh S/o Late Bachkun Singh Resident of Village- Madheiya Math, P.S.- Sahebganj, District- Muzaffarpur.
19. Sanjay Singh S/o Late Bachkun Singh Resident of Village- Madheiya Math, P.S.- Sahebganj, District- Muzaffarpur.
20. Sangita Devi W/o Sanjit Kumar R/o Village- Ruphara, P.S.- Shikarganj, District- East Champaran.
21. Shyam Sunder Singh S/o Late Ramchander Singh Resident of Village- Salempur, P.O.- Ahiyapur, P.S.- Sahebganj, District- Muzaffarpur.
22. Narendra Singh S/o Late Ramchander Singh Resident of Village- Salempur, P.O.- Ahiyapur, P.S.- Sahebganj, District- Muzaffarpur.
23. Sumitra Devi W/o Pramanand Singh, D/o Late Ramchandar Singh Resident of Village- Mathia, P.O.- Bankat, P.S.- Kesaria, District- East Champaran.
24. Krishna Devi W/o Harendra Thakur, D/o Late Ramchandra Singh R/o Village and P.O.- Khajuria, P.S.- Dumariaghat, District- East Champaran.
25. Sunita Devi W/o Arbind Kumar Sharma, D/o Late Ramchander Singh R/o Village and P.O.- Pagahiya, P.S.- Kathaiya, District- Muzaffarpur.
26. Shambhu Singh S/o Seodhar Singh R/o Village- Shambhu Chak, P.S.- Kalyanpur, District- East Champaran.
27. Badri Singh S/o Late Banshi Singh R/o Village- Shambhu Chak, P.S.- Kalyanpur, District- East Champaran.
28. Sri Kaushal Kishore Singh, Advocate At Civil Court Motihari P.S. Motihari Town, District - East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Karandeep Kumar, Advocate
For the Respondent/s	:	Mr. Vijay Shankar Shrivastava, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 04-03-2024

Heard the learned counsels for the respective parties on the point of admission and I intend to dispose of the petition at the stage of admission itself.

02. The present petition has been filed by the petitioner under Article 227 of the Constitution of India against the order dated 12.12.2019 passed by the learned Sub-Judge-V,



East Champaran at Motihari in Partition Suit No. 22 of 1994 whereby and whereunder the petition filed by the petitioner for not taking on record his written statement was refused.

03. In nutshell, the case of the petitioner is that he is the defendant in Partition Suit No. 22 of 1994 and the petitioner could not file his written statement within time and he filed the same on 14.09.2009 and the learned trial court refused to accept the written statement vide order dated 25.05.2010. Thereafter, the petitioner filed a petition on 17.12.2011 to recall the said order. The said petition was rejected by the learned trial court vide order dated 25.04.2012, which was challenged in CWJC No. 10710 of 2012. This Court set aside the order dated 25.04.2012 passed by the learned trial court subject to payment of cost of Rs. 4,000/-. Further case of the petitioner is that the conducting lawyer of the petitioner/defendant came in collusion with defendant nos. 2 and 14 and filed the written statement with wrong averments on behalf of the petitioner. Though the petitioner put his signature on the written statement in good faith, the said written statement was filed against the interest of the petitioner and this fact came to the knowledge of the petitioner later on. Thereafter, the conducting lawyer, Mr. Kaushal Kishor Singh, deposited Rs. 4,000/- by way of cheque



against the instructions of this petitioner as the petitioner did not want to deposit the amount so that his written statement would not be taken on record. As the conducting lawyer deposited the cost of Rs. 4,000/- by way of a cheque, the written statement has been taken on record. Though the petitioner moved before the learned trial court making submission that his written statement should not be taken on record, the learned court vide impugned order rejected his prayer.

04. Learned counsel for the petitioner submits that the impugned order is not sustainable as there has been fraudulent act on part of the conducting lawyer of the petitioner which was not considered by the learned trial court which did not make any inquiry to the allegations made by the petitioner and did not appreciate the fact that the cost was deposited by the conducting lawyer of the petitioner, who was not holding power on behalf of the petitioner at the relevant point of time. Learned counsel further submits that the defendant nos. 2 to 14 hatched a conspiracy with the conducting lawyer and got a wrong written statement filed on record on behalf of the petitioner. Learned counsel further submits that in the aforesaid facts and circumstances, the impugned order is not sustainable and the same be set aside.



05. On the other hand, learned counsels appearing on behalf of respondent nos. 7, 8, 9, 10, 13, 14, 15, 26 and 28 submit that there is no merit in the instant petition. The petitioner has failed to point out any infirmity or illegality in the impugned order. The learned trial court has simply considered the settled provisions of law and rightly rejected the petitions filed on behalf of the petitioner. Learned counsels for the respondents further submit that the written statement bears signature of the petitioner who gave the *vakalatnama* to his lawyer and now he cannot say that his lawyer came in collusion with other defendants and he filed the wrong written statement against the interest of the petitioner.

06. Having regard to the rival submission of the parties and also considering the facts and circumstances of the case, I do not find any infirmity in the impugned order. Admittedly, the written statement was filed with the signature of the petitioner. The petitioner has not denied giving *vakalatnama* to the learned counsel, Mr. Kaushal Kishor Singh. When a query was put to learned counsel for the petitioner, he admitted that no complaint has been made against the said conducting lawyer. Rather, the petitioner approached this Court when the written statement was not being taken on record by the learned trial



court and by the orders of this Court in CWJC No. 10710 of 2012, the learned trial court was directed to take the written statement on record subject to payment of cost of Rs. 4,000/-. The petitioner instructing his counsel not to deposit the cost would amount to disobedience of the orders of this Court since it was the writ petition of the petitioner and the writ petition was allowed directing the petitioner to make the payment of cost of Rs. 4,000/-. The petitioner cannot blow hot and cold at the same time. After payment of the cost, the written statement has already been taken on record and the same cannot be expunged from the record on merely saying of the petitioner.

07. The petitioner could not have approached the learned trial court seeking expunction of documents from the record by the learned trial court in this manner. However, the petitioner could exercise other options like making prayer for amendment of his written statement and such prayer could be considered by the learned trial court under the extant provisions of law. In the light of discussion made so far and finding no infirmity in the impugned order, the same is affirmed.

08. In the light of aforesaid facts and circumstances, I do not find any merit in the present petition and hence, the instant petition is dismissed.



09. However, the petitioner is at liberty to take recourse of law for bringing the conduct of the lawyer concerned to the competent authorities and also to take remedial measures with regard to his claims as provided under the provisions of law, if so advised.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.03.2024
Transmission Date	NA

