

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.71 of 2022

In
CIVIL MISCELLANEOUS JURISDICTION No.793 of 2022

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Bagendra Mishra Son of Late Sankar Misra, resident of Village-
Bhudhiatadhi, P.O.- Gogri Jamalpur, Police Station- Gogri, District- Khagaria.

... .. Petitioner/s

Versus

1. Mosomat Kaili Devi W/o Late Ganesh Prasad Yadav resident of Village-
Bhudhiatadhi, P.O.- Gogri Jamalpur, Police Station- Gogri, District-
Khagaria.
2. Jitendra Yadav S/o Late Ganesh Prasad Yadav resident of Village-
Bhudhiatadhi, P.O.- Gogri Jamalpur, Police Station- Gogri, District-
Khagaria.
3. Chuneswar Kumar Yadav S/o Late Ganesh Prasad Yadav resident of Village-
Bhudhiatadhi, P.O.- Gogri Jamalpur, Police Station- Gogri, District-
Khagaria.
4. Uma Kant Yadav S/o Late Ganesh Prasad Yadav resident of Village-
Bhudhiatadhi, P.O.- Gogri Jamalpur, Police Station- Gogri, District-
Khagaria.
5. Kashi Kumar Yadav S/o Late Ganesh Prasad Yadav resident of Village-
Bhudhiatadhi, P.O.- Gogri Jamalpur, Police Station- Gogri, District-
Khagaria.
6. Rakesh Narayan Singh S/o Late Kamaldeo Narayan Singh, R/o Vill, P.O.
and P.S.- Parbatta, District- Khagaria.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rakesh Narayan Singh, Adv.
For the Respondent/s	:	Mr.Birendra Nath Mishra, Adv.
		Mr.Amrendra Kumar Sinha No.1, Adv.

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**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV ORDER

12 12-01-2024 Heard the parties.

2. The petitioner-defendant, being aggrieved by the
order dated 29.08.2022 passed by Civil Judge, Senior Division,
Gogri, Khagaria in Title Suit No. 63 of 2017, has preferred this
civil revision.



3. Vide impugned order, the learned Civil Judge, Senior Division, Gogri, Khagaria rejected the petition, filed by the petitioner-defendant under Order VII Rule 11 and 151 of the CPC., which was filed with a prayer to reject the plaint.

4. The plaintiffs/opposite parties (1st set), opposite party nos. 1 to 5 filed Title Suit No. 63 of 2017 against the petitioner and one Rakesh Narayan Singh who is opposite party no. 6 (defendant-2nd set).

5. The plaintiff's case in brief is that one Kamaldeo Narayan Singh, father of opposite party no. 6, was owner of the land in dispute, described in Schedule-A of the plaint. He executed a sale deed in favour of one Bateshwar Singh on 16.12.1961. Bateshwar Singh executed a sale deed of that land in favour of late Ganesh Prasad Yadav on 01.07.1975 who was husband of Mosamat Kailli Devi (opposite party no. 1) and he was father of opposite party nos. 2 to 5 (plaintiffs). The plaintiffs came in possession of the purchased land and constructed *phoos* house thereon. The defendant no. 1 (the petitioner) who is a litigant and muscleman, planted a story and he brought a false and *farzee* Bataidaari case no. 76 of 1974-75 before the Deputy Collector Land Reforms, Khagaria and, obtained an order in his favour which was challenged by the



opposite party in CWJC 689 of 1981 and the High Court set-aside the order of DCLR on 22.04.1986 and remanded back the case to DCLR, Khagaria to decide the matter afresh. Having concealed the order of the High Court, the petitioner applied before Anchal Adhikari, Gogri for dar raiyat right and filed a Dar Raiyat Case No. 02 of 1996-97 and obtained further an order in his favour on 03.08.2000. Ganesh Prasad Yadav, husband and father of opposite party nos. 1 to 5 along with other co-sharers challenged the order dated 03.08.2000 before the Appellate Court, Sub-Divisional Officer, Gogri in Dar Raiyat Appeal case no. 01 of 2002-03 and the Appellate Court, after hearing the parties, passed an order dated 15.09.2003 setting aside the order dated 03.08.2000 in the light of order and judgment dated 22.04.1986 passed in CWJC No. 689 of 1981 by the High Court directing the C.O., Gogri to amend the revenue records. The husband and father of opposite party nos. 1 to 5 applied for mutation of the purchased land but unfortunately, the Anchal Adhikari, Gogri in collusion with the defendants rejected the mutation petition on 16.02.2013 in mutation case no. 620 of 2012. Being aggrieved by the order of Anchal Adhikari, the husband and father of the plaintiffs brought a case



under section 4 of Bihar Land Disputes Resolution Act, 2009 before the Deputy Collector, Land Reforms, Gogri for declaration of right and possession over the suit land vide B.L.D.R. Case No. 39/2013-14 but in the meantime, the Hon'ble High Court vide CWJC NO. 1091 of 2013 promulgated an order that DCLR has no jurisdiction to decide the right and title of the parties. The learned DCLR then dropped the proceeding with observation to seek relief in the competent civil court vide his order dated 01.06.2015. In the meantime, Ganesh Prasad Yadav died leaving behind the plaintiffs. After the order of DCLR, Gogri, the defendant became emboldened and started to disturb these plaintiffs through various ways after the death of Ganesh Prasad Yadav and threatened to dispossess the plaintiffs and finally, on 15.07.2017, they threatened the plaintiffs to vacate the suit land otherwise, they would be murdered. In paragraph-12 of the plaint, the plaintiffs have mentioned that defendant no. 2 (O.P. No. 6) in the above BLDR Case No. 39 of 2013-14 in his objection petition, stated that the land, in dispute came in his share through Partition Suit Nos. 25/49, 41/51 and it was demarcated by Pleader Commissioner in the year 1972. Hence, there is no question of execution of sale deed in favour of Bateshwar Singh by his father Sri Kamaldeo Narayan Singh.



