

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1100 of 2018

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Laliteshwar Kumar Sinha S/o Late Indar Singh Resident of Village- Kothwan,
P.O. Khagaul, P.S. Khagaul, District- Patna.

... .. Petitioner/s

Versus

1. The Welfare Housing Cooperative Society Ltd.
2. Sri Shashi Prasad Singh S/o late Bindeshwari Prasad Singh, Secretary of Said Society Resident of Bailey Road, P.S. Kotwali, P.O. District- Patna.
3. Shailendra Kumar Sinha
4. Shailesh Kumar Sinha Both Resident of Village- Kothwan, P.O. Khagaul. P.S. khagaul, District- Patna.
- 5.1. Satyanand Sinha S/o Late Murat Lal Singh, Husband of Late Malti Devi, Resident of Jyotipuram Colony, Maurya Path Khajpura, Near - Shyamal Hospital, P.O. - B.V. College, P.S. - Rajiv Nagar, District - Patna - 800014.
- 5.2. Kundan Sinha S/o Late Malti Devi, Resident of Jyotipuram Colony, Maurya Path Khajpura, Near - Shyamal Hospital, P.O. - B.V. College, P.S. - Rajiv Nagar, District - Patna - 800014.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bal Bhushan Choudhary, Advocate Mr. Raj Kishore Pd. Singh, Advocate
For the Respondent Nos. 1&2	:	Mr. Rajeev Shekhar, Advocate Ms. Abhanjalli, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 03-09-2025

The present civil miscellaneous has been filed against the order dated 26.04.2018 passed by learned Subordinate Judge-III, Danapur in Title Suit No. 89 of 1986 whereby and whereunder the petition dated 02.07.2014 for acceptance of additional written statement was rejected.

02. Briefly stated, facts of the case are that the petitioner is one of the defendants in a suit filed by respondents



1st set bearing Title Suit No. 89 of 1986. The suit has been filed against Kewala Kuer and Inder Singh, the parents of the petitioner, for specific performance of contract on the basis of agreement for sale dated 12.04.1983 said to be executed by Kewala Kuer in favour of the plaintiff. Kewala Kuer, the original defendant no. 1 died on 30.04.1993 and a petition for substitution of her heirs/legal representatives was filed on 15.07.1993 which was allowed vide order dated 31.05.1994/01.08.1994 directing the plaintiffs to file requisites for appearance of substituted defendant fixing 25.08.1994 as the next date in the said suit. It further appears that a *vakalatnama* has been filed on behalf of the petitioner, his brothers and sister who were the legal representatives of Kewala Kuer with a petition to treat the written statement filed by Kewala Kuer and Inder Singh as written statement of the substituted defendants. The matter proceeded and the evidence of the plaintiffs was closed and the matter had been coming up for the recording of the evidence of the defendants. At this stage on 02.07.2014, the petitioner who is defendant no. 1(B) before the learned trial court filed an application along with an additional written statement for taking the additional written statement of the petitioner on record. It also transpires that 04.03.2016 was the



date fixed in the suit for hearing on the petition dated 02.07.2014 filed by the petitioner and rejoinders filed by the plaintiffs and defendant no. 1(A). A time petition was filed on behalf of the petitioner seeking adjournment due to engagement of his counsel in some other Court but the petition dated 02.07.2014 was rejected instead of rejecting the adjournment petition. Thereafter, the petitioner on 03.05.2016 filed another application to hear the petitioner on his petition dated 02.07.2014 which had been rejected on 04.03.2016 as not pressed. The learned trial court, after hearing the petitioner rejected the petition dated 03.05.2016 by its order dated 17.08.2016 with a liberty to the petitioner to file a fresh petition. Thereafter, the petitioner on 29.09.2016 filed a fresh petition with prayer to recall the order dated 04.03.2016 and accept the additional written stated dated 02.07.2014. This application was dismissed by the learned trial court vide order dated 26.04.2018 which is under challenge before this Court.

