

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.895 of 2023

1. Amrendra Kumar, S/o Late Aash Narayan Thakur, Resident of Village- Mirjapur Pamra, P.S. and District-Sitamarhi.
2. Prabha Shankar Thakur, S/o Late Ram Sobhit Thakur, Resident of Village- Mirjapur Pamra, Pargana-Mihla, P.S. and District- Sitamarhi.

... .. Petitioner/s

Versus

1. Kishori Das, Son of Fulchand Das, Resident of Village- Mirjapur, Pamra, Pargana-Mihla, P.S. and District- Sitamarhi.
2. Most. Sakuntala Devi, Widow of Jai Narayan Thakur, Resident of Village- Mirjapur, Pamra, Pargana-Mihla, P.S. and District- Sitamarhi.
3. Mahendra Kumar, Son of Late Jai Narayan Thakur Resident of Village- Mirjapur, Pamra, Pargana-Mihla, P.S. and District- Sitamarhi.
4. Dharendra Thakur, Son of Late Jai Narayan Thakur Resident of Village- Mirjapur, Pamra, Pargana-Mihla, P.S. and District- Sitamarhi.
5. Rashami Kumari, D/o Late Jai Narayan Thakur Resident of Village- Mirjapur, Pamra, Pargana-Mihla, P.S. and District- Sitamarhi.
6. Smt. Mithilesh Devi, D/o Late Ram Padarath Thakur, W/o Ram Chandra Chaudhary, Resident of Village- Dharampur, P.O.- Bhittha P.S. Pupri, District- Sitamarhi.
7. Smt. Suresh Devi, D/o Late Ramashish Thakur, wife of Sri Debesh Prasad Ojha, Resident of Village- Kabra, P.O.-Malahi, P.S.-Sursand, District- Sitamarhi.
8. Smt. Vindhyachal Devi, D/o Late Ramashish Thakur, wife of Sri Ram Kalewar Mishra, Resident of Village and P.O.-Janipur, P.S. Nanpur, District- Sitamarhi.
9. Smt. Archana Devi, D/o late Ramashish Thakur, wife of Sri Anil Kumar, Resident of Village and P.O. Muradpur, P.S. Dumra, District Sitamarhi.
10. Jitendra Kumar Thakur, S/o Late Ramashish Thakur, Resident of Village Mirjapur Pamra, P.O.- Raghupur Bakhri, P.S. and District- Sitamarhi.
11. Rajeev Thakur, S/o Late Ram Sobhit Thakur, Resident of Village- Mirjapur Pamra, Pargana- Mihla, P.S. and District- Sitamarhi.
12. Smt. Vinita Devi, D/o Ram Sobhit Thakur, wife of Sri Ramashish Mishra, Resident of Village- Baghanipatti, P.S. Madhawanpur, District- Madhubani.
13. Smt. Anita Sinha, D/o Late Ram Sobhit Thakur, wife of Sri Sunil Singh, Resident of Village- Dhurwar, P.S. Parsauni, District- Sitamarhi.
14. Smt. Amrita Chaudhary, D/o Late Ram Sobhit Thakur, wife of Sunil Singh, Resident of Village- Dhurwar, P.S. Parsauni, District- Sitamarhi.
15. Pushpa Kumari, D/o Late Aash Narayan Thakur, wife of Shambhu Prasad Thakur, Resident of Village and P.S. Janakpur Dham, District- Dhanusha (Nepal).
16. Kalpana Kumari, D/o Late Aash Narayan Thakur, wife of Shivnandan



Chaudhary, Resident of Village and P.O.- Hanuman Nagar, P.S. Sursand, District- Sitamarhi.

17. Ragni Kumari, D/o Late Aash Narayan Thakur, wife of Prabhu Nandan Shahi, Resident of village- Malikana, P.O. Subhai, P.S.-Dumra, District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mrs. Vagisha Pragya Vacaknavi, Advocate
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 04-01-2024

Heard learned counsel for the petitioners and the matter has been taken up for disposal since none appeared on behalf of respondent 1st party despite service of notice.

2. The petitioners have filed the instant petition for quashing the order dated 11.08.2023 passed by learned Sub-Judge-I, Sitamarhi in Title Suit No. 11 of 1997 rejecting the petition dated 10.05.2023 filed on behalf of the plaintiffs/petitioners with a prayer for admitting deposition of deceased defendant no.2, namely, Sunaina Devi in Trial No. 525 of 1999 before the court of learned Judicial Magistrate-1st Class, Sitamarhi in the matter of State Vs. Jai Narayan Thakur.

