

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1739 of 2017

Manikchand Singh Son of Late Ram Prasad Mahto, Resident of Mohalla-
Kabirganj, Sasaram, Police Station- Sasaram, District- Rohtas Sasaram.

... .. Petitioner/s

Versus

1. Bishwanath Singh Son of Late Hari Singh, Resident of Village - Belarhi, Sasaram, P.O. Morsaray, Police Station - Sasaram, District- Rohtas (Sasaram).
2. Keshnath Singh @ Kesnath Singh Son of Late Hari Singh, Resident of Village - Belarhi, Sasaram, P.O. Morsaray, Police Station - Sasaram, District- Rohtas (Sasaram).
3. Sheonath Singh Son of Late Hari Singh, Resident of Village - Belarhi, Sasaram, P.O. Morsaray, Police Station - Sasaram, District- Rohtas (Sasaram).
4. Tetara Devi Wife of Chandrama Singh, D/o Late Hari Singh, Resident of Village - Belarhi, Police Station - Sasaram, at present village - Darigaon, P.O. Morsaray, Police Station - Sasaram, District- Rohtas(Sasaram).
5. Surendra Kumar Keshari Son of Late Bishwanath Prasad Keshari, Resident of Mohalla - Gurunanakpur (Karan Sarai), P.O. and P.S. - Sasaram, District- Rohtas (Sasaram)
6. Mantu Keshari Son of Late Bishwanath Prasad Keshari, Resident of Mohalla - Gurunanakpur (Karan Sarai), P.O. and P.S. - Sasaram, District- Rohtas (Sasaram)
7. Ajay Kumar Keshari, Son fo Late Bishwanath Prasad Keshari, Resident of Mohalla - Gurunanakpur (Karan Sarai), P.O. and P.S. - Sasaram, District- Rohtas (Sasaram)

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Surendra Kumar Choubey, Adv.
For the Respondent/s : Mr.Rajani Kant Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

5 28-07-2025 Heard learned counsel for the parties.

2. Petitioner is aggrieved by the order dated 03.07.2017 passed in Title Suit No. 247 of 2008 by the learned Sub Judge-VII, Sasaram, Rohtas whereby and whereunder the learned trial court allowed the application dated 06.01.2017



filed by respondent 2nd set to mark the photocopy of receipt no. 35 page no. 65 of Sheo Prasad Gupta Hospital, Varanasi filed by defendant 1st set/respondent 1st set as material exhibit.

3. Learned counsel for the petitioner submits that the order impugned is completely illegal and a photocopy has been marked exhibit without following the procedure prescribed in this regard by the law. The document was marked exhibit at the fag end of the trial when the matter was fixed for argument after the evidence of the parties has been closed. Without any justification for taking the photocopy on record, by a cryptic order, the said document has been marked material exhibit by the learned trial court.

4. Learned counsel appearing on behalf of respondents 2nd set submits that there is no infirmity in the impugned order. The document in question was filed by the defendant 1st set/respondent 1st set but no steps were taken for getting the said document exhibit by defendant 1st set/respondent 1st set. Learned counsel further submits that on the basis of forged *mahadnama* the petitioner has been fighting the case. There is dispute over death of one Hari Singh who executed an agreement of sale which is the subject matter of Title Suit No. 247 of 2008. It is the case of respondent 2nd set



that death occurred in the year 1997 whereas the petitioner claimed that death took place in the year 2001. Therefore, the said document was an essential document and the learned trial court took note of this fact and rightly allowed the application of the defendants 2nd set for marking the photocopy as material exhibit.

5. Having regard to the rival submission of the parties and on perusal of record, I find that the learned trial court proceeded in the matter and exhibited a photocopy of receipt of a hospital without following the procedure prescribed in this regard under the law. Even the stage of the trial was not considered while allowing the application for marking exhibit the photocopy of the receipt of Sheo Prasad Gupta Hospital, Varanasi. Whatever might be the claim of respondent 2nd set about the merits of the case of the plaintiff/petitioner, the same should have no bearing on passing the impugned order by the learned trial court. Under Section 65 of the Evidence Act, certain conditions have been prescribed for taking secondary evidence. Evidently, the learned trial court has not considered this point and allowed the application for taking in evidence the photocopy of document and hence, the said order could not be sustained and the same is set aside being against the provision



of law.

6. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

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