

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1627 of 2017

Sanjay Thakur, S/o Late Paras Thakur, resident of Village- Godhwa, P.O.-
Pataura, P.S.- Mufassil Motihari, District- East Champaran.

... .. Petitioner/s

Versus

1. Satya Narayan Sharma, Son of Late Mukhlal Thakur, resident of Village-
Godhwa, P.O.- Pataura, P.S.- Mufassil, Motihari, District- East Champaran.
2. Harihar Sharma, Son of Late Mukhlal Thakur, resident of Village- Godhwa,
P.O.- Pataura, P.S.- Mufassil, Motihari, District- East Champaran.
3. Prayag Sharma, Son of Late Mukhlal Thakur, resident of Village- Godhwa,
P.O.- Pataura, P.S.- Mufassil, Motihari, District- East Champaran.
4. Nand Kishore Sharma, Son of Late Mukhlal Thakur, resident of Village-
Godhwa, P.O.- Pataura, P.S.- Mufassil, Motihari, District- East Champaran.
5. Chhathi Devi, Wife of Late Paras Thakur, resident of Village- Godhwa, P.O.-
Pataura, P.S.- Mufassil, Motihari, District- East Champaran.
6. Vijay Thakur, Son of Late Paras Thakur, resident of Village- Godhwa, P.O.-
Pataura, P.S.- Mufassil, Motihari, District- East Champaran.
7. Sandhya Devi, Wife of Laxman Sharma, resident of Village- Manglapur,
P.O.- Manglapur, P.S.- Sangrampur, District- East Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar No.III, Advocate
For the Respondent/s	:	Mr. Bijendra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 09-05-2024

Heard learned counsel for the petitioner as well as
learned counsel for the respondent nos. 1, 2 and 4 on the point
of admission and I intend to dispose of the present petition at the
stage of admission itself.

2. The instant petition has been filed by the petitioner
under Article 227 of the Constitution of India against the order
dated 25.07.2017 passed by the learned Sub Judge 13, Motihari,



East Champaran in Title Suit No. 135 of 2011 whereby and whereunder the learned Sub Judge 13, Motihari, East Champaran rejected the petition dated 30.05.2017 filed by the petitioner and opposite party/ respondent nos. 5 to 7.

3. Learned counsel for the petitioner submits that the petitioners are defendants before the learned trial court whereas the respondent nos. 1, 2 and 4 are the plaintiffs. The petitioner and respondent nos. 5 and 6 are legal heirs of one Paras Thakur who was the original defendant. The evidence of the plaintiffs was closed 28.02.2014 and the evidence of the defendant was closed on 31.08.2015. During pendency of the suit, original defendant Paras Thakur died and his legal heirs/representatives were substituted at his place, who are petitioner and respondent nos. 5 to 7 herein. A petition was filed on 07.02.2017 by the petitioner and respondent nos. 5 to 7 making a prayer to reopen the case and allowing them to adduce the evidence. Vide order dated 29.03.2017, petition dated 07.02.2017 was allowed by the learned Sub Judge 13, Motihari, East Champaran subject to payment of cost of Rs. 500/-. The learned trial court held that Chhathi Devi, wife of Paras Thakur has put forward her claim on the basis of a gift deed dated 22.03.1990 executed by Mukhlal Thakur. The learned trial court held that the execution



of the gift deed was a disputed question and it was proper to allow the parties to adduce the evidence on this disputed question. Thus, the application was allowed in limited sense and the defendants were given opportunity to adduce the evidence on next dates only with regard to the gift deed. The plaintiffs were also given opportunity to adduce their evidence in rebuttal. Thereafter, petitioner and respondent nos. 5 and 7 again filed a petition on 30.05.2017 in the court of learned Sub Judge 13, Motihari, East Champaran making prayer to allow them to adduce full fledged evidence in order to protect their interest. However, the learned trial court, after hearing the parties, rejected the petition dated 30.05.2017 which has been assailed before this Court in the present civil miscellaneous petition.

4. Learned counsel further submits that the learned trial court committed error while passing the impugned order. The learned trial court did not consider that the instant petition was filed by the heirs/legal representatives of the sole defendant Paras Thakur and the gift deed dated 22.03.1990 executed by Mukhlal Thakur in favour of defendant no.1(क) i.e., respondent no. 5 is an important document for adjudication of the case and it was necessary that the defendants be given an opportunity to adduce their evidence for the ends of justice. But the learned



trial court ignored these facts and circumstances and rejected the petition filed by the petitioner and others. The learned trial court did not even consider its earlier order dated 29.03.2017 and rather closed the opportunity to the petitioner and respondent nos. 5 to 7 to produce full fledged evidence. Thus, the learned counsel submits that the impugned order is not sustainable and the same be set aside and the petitioner and other defendants be given opportunity to contest the suit by allowing them to adduce their evidence.

5. Learned counsel appearing on behalf of respondent nos. 1, 2 and 4 submits that there is no infirmity in the impugned order. Learned counsel further submits that in fact in the garb of the petition dated 30.05.2017, the petitioner is seeking review of the order dated 29.03.2017. The learned trial court already considered the prayer of the petitioner/defendants and allowed them to adduce evidence on the limited point of execution of the gift deed and this order was not challenged, therefore, it attained finality. Now with the same prayer another application was filed which was rejected by the learned trial court vide dated 25.07.2017. Hence, the subsequent petition is barred by *res judicata* which would be applicable even at different stages of same trial. Learned counsel further submits



that moreover the petitioner/defendants were given opportunity for adducing their evidences and they failed to avail that opportunity and even while rejecting the application dated 30.05.2017, the learned trial court fixed the case for evidence of the defendants and gave them the last opportunity but instead of adducing their evidence, the petitioner has come before this Court. Learned counsel further submits that there are four legal heirs/representatives of the deceased Paras Thakur but only one of them has approached this Court and even Chhathi Devi, in whose favour the alleged gift has been executed, has not approached this Court. Learned counsel further submits that the petitioner wants to delay the trial before the learned trial court and has succeeded in his designs and the trial has already got delayed by seven years.

6. I have given my thoughtful consideration to the different aspects of the matter. Earlier the petitioner and other defendants moved before the learned trial court seeking reopening of their evidence and making prayer for allowing them to adduce their evidence in support of their case and that petition was disposed of on 29.03.2017 by the learned trial court allowing it in part. Therefore, the petitioner and other defendants are precluded from moving another petition with



same prayer as they have not challenged the earlier order. So I do not find much merit in the claim of the petitioner that the learned trial court did not consider the facts and circumstances of the case while passing the impugned order. Hence, finding no infirmity, the order dated 25.07.2017 is sustained. However, the petitioner is at liberty to adduce his evidence on two dates with regard to the gift deed executed in favour of the Chhathi Devi in terms of order dated 29.03.2017 of the learned trial court.

7. With the aforesaid liberty, the present civil miscellaneous petition stands disposed of.

(Arun Kumar Jha, J)

balmukund/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.05.2024
Transmission Date	NA

