

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1233 of 2017

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Raj Kali Devi wife of Sri Shiv Shankar Prasad, Resident of Village- Manpur,
P.O. Karsaut, P.S.- Maharajganj, District- Siwan.

... .. Petitioner/s

Versus

1. Kalactor Yadav Son of Late Nathuni Yadav.
2. Satendra Yadav
3. Shambhu Yadav
4. Ganga Yadav All son of Kalactor Yadav. Resident of Village- Manpur, P.O. Karsaut, P.S.- Maharajganj, District- Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Uday Bhan Singh, Advocate Ms. Kumari Shreya, Advocate Mr. Nandan Kumar Rai, Advocate
For the Respondent/s	:	None

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 04-07-2025

Present learned counsel for the petitioner. However,
even on call, none appears for the respondents.

2. Perusal of record shows even on previous date
there was no representation on behalf of the respondents or
adjournment was sought on behalf of the respondents.

3. Heard learned counsel for the petitioner.

4. The petitioner is aggrieved by the order dated
17.04.2017 passed by learned Sub Judge - IXth, Siwan in Title
Suit No. 526 of 2007, whereby and whereunder the petition filed
by the plaintiff/petitioner under Order XIII Rule 2 read with



Section 151 of the Code of Civil Procedure (in short 'the Code') has been rejected.

5. Learned counsel for the petitioner submits that the petitioner being the plaintiff before the learned trial court has filed Title Suit No. 526 of 2007 for declaration of title and other reliefs over the suit land on the basis of sale deed dated 05.04.2005. Learned counsel further submits that the suit land was originally recorded in the name of Charitar Raut, who sold the disputed land through registered sale deed dated 25.06.1957 in favour of Jhinu Raut and delivered its possession. After the death of Jhinu Raut, his son Teju Yadav came in peaceful possession of the suit land. Subsequently, the plaintiff/petitioner purchased the suit land from Teju Yadav through sale deed dated 05.04.2005. The property of the defendants is situated adjacent to the property of the petitioner and the defendants wanted to purchase the suit land from said Teju Yadav but as they did not offer proper consideration amount, Teju Yadav refused to sell the suit land to the defendants. On 15.09.2007, the defendants/respondents dispossessed the plaintiff/petitioner from the suit land and amalgamated the suit land with their property. The defendants claimed that the suit land was recorded in the name of one Sunar Ahir in R.S. Khatiyan. Sunar Ahir sold



the disputed land to the father of the defendants orally for a consideration of Rs. 15 and 10 Ana on 02.05.1973 and also executed a plain sale deed in proof of oral sale, and after the oral sale the defendants came in possession over the disputed land. After the death of their father, the three sons partitioned the entire ancestral and purchased land including the disputed land and have been coming into its possession. Learned Sub Judge-Vth, Siwan, after hearing the parties, decreed the suit in favour of the plaintiff/petitioner vide judgment and decree dated 26.03.2012. The defendants/respondents filed an appeal against the judgment and decree dated 26.03.2012 before the learned District Judge, Siwan by filing Title Appeal No. 50 of 2012. The learned District Judge, after hearing the parties, remanded the matter to the learned trial court with specific direction that five clear dates will be provided to the defendants/respondents for giving evidence on payment of cost of Rs.10,000/-. After remand of the matter, the plaintiff/petitioner filed a petition dated 05.12.2016 under Order XIII Rule 2 read with Section 151 of the Code with a prayer for taking some relevant documents as evidence. The defendants/respondents filed their rejoinder and after hearing the parties, the learned trial court rejected the petition of the plaintiff/petitioner vide order dated 17.04.2017



which is under challenge before this Court.

6. Learned counsel for the petitioner further submits that the learned trial court has not applied its judicial mind while dismissing the petition of the plaintiff/petitioner which was only with regard to acceptance of the certain documents filed by the plaintiff. These documents are the basis of the suit and find mention in the pleading but due to non-availability of the documents, the documents could not be filed within time before the learned trial court. Learned counsel further submits that the documents are important and relevant for proper and just decision of the same. The learned trial court has rejected the petition merely on the ground that document no. 1 is the photocopy of sale deed dated 25.03.1957 and the original was not brought on record by the plaintiff. Second document was rejected on the ground that the same was hit by order dated 06.08.2013 passed in Title Appeal No. 50 of 2012 granting only five dates for recording the evidence of the defendants. Learned counsel further submits that the reasons given for dismissal of the petition are not proper and valid. It has time and again been pleaded that the original was not available and certified copy was not being issued for the reason that the relevant pages of the register by which sale deed dated 25.03.1957 was registered was



not available. Learned counsel further submits that the copy of communication issued by the office of Sub-Registrar, Maharajganj has been brought on record to certify this fact. Moreover, the plaintiff/petitioner is an old lady and she was not having knowledge about availability of other document as it was kept somewhere and misplaced and the plaintiff by chance got the said document. The learned trial court did not consider these facts and rejected the petition and the same is not sustainable.

7. Perused the record.

8. Perusal of record shows the learned trial court has passed the order rejecting the petition to take the document as evidence brought on record by the plaintiff/petitioner on two grounds. Document no. 1 which is the photocopy of sale dated 25.03.1957. The learned trial court observed that document no. 1 is the photocopy, it cannot be allowed before ascertaining non-availability of primary evidence. Second document has been rejected on the ground that in Title Appeal No. 50 of 2012, only five dates have been given to the learned trial court. So far as finding of the learned trial court about document no. 1 is concerned, position of law is very much clear that a photocopy of the document cannot be taken on record and marked exhibit. It is the prayer of the plaintiff/petitioner that it should be taken



as secondary evidence. It has been submitted on behalf of the plaintiff/petitioner that neither the original nor the certified copy of the said document are available but this fact could not be brought to the notice of the learned trial court.

So far as second document is concerned, the learned trial court merely observed that the same is hit by order dated 06.08.2013 and without assigning any further reason, rejected this document.

9. In these circumstances, I think it proper that the matter be remanded to the learned trial court for passing orders afresh after giving due opportunity of hearing to the parties. The plaintiff/petitioner will place before the learned trial court material about non-availability of primary evidence so far as document no. 1 is concerned. Since the rejection of the second document is without any justifiable reason, the learned trial court will also pass reasoned order taking into consideration the submission of the parties.

10. Accordingly, the impugned order dated 17.04.2017 is set aside and the matter is remanded to the learned trial court for passing orders afresh. The petitioner is at liberty to bring all the materials available before the learned trial court regarding non-availability of document no. 1 and the learned trial court



will pass a speaking order on the basis of the contention of the parties.

11. With the aforesaid observation, the present petition stands disposed of.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.07.2025
Transmission Date	NA

