

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.28 of 2023

1. Awadh Narayan Singh Son of Late Ram Sakal Singh Resident of Village- Lerua, Post- Kanchanpur, P.S.- Sasaram, District- Rohtas, at present Village- Mednipur, Post Ram Chandrapur, District- Rohtas.
2. Janardan Singh, Son of Late Ram Sakal Singh Resident of Village- Lerua, Post- Kanchanpur, P.S.- Sasaram, District- Rohtas, at present Village- Mednipur, Post Ram Chandrapur, District- Rohtas.
3. Uday Singh, Son of Late Ram Sakal Singh Resident of Village- Lerua, Post- Kanchanpur, P.S.- Sasaram, District- Rohtas, at present Village- Mednipur, Post Ram Chandrapur, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through Collector, Rohtas, Sasaram, District- Rohtas.
2. Anchal Adhikari, Sasaram Anchal Office, Sasaram, District- Rohtas.
3. Shiv Kumari Devi, Wife of Ram Bela Singh Resident of Village- Ahraw, Post- Ahraw, P.S.- Sasaram, District- Rohtas.
4. Sonma Kuwar, Wife of Late Dhanaji Singh Resident of Village- Rajpur, Post and P.S.- Rajpur, District- Rohtas.
5. Dhanva Devi, Wife of Baban Yadav Resident of Village- Gorilla, Post Navadih, P.S.- Indrapuri, District- Rohtas.
6. Most. Sahodra Kuwar, Wife of Late Lakhan Singh Resident of Village- Lerua, P.S.- Sasaram, Post- Kanchanpur, District- Rohtas.
7. Chhathia Devi, Wife of Chandrama Singh Resident of Village- Rajpur, Post- Rajpur, P.S.- Rajpur, District- Rohtas.
8. Bala Muni Devi, Wife of Bhuli Singh R/o Village Goneka, Post- Nawadih, P.S.- Indrapuri, District- Rohtas.
9. Putri Devi, Wife of Sanjay Singh, R/o Village Babhanpura, P.S.- Barvan, P.S.- Sasaram, District- Rohtas.
10. Anita Devi, Wife of Bindu Yadav R/o Village- Dharampur Post Jhakra, P.S.- Nokha, District- Rohtas.
11. Most. Dhaneshra Kuwar, Wife of Late Ram Bachan Singh Resident of Village- Lerua, Post- Kanchanpur, P.S.- Sasaram, District- Rohtas.
12. Chanmuniya Devi, Wife of Ravindra Yadav Resident of Village- Ahrao, Post Ahrao, P.S.- Natwar, District- Rohtas.
13. Lalmuni Devi, Wife of Babulal Yadav Resident of Village- Dharupur, Post- Jhakra, P.S.- Nokha, District- Rohtas.
14. Ram Badan Singh, Son of Laxman Singh Resident of Village- Lerua, P.S.- Sasaram, Post- Kanchanpur, District- Rohtas.
15. Hari Singh, Son of Laxman Singh Resident of Village- Lerua, P.S.- Sasaram, Post- Kanchanpur, District- Rohtas.
16. Chandra Shekhar Singh, Son of Lakhan Singh Resident of Village- Lerua,

P.S.- Sasaram, Post- Kanchanpur, District- Rohtas.