6. Learned counsel for the petitioner has submitted that the plaintiffs claim the suit land on the basis of a sale deed executed by Bateshwar Singh in favour of Ganesh Prasad Yadav but the sale was not completed because late Ganesh Prasad Yadav did not pay the consideration money to Bateshwar Singh and it was the reason that the registering authorities destroyed the sale deed. By drawing my attention towards annexure-5 which is the list of sale deeds destroyed by the registering authorities, the learned counsel for the petitioner submitted that the sale deed executed by Bateshwar Singh in favour of Ganesh Prasad Yadav is mentioned at serial no. 95 of the list of the sale deeds which were destroyed by the registering authorities due to non-payment of the consideration money. He submitted that the basis of suit filed by the plaintiff is a destroyed sale deed and on that basis, they cannot claim the property in dispute and their plaint was liable to be rejected under the provisions under Order VII Rule 11 of the CPC but the learned court below committed illegality, in not rejecting the plaint. In support of his submission, learned counsel for the petitioner relied upon the decisions reported in *AIR 2010, Patna 179 (Bhagirath Prasad Singh Vs. Ram Narayan Rai & Anr.)*. Further, he has relied upon the decision of Orissa High Court reported in *(1996) 2*



Orissa LR 403 (Satyananda Sahoo vs. Ratikanta Panda) and also a decision reported in ***AIR 2020 SC 3310: AIR ONLINE 2020 SC 634 (Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra)(D) Thr Lrs.***

7. From perusal of the certified copy of the list of destroyed sale deeds (Annexure-5), it transpires that nowhere it has been mentioned that due to non-payment of consideration money, those sale deeds were destroyed. At the top of annexure-5, it has been mentioned as “list of unclaimed documents”, it means that none turned up to receive those sale deeds for a considerable long period and it was the reason that as per provisions of section 85 of the Registration Act, 1908, the Registering Authority destroyed those sale deeds. Moreover, from perusal of the xerox copy of certified copy of the sale deed executed by Bateshwar Singh in favour of Ganesh Prasad Yadav in the year, 1975, it transpires that the vendor had received the entire consideration money from the vendee and after execution of the sale deed, he handed over the possession of the disputed land in favour of the vendee. Be that as it may, this is the question of fact and can only be decided by providing proper opportunity to the parties to lead their evidence. The plaint cannot be rejected on this ground. Moreover, Bateshwar Singh



who is the vendor can only take this plea that the consideration was not paid to him. The petitioner who is a stranger to that transaction, cannot take this plea.

8. In paragraph-11 of the memo of revision, the petitioner has mentioned that the plaintiff in paragraph Nos. 3, 4 & 12 of the plaint had stated contradictory things as on the one hand, the plaintiff is claiming that he purchased the land from one Bateshwar in the year, 1975 and Bateshwar Singh purchased this land from Kamaldeo Narayan Singh in the year, 1961 and further stated that Kamaldeo Narayan Singh got this land after final demarcation in 1972. This fact mentioned in paragraph-11 of the memo of revision appears to be totally incorrect. The plaintiffs, in their plaint have nowhere claimed that the suit land was finally demarcated in the year, 1972. In paragraph-12 of the plaint, the plaintiffs indicated defendant's objection filed in B.L.D.R. Case No. 39 of 2013-14 and it has been mentioned in that objection that the defendants have stated that the land was demarcated in the year, 1972.

9. It has also been submitted by learned counsel for the petitioner that the inordinate delay in filing the mutation petition was not considered by the learned court below and this suit has also been filed after the period of limitation.



10. It has been settled law that the question of limitation is a mixed question of fact and law and without giving opportunities to lead evidence, this issue cannot be decided. As such, the plaint cannot be rejected on this score.

11. The further submission of the learned counsel is that on similar ground as well as on similar facts and circumstances, another court (court of Sub-Judge, Gogri in Title Suit No. 152 of 2014), allowed the petition under Order 7 Rule XI of the CPC.

12. So far the order of the Sub-Judge in that case is concerned, that is not under challenge before this court. So this Court is not going to pass any comment on that order. It is for the aggrieved party to take proper recourse provided as per provisions of law, against that order.

13. The impugned order dated 29.08.2022 passed by Sub-Judge 1st, Gogri in Title Suit No. 63 of 2017 is well reasoned and does not require interference. The order is upheld.

14. Accordingly, this revision petition is dismissed.

(Nawneet Kumar Pandey, J)

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