3. Learned counsel for the petitioners submits that the petitioners are the plaintiffs before the learned court below and are legal heirs of original plaintiff Ram Sobhit Thakur who instituted a title suit bearing Title Suit No. 11 of 1997 in the



court of learned Munsif, Sitamarhi Sadar against the defendants including defendant no.2, Sunaina Devi, who is since dead. The suit was decreed vide judgment dated 24.12.2021 and decree dated 07.01.2021 passed by learned Sub-Judge-1, Sitamarhi. The defendant/respondent no.1, namely, Kishori Das filed Title Appeal No.01 of 2022 against the aforesaid judgment and decree passed in Title Suit No. 11 of 1997. The first appellate court remanded the matter to the learned trial court in terms of the following order:-

“(iii) The case is remanded back to the trial court to pass fresh judgment/decide the case after giving opportunity to the appellant/respondents, in respect of the following only:

(a) Court will give opportunity to the contesting defendant/appellant to cross examine to the non survey knowing pleader commissioner Rajeev Ranjan Singh examined on behalf of plaintiffs as P.W.-15.

(b) The court will have discretion to allow petition for appointment of non survey knowing pleader commissioner, if filed on behalf of appellant/defendant 1st party and liberty to examine the non survey knowing pleader commissioner in support of his report, if any, but will give opportunity of cross-examination on behalf of plaintiffs & other defendants.

(c) Court will also give opportunity to the



defendant 1st party/appellant to cross-examine Durga Prasad Thakur examined on behalf of plaintiffs as PW13.

(d) Court will also give opportunity to the contesting defendant/appellant to file objection petition in respect of amendment in the relief of the plaintiff and liberty to adduce-evidence in support of his objection petition.

(e) Court will hear the final argument on both sides.”

4. After remand of the matter, the petition dated 10.05.2023 was filed by the petitioners/plaintiffs for admitting deposition of deceased defendant no.2, namely, Sunaina Devi, who deposed in Trial No. 525 of 1999 in which she has admitted that she married with Ramashish Thakur while his first wife, namely, Raj Kumari Devi was alive. The petitioners filed a certified copy of deposition of deceased defendant no.2 along with list of documents in the aforesaid suit on the same day i.e., 10.05.2023. Rejoinder was filed by defendant/respondent no.1 on 12.05.2023. However, learned trial court misconstrued the remand order in appeal and rejected the application dated 10.05.2023 filed on behalf of the plaintiffs/petitioners holding that the record was remanded from the appellate court with specific directions as mentioned on page no.9 of the judgment and no liberty was given to the plaintiffs to bring on record any new evidence.



5. Learned counsel further submits that the remand order in appeal shows that the certain restrictions were imposed upon appellants/respondents but there was no bar upon the plaintiffs to produce fresh evidence. Learned counsel further submits that the trial court did not take into consideration the fact that these petitioners were transposed as plaintiffs in place of Ram Sobhit Thakur on 24.11.2021. Learned counsel further submits that the plaintiffs had no knowledge of the said deposition of late Sunaina Devi as Jai Narayan Thakur was custodian of all the records of this case as well as criminal case.

6. Learned counsel further submits that the learned trial court failed to consider that bringing material evidence on record cannot be denied in the garb of the restrictions imposed in the appellate court's order. The document sought to be brought on record is a public document under Section 74 of the Evidence Act. Then this is an important document which will enable the learned trial court to decide the real controversy between the two parties effectively and completely. The learned trial court also failed to consider the fact that evidence which is required to arrive at a definite finding in order to end the dispute can be produced at any stage even at the appellate stage. The learned trial court also lost sight of the adage that only the truth



should be guiding star in all cases and for arriving at truth, it could also use its inherent power. Thus, learned counsel submits that if such material documentary evidence having direct bearing on the issues involved in the title suit is not taken on record and marked as exhibit then it will cause miscarriage of justice and would adversely affect the interest of the plaintiffs/petitioners.

7. Perused the records.

8. Having regard to the facts and circumstances and submissions made on behalf of the petitioners, I am of the opinion that the learned trial court ought to have considered the prayer of the petitioners in right earnest. The matter was remanded to it with certain directions by the learned first appellate court but bare reading of it shows the same were imposed upon the appellants/respondents. The learned trial court should have considered the fact that the documents sought to be brought on record might not be available to the petitioners/plaintiffs and if the material is relevant for the purpose of deciding the controversy between the parties, the same should be taken on record notwithstanding any bar put up by the first appellate court while remanding the matter. Moreover, it goes without saying the parties should be given fair



opportunity of hearing and for this it is also necessary that the best evidence should be brought on record. I am afraid the learned trial court committed an error when it failed to exercise the jurisdiction vested in it by not allowing the petitioners to bring on record a document which is deposition of a person before a court of competent jurisdiction.

9. In view of the discussion made hereinabove, the impugned order dated 11.08.2023 passed by learned Sub-Judge-I, Sitamarhi in Title Suit No. 11 of 1997 is set aside and the petition dated 11.05.2023 filed on behalf of the plaintiffs/petitioners is allowed and the learned trial court is directed to make the document as exhibit by allowing the petitioners to bring it on record as evidence while giving ample opportunity to the opposite side to rebut/controvert the same.

10. With the aforesaid observations and directions, the instant petition stands allowed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.01.2024
Transmission Date	NA