17. Chandeshwar Singh, Son of Lakhan Singh Resident of Village- Lerua, P.S.- Sasaram, Post- Kanchanpur, District- Rohtas.
18. Ramashray Singh, Son of Ram Bachan Singh Resident of Village- Lerua, P.S.- Sasaram, Post- Kanchanpur, District- Rohtas.
19. Bahadur Singh, Son of Ram Bachan Singh Resident of Village- Lerua, P.S.- Sasaram, Post- Kanchanpur, District- Rohtas.
20. Laxman Mahto, Son of Byash Mahto Resident of Village Lerua, Post Kanchanpur, P.S.- Sasaram, District- Rohtas.
21. Shobha Mahto, Son of Raja Mahto Resident of Village Lerua, Post Kanchanpur, P.S.- Sasaram, District- Rohtas.
22. Kusum Kuwar, Wife of Shobha Mahto Resident of Village Lerua, Post Kanchanpur, P.S.- Sasaram, District- Rohtas.
23. Uday Kumar Singh, Son of Late Shobha Nath Mahto Resident of Village Lerua, Post Kanchanpur, P.S.- Sasaram, District- Rohtas.
24. Ajit Kumar, Son of late Shobha Nath Mahto Resident of Village Lerua, Post Kanchanpur, P.S.- Sasaram, District- Rohtas.
25. Ankush Raj alias Munna Kumar, Son of Late Shobha Nath Mahto Resident of Village Lerua, Post Kanchanpur, P.S.- Sasaram, District- Rohtas.
26. Aarti Devi, Wife of Laxman Kumar Resident Village Chainpur, Post- Darihat, P.S.- Darihat, District- Rohtas.
27. Baleshwar Mahto, Son of Radha Mahto Resident of Village- Medanipur, Tola Bhagwanbiga, Post and P.S.- Sasaram, District- Rohtas.
28. Uma Mahto, Son of Radha Mahto Resident of Village- Medanipur, Tola Bhagwanbiga, Post and P.S.- Sasaram, District- Rohtas.
29. Sugreev Mahto, Son of Radha Mahto Resident of Village- Medanipur, Tola Bhagwanbiga, Post and P.S.- Sasaram, District- Rohtas.
30. Sudama Mahto, Son of Laxman Mahto Resident of Village- Medanipur, Tola Bhagwanbiga, Post and P.S.- Sasaram, District- Rohtas.
31. Nagendra Mahto, Son of Laxman Mahto Resident of Village- Medanipur, Tola Bhagwanbiga, Post and P.S.- Sasaram, District- Rohtas.
32. Mantu Mahto, Son of Laxman Mahto Resident of Village- Medanipur, Tola Bhagwanbiga, Post and P.S.- Sasaram, District- Rohtas.
33. Jitendra Mahto, Son of Laxman Mahto Resident of Village- Medanipur, Tola Bhagwanbiga, Post and P.S.- Sasaram, District- Rohtas.
34. Parshuram Mahto, Son of Bhaju Mahto Resident of Village- Medanipur, Tola Bhagwanbiga, Post and P.S.- Sasaram, District- Rohtas.
35. Baliram Mahto, Son of Bhaju Mahto Resident of Village- Medanipur, Tola Bhagwanbiga, Post and P.S.- Sasaram, District- Rohtas.
36. Chandrama Mahto, Son of Bhaju Mahto Resident of Village- Medanipur, Tola Bhagwanbiga, Post and P.S.- Sasaram, District- Rohtas.
37. Most. Radhika Kuwar, Wife of Raja Ram Singh Resident of Village- Medanipur, Tola Bhagwanbiga, Post and P.S.- Sasaram, District- Rohtas.

38. Dhira Singh, Son of Raja Ram Singh Resident of Village- Medanipur, Tola Bhagwanbigha, Post and P.S.- Sasaram, District- Rohtas.
39. Dharmdev Singh, Son of Late Raja Ram Singh Resident of Village- Medanipur, Tola Bhagwanbigha, Post and P.S.- Sasaram, District- Rohtas.
40. Bhangel Singh, Son of Late Raja Ram Singh Resident of Village- Medanipur, Tola Bhagwanbigha, Post and P.S.- Sasaram, District- Rohtas.
41. Parvatiya Devi, Wife of Kanhaiya Singh Resident of Village- Dakhair, Post and P.S.- Darigaon, District- Rohtas.
42. Basanti Devi, Wife of Kishan Singh R/o- Village- Bhaibala, P.O.- Lalapur, P.S.- Kudra, District- Kaimur at Bhabhua.
43. Swarath Singh, Son of Raja Ram Singh Resident of Village- Medanipur, Tola Bhagwanbigha, Post and P.S.- Sasaram, District- Rohtas.
44. Mundrika Ram, Son of Late Nanhak Ram Resident of Village- Medanipur, Tola Bhagwanbigha, Post and P.S.- Sasaram, District- Rohtas.
45. Bhola Singh, Wife of Param Singh Resident of Village- Mednipur, Tola Bhagwan Bigha, Post and P.S.- Sasaram, District- Rohtas.
46. Bigan Singh, Son of Late Basudev Singh Resident of Village- Mednipur, Tola Bhagwan Bigha, Post and P.S.- Sasaram, District- Rohtas.
47. Kamta Singh, Son of Late Gurucharan Singh Resident of Village- Mednipur, Tola Bhagwan Bigha, Post and P.S.- Sasaram, District- Rohtas.
48. Rajeshwar Singh, Son of Late Gurucharan Singh Resident of Village- Mednipur, Tola Bhagwan Bigha, Post and P.S.- Sasaram, District- Rohtas.
49. Shambhu Singh, Son of late Gurucharan Singh Resident of Village- Mednipur, Tola Bhagwan Bigha, Post and P.S.- Sasaram, District- Rohtas.
50. Bahadur Singh, Son of Gopal Singh Resident of Village- Mednipur, Tola Bhagwan Bigha, Post and P.S.- Sasaram, District- Rohtas.
51. Sipahi Singh, Son of Gopal Singh Resident of Village- Mednipur, Tola Bhagwan Bigha, Post and P.S.- Sasaram, District- Rohtas.
52. Prem Singh, Son of Sidhi Singh Resident of Village- Mednipur, Tola Bhagwan Bigha, Post and P.S.- Sasaram, District- Rohtas.
53. Pujan Singh, Son of Late Kuwar Singh Resident of Village- Mednipur, Tola Bhagwan Bigha, Post and P.S.- Sasaram, District- Rohtas.
54. Lal Mohan Singh, Son of Pujan Singh Resident of Village- Mednipur, Tola Bhagwan Bigha, Post and P.S.- Sasaram, District- Rohtas.
55. Vishkarma Singh, Son of Pujan Singh Resident of Village- Mednipur, Tola Bhagwan Bigha, Post and P.S.- Sasaram, District- Rohtas.
56. Santa Singh, Son of Pujan Singh Resident of Village- Mednipur, Tola Bhagwan Bigha, Post and P.S.- Sasaram, District- Rohtas.
57. Mahindra Singh, Son of Shiv Bachan Singh Resident of Village- Mednipur, Tola Bhagwan Bigha, Post and P.S.- Sasaram, District- Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Awadhesh Kumar Singh, Advocate
For the State	:	Mr. Arun Kumar Bhagat (AC to AAG-12)
For the Respondent no. 52	:	Mr. Jitendra Pd. Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT
Date : 29-07-2024

