

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.175 of 2020**

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1. Smt. Malti Devi W/o Sri Haridwar Sharma, Resident of Village-Kutlupur, Bohiya Bhaya Mow, Bohiyakamalpur, P.S.-Tekari, District-Gaya-824235.
 2. Haridwar Sharma Son of Ram Saha Sharma Resident of Village-Kutlupur, Bohiya Bhaya Mow, Bohiyakamalpur, P.S.-Tekari, District-Gaya-824235.

... .. Petitioner/s

Versus

1. Umeshwar Singh (deleted vide order dt. 29.09.2022) Son of Late Ugrah Singh Resident of Village-Kutalupur, P.S.-Tekari, District-Gaya-Pin-824235.
2. Urmila Devi M/o Late Bharat Sharma Resident of Village-Kutalupur, P.S.-Tekari, District-Gaya-Pin-824235.
3. Srawan Kumar S/o Late Bharat Sharma Resident of Village-Kutalupur, P.S.-Tekari, District-Gaya-Pin-824235.
4. Arpan Kumar S/o Late Bharat Bharat Sharma Resident of Village-Kutalupur, P.S.-Tekari, District-Gaya-Pin-824235.
5. Ashlok Sharma S/o Umeshwar Singh Resident of Village-Kutalupur, P.S.-Tekari, District-Gaya-Pin-824235.
6. Mamta Devi D/o Late Bharat Sharma, W/o Nirbhay Kumar, R/o Village-Bhagwatipur, P.S. Kurtha, Dist-Arwal, presently residing at

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Ashutosh Singh, Advocate
For the Respondent/s : Mr.Binod Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 19-03-2025

Heard learned counsel for the parties.

2. The petitioners are aggrieved by the order dated 24.07.2019 passed by learned Munsif-II, Gaya in Title Suit No. 66 of 2002 whereby and whereunder the petition dated 24.05.2019 filed by the petitioner to mark exhibit, the certified copy of the report of Anchal Amin dated 11.07.2002 and Order passed by the learned S.D.M. dated 16.03.2002 has been rejected.



3. Learned counsel for the petitioner submits that petitioners are plaintiffs and have filed Title Suit No. 66 of 2002 for removal of encroachment on the suit land and for restoration of possession of the suit in the encroached portion of the suit land against the defendant. A proceeding under Section 144 of the Cr.P.C. was drawn which was converted into proceeding under Section 145 of the Cr.P.C. vide order dated 16.03.2002. Earlier on the prayer of the plaintiffs, Anchal Adhikari/Circle Officer, Tekari, Gaya deputed an Anchal Amin for measurement of the land in question and the Anchal Amin after the measurement submitted the report dated 11.07.2002 before the Circle Officer, Tekari. Learned counsel further submitted that while the evidence of the plaintiffs was being recorded, the deposition of P.W.-6 namely Ambuj Prasad was recorded on 31.08.2004 wherein he deposed about the report of the Anchal Amin and signature of the Amin was marked Exhibit 5 on the document. But the Exhibit 5 has been marked in the certified copy of the final order passed by the S.D.M., Tekari on 16.03.2002 in Miscellaneous Case No. 5 of 2002 instead of marking it exhibit on the report of the Amin. Learned counsel further submits that at the time of argument this fact came to the notice of the plaintiffs that report of the Anchal Amin was not marked exhibit rather the exhibit 5 has wrongly been marked in the certified copy of the



final order passed by S.D.M., Tekari. The plaintiff moved before the learned trial court seeking to reopen the case of the plaintiffs for proving and marking exhibits the certified copy of the report of the Anchal Amin, Tekari dated 11.07.2002 and the Order passed under Section 144 of the Cr.P.C. dated 16.03.2002 which were already on record. However, the learned trial did not appreciate the facts in proper perspective and rejected the application filed by the plaintiffs. The documents sought to be exhibited are relevant documents and could not be brushed aside and they are essential for the purpose of decision of the case. The learned trial court has committed grave error in not considering this fact. Moreover the documents were already on record but only due to inadvertence the same could not be marked exhibits. Therefore, the impugned order is not sustainable and the same be set aside.

4. Learned counsel appearing on behalf of the respondents vehemently contends that there is no infirmity in the impugned order. Learned counsel submits that the title suit was filed in the year 2002 and evidence of the plaintiffs was closed in the year 2012. During this period, the plaintiffs never took any steps for getting the documents marked exhibit. The plaintiffs got a deposition recorded by P.W.-6, Ambuj Prasad wherein wrong averment has been made as there was no report of Amin dated



16.03.2002, so it is not clear which document was produced at that time of deposition which was identified by the P.W.-6. Moreover, record shows Exhibit 5 has been marked on 31.08.2004 by the learned trial court which is a document dated 16.03.2002 of learned S.D.M., Tekari, Gaya which is the order sheet dated 08.06.2002 passed by learned S.D.M., Tekari, Gaya in Miscellaneous Case No. 05 of 2002. But the said document was not identified by the witness. Learned counsel further submits that the plaintiffs are in the habit of moving such applications and in one such instance amendment was sought at the stage of argument which was rejected by the learned trial court as well as by this Court and also by the Hon'ble Supreme Court. Thus, learned counsel submits that the impugned order needs no interference by this Court.

5. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

6. Order XI Rule 1 of the Code of Civil Procedure provides for filing of documents and production of documents by the parties. It stipulates that the documents must be produced prior to settlement of issues or at the time of settlement of issues. Thereafter, the documents could be filed on record only after leave of the Court and not otherwise. However, for introducing the document/evidence as exhibit proper foundation needs to be



laid down and the evidence to the effect is required to be recorded. In the instant case, the plaintiffs did not take any steps for taking the above noted documents on record for almost 17 years and blaming it on the counsel or oversight and *bona fide* mistake could not help the cause of the plaintiffs. It further appears that one of the documents had already been marked exhibit and the claim of the plaintiff that the same document be marked exhibit, is beyond comprehension.

7. Considering the apparent lack of reasons for not bringing the documents on record at earlier point of time and further considering the negligent and casual approach of the plaintiffs, the learned trial court has not committed any error of jurisdiction and has passed the orders on consideration of facts and circumstances and the said order needs no interference by this Court and the said order dated 24.07.2019 is affirmed.

8. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.03.2025
Transmission Date	N/A

