

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1025 of 2023

Vishwanath Prasad @ Lallu Prasad Son of Late Rajendra Prasad, resident of Village- Daudnagar Purana Sahar, Kayastha Toli, Daudnagar, Police Station-Daudnagar, District- Aurangabad.

... .. Petitioner/s

Versus

1. Binod Kumar Sinha @ Dadan Prasad Son of Late Madan Mohan Prasad, resident of Village- Daudnagar Purana Sahar, Kayastha Toli, Daudnagar, Police Station-Daudnagar, District- Aurangabad.
2. Mukesh Prasad @ Mukul Prasad, Son of Late Madan Mohan Prasad, resident of Village- Daudnagar Purana Sahar, Kayastha Toli, Daudnagar, Police Station-Daudnagar, District- Aurangabad.
3. Sukul Kumar @ Sukul Prasad, Son of Late Madan Mohan Prasad, resident of Village- Daudnagar Purana Sahar, Kayastha Toli, Daudnagar, Police Station-Daudnagar, District- Aurangabad.
4. Govind Kumar Sinha @ Govind Prasad, Son of Late Madan Mohan Prasad, resident of Village- Daudnagar Purana Sahar, Kayastha Toli, Daudnagar, Police Station-Daudnagar, District- Aurangabad.
5. Vijay Kumar Sinha @ Vijay Prasad, Son of Late Madan Mohan Prasad, resident of Village- Daudnagar Purana Sahar, Kayastha Toli, Daudnagar, Police Station-Daudnagar, District- Aurangabad.
6. Arti Sinha, Daughter of Late Madan Mohan Prasad, resident of Village-Daudnagar Purana Sahar, Kayastha Toli, Daudnagar, Police Station-Daudnagar, District- Aurangabad.
7. Seema Sinha, Daughter of Late Madan Mohan Prasad, resident of Village-Daudnagar Purana Sahar, Kayastha Toli, Daudnagar, Police Station-Daudnagar, District- Aurangabad.
8. Parwati Devi, Wife of Late Madan Mohan Prasad, resident of Village-Daudnagar Purana Sahar, Kayastha Toli, Daudnagar, Police Station-Daudnagar, District- Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Jitendra Prasad Singh, Advocate
For the Respondent/s	:	Mr.Mukesh Kumar, Advocate
		Mr. Shivjee Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

2 02-07-2024 The matter has been taken up on mentioning being

made on behalf of the petitioner.



2. Heard the learned counsel for the parties and I intend to dispose of the instant petition at the stage of admission itself.

3. The petitioner is aggrieved by the order dated 01.08.2023 passed by learned Additional District Judge-VII, Aurangabad in Title Appeal No. 02 of 2021 refusing his prayer under Order 41 Rule 27 of the Code of Civil Procedure (hereinafter as 'the Code') for taking plain sale deed and other documents on record as additional evidence.

4. However, from perusal of impugned order I do not find any infirmity in the said order. The learned First Appellate Court has recorded its finding with regard to absence of due diligence on the part of the petitioner in producing sale deed earlier though it was in his possession all along and other documents have been subsequently created by the petitioner during pendency of appeal. It has also been observed that the court did not find it necessary to take the documents as additional evidence to enable it to pronounce judgment. The document in question is a plain sale deed with regard to 1.98 acres of land and the document was required to be compulsorily registered to make it admissible in evidence. The learned First Appellate Court has disbelieved the story of the petitioner about this



document not being available earlier in time. Further, it is also noted that the petitioner as defendant claimed in his written statement that the land in question was transferred to him by his father but there was no averment that this transfer took place through a plain sale deed. Other documents have been prepared during pendency of appeal by the petitioner and his sons and could not have any bearing on disposal of appeal.

5. Considering the facts and circumstances, I do not think that the learned First Appellate Court committed any error so as to require interference by this Court and the impugned order is affirmed. However, it is made clear that the rejection of the petition of the petitioner, for taking additional evidence on record and contentions made by them, shall not cause prejudice to the learned First Appellate Court while disposing of the appeal on its own merit.

6. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

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