Heard learned counsel for the petitioners as well as learned counsel for the State and learned counsel for respondent no. 52.

02. The instant petition has been filed under Article 227 of the Constitution of India for setting aside orders dated 20.05.2022 and 20.12.2021 in Title Suit No. 23 of 2002 passed by learned Sub Judge-X, Sasaram, Rohtas.

03. Briefly stated, the facts of the case are that the ancestor of the petitioners/plaintiffs filed Title Suit No. 23 of 2002 in the Court of learned Sub Judge seeking relief of declaration of their right title and possession and also for correction of entries of record of rights for suit plots bearing Khata No. 197, Plot Nos. 1064, 1086, 1076, 1084, 1083, 1086 and 1090 having total area of 3.45 acres in Village Mednipur, Thana No. 240 in the District- Rohtas against the defendants who are respondents of the present case. After death of their father the petitioners came to be substituted as plaintiffs in the suit. The respondents filed their written statement. Subsequently documents have been filed and evidence was recorded. On

02.12.2021 the respondents filed a petition seeking permission of Court to file photostat copies of the document for marking the documents as exhibits in the case. The petitioners filed rejoinder on 07.12.2021 claiming that the petition filed by the respondents was not maintainable and not permissible in the eyes of law. However, the learned trial court accepted the petition of the respondents and allowed the photostat copies of the documents to be marked exhibits *vide* order dated 20.12.2021. Thereafter, the petitioners filed a petition on 29.04.2022 for recalling the order passed by the Court on 20.12.2021. Its rejoinder was filed by the respondents on 10.05.2022. The learned trial court *vide* order dated 20.05.2022 disallowed the petition filed by the petitioner. Against these two orders the petitioners have approached this Court.

04. Learned counsel for the petitioners submitted that the impugned orders are not sustainable as they have been passed without proper appreciation of Section 63 and Section 65 of the Evidence Act. The learned trial court lost sight of the fact that the documents sought to be marked exhibits were photocopies and in absence of their originals, the photocopies could not be marked exhibits. The learned trial court overlooked the settled position of law as the Hon'ble Supreme Court in a

number of cases has held that photostat copies of documents could not be marked exhibits and taken even as secondary evidence as the same will go against the mandate of law under provisions of Section 63 of the Evidence Act. Learned counsel relied on the decision of the Hon'ble Supreme Court in the case of *Smt. J. Yashoda vs Smt. K. Shobha Rani* reported in (2007) 5 SCC 730 in support of his contention that the photocopies cannot be even received as secondary evidence in terms of Section 63 of the Evidence Act. For admissibility of documents as secondary evidence condition under Section 65 (a) of the Evidence Act has to be satisfied. Thus for adducing secondary evidence it is necessary to prove existence and exhibition of the original documents and conditions laid down under Section 65 must be fulfilled before secondary evidence could be admitted. Thus, the learned counsel for the petitioners submitted that the orders passed by the learned trial court suffer with material irregularity and needs to be set aside.

05. Learned counsel appearing on behalf of the state respondent as well as respondent no. 52 opposed the submission made on behalf of the petitioners. Learned counsel for the respondent no. 52 submitted that in the trial court, both sides filed their respective documents and the answering respondents

also filed their original documents along with a list of documents on 05.02.2003. All the documents which have been filed on behalf of the respondents are public documents and are more than 30 years old. All the original documents were filed in a file in the Court but the same is not available on the Court record despite various directions of the learned trial court. About ten defendants died during the pendency of the suit and as the suit is about 19 years old, there was every chance that other defendants might also die during the pendency of the suit. When the original of the photostat copies produced by the respondents were not produced despite several directions of the presiding officer of the learned trial court then only the respondents filed the photocopy of the originals which were available with the petitioners. Learned counsel further submitted that after the documents went missing, exactly the true copies of the documents which have been prepared by a mechanical process, have been filed on record. As there was no possibility of getting the original which have been lost from the records of the Court, only option left was for filing the photostat copies of the original as there could not be any comparison with the originals. Thus the learned counsel submitted that the only course open to the learned trial court was for marking the photostat copies

exhibits due to missing originals. Hence, there is no infirmity in the impugned orders and both the orders need to be sustained.

06. I have given my thoughtful consideration to the rival submission of both the parties. The photostat copies come under the purview of secondary evidence as prescribed in Section 63 of the Indian Evidence Act which reads as under:

“63 Secondary evidence—Secondary evidence means and includes —

- (1) certified copies given under the provisions hereinafter contained
- (2) copies made from the original by mechanical processes which in themselves insure the accuracy of the copy, and copies compared with such copies
- (3) copies made from or compared with the original
- (4) counterparts of documents as against the parties who did not execute them
- (5) oral accounts of the contents of a document given by some person who has himself seen it.”

Thereafter, Section 65 provides for situation in which secondary evidence relating to documents may be given.

Section 65 of the Indian Evidence Act reads as under:

“65. Secondary evidence may be given of the existence, condition or contents of a document in the following cases:—

- (a) when the original is shown or appears to be in the possession or power-
of the person against whom the document is sought to be proved, or of any person out of reach of, or not subject to, the process of the Court, or of any person legally bound to produce it, and when, after the notice mentioned in section 66, such person does not produce it;

(b) when the existence, condition or contents of the original have been proved to be admitted in writing by the person against whom it is proved or by his representative in interest;

(c) when the original has been destroyed or lost, or when the party offering evidence of its contents cannot, for any other reason not arising from his own default or neglect, produce it in reasonable time;

(d) when the original is of such a nature as not to be easily moveable;

(e) when the original is a public document within the meaning of section 74;

(f) when the original is a document of which a certified copy is permitted by this Act, or by any other law in force in Bangladesh to be given in evidence;

(g) when the originals consist of numerous accounts or other documents which cannot conveniently be examined in Court, and the fact to be proved is the general result of the whole collection.

In cases (a), (c), and (d), any secondary evidence of the contents of the document is admissible.

In case (b), the written admission is admissible.

In case (e) or (f), a certified copy of the document, but no other kind of secondary evidence, is admissible.

In case (g), evidence may be given as to the general result of the documents by any person who has examined them, and who is skilled in the examination of such documents.”

The reading of these two provisions makes it amply clear that before a secondary evidence is admitted, the documents needs to be compared with the original. In the present case it is the contention of the respondents that the originals though filed in the trial court, have gone missing, therefore, there is no occasion for comparing the photostat

copies of the documents with their originals. I am afraid, there is some merit in the contention of the learned counsel for the petitioners though it may sound harsh on the respondents. A photostat copy could be marked as exhibit under Section 63 read with Section 65 of the Evidence Act subject to the condition that the document gets compared from the original. Nevertheless, if the documents have been filed before the Court it is the duty of the Court to ensure that the documents are made available and marked exhibits in accordance with law. There should be an unequivocal finding of the Court that the documents are lost and could not be produced or the documents could not be made available for comparison, for any reason. If the originals are available, the case of the petitioners would not be covered under Section 65. Therefore, I am of the view that learned trial court erred when it allowed the application for taking photostat copies on record as evidence and committed further error when it refused to recall its earlier order.

07. In the light of discussion made so far, I find and hold that the orders dated 20.05.2022 and 02.12.2021 in Title Suit No. 23 of 2002 of the learned trial court are not sustainable and both the orders are set aside.

08. However, the learned District Judge, Rohtas at

Sasaram is directed to look into the matter on urgent basis and ensure that the documents filed by the respondents are traced and placed on record. If it is impossible to trace the documents and to bring these documents on record and a declaration to this effect is made by the authorities then the situation would be different and in that case, the respondents may move proper application which would be considered by the learned trial court on its merits.

09. With the aforesaid observation, the petition stands allowed.

(Arun Kumar Jha, J)

anuradha/-

AFR/NAFR	NAFR
CAV DATE	04.07.2024
Uploading Date	29.07.2024
Transmission Date	N/A