03. Learned counsel appearing on behalf of the petitioner submitted that the impugned order is not sustainable and the same has been passed in total disregard of the facts of the case. The mother of the petitioner, who was the original defendant no. 1, died on 30.04.1993 leaving behind her three



sons and one daughter but the summons issued upon the substituted heirs was not served on the petitioner though it is stated that petitioner appeared in the case on 25.08.1994 as *vakalatnama* has been filed on behalf of the petitioner and other substituted heirs, this presumption is not correct as petitioner had no knowledge or information about pendency of Title Suit No. 89 of 1986 prior to 02.07.2014. The petitioner did not execute any *vakalatnama* in favour of Sri B. Chaudhary, Advocate and he has not instructed him to file any petition on his behalf for adopting the written statement filed by his mother. This fact becomes clear from the petition dated 25.08.1994 purported to have been filed jointly on behalf of the petitioner, his two brother and sister as the said petition does not bear the signature of any of the petitioners. Learned counsel further submitted that perhaps, the brother of the petitioner namely Shailesh Kumar Sinha, misused the signature of the petitioner which he had obtained on a blank *vakalatnama* and he has come in collusion with the plaintiffs.

04. Learned counsel further submitted that once the petitioner came to know about the pendency of the title suit in which he had been made a defendant, the petitioner is within his rights to file additional written statement in accordance with the



provisions of Order 22 Rule 4(2) of the Code of Civil Procedure (in short “the Code”). Learned counsel further submitted that Order 22 Rule 4(2) of the Code provides that any person made a party after death of the defendant may make any defence appropriate to his character as legal representative of the deceased defendant. But the learned trial court did not consider this legal principle and went on to pass an erroneous order. Learned counsel further submitted that petitioner is one of the co-sharers of the land in dispute and being the substituted defendant he has every right to protect his interest in his own capacity. By rejecting the application dated 02.07.2014, the learned trial court denied the petitioner his statutory right to file an additional written statement and to make any defence appropriate to his character as legal representative of the original defendant no. 1. Learned counsel referred to para no. 8 of the case of *Sumtibai & others vs. Paras Finance Co. Mankanwar W/o Parasmal Chordia (D)& Ors.* reported in *(2007) 10 SCC 82* wherein the Hon’ble Supreme Court has held as follows:-

“8. Every party in a case has a right to file a written statement. This is in accordance with natural justice. The Civil Procedure Code is really the rules of natural justice which are set out in great and elaborate detail. Its purpose is to enable both parties to get a hearing. The



appellants in the present case have already been made parties in the suit, but it would be strange if they are not allowed to take a defence. In our opinion, Order 22 Rule 4(2) [CPC](#) cannot be construed in the manner suggested by learned counsel for the respondent.”

Learned counsel reiterated that the respondent in their rejoinder did not refute the claim of the petitioner about the petition dated 25.08.1994 being unsigned. Learned counsel further submitted that the learned trial court committed further mistake in considering the merits of the written statement and the additional written statement sought to be brought on record by the petitioner. Learned counsel next submitted that defendant no. 1(A) has also filed rejoinder stating that the said defendant has no objection in accepting the written statement filed by the petitioner. Considering all these facts and circumstances, it is evident that the petitioner has been denied an opportunity to contest the case and if the same is not allowed, it would cause miscarriage of justice. Thus, the learned counsel submitted that the impugned order is bad and not sustainable in the eyes of law and the same needs to be set aside.

05. Learned counsel appearing on behalf of the respondents 1st set vehemently contended that there is no merit in the present petition and the same is liable to be dismissed.



There is no infirmity or illegality in the impugned order and the petitioner has filed a false and frivolous petition challenging the said order. Learned counsel further submitted that after death of their parents, the petitioner and other legal heirs have been duly substituted and all the four legal heirs entered appearance by filing a common *vakalatnama*. Therefore it is wrong on part of the petitioner to say that he was not having any knowledge of the Title Suit No. 89 of 1986. All of them adopted the written statement filed earlier by their mother, the original defendant no. 1 and their father, the original defendant no. 2. The plea taken by the petitioner is wholly untenable and the grounds urged are incorrect and misleading. The petitioner and other substituted defendants have been participating in the proceeding through their advocates since 1994. The record would show evidence of the plaintiffs was closed long back where after the defendants started adducing their evidence. However, despite passage of considerable time, the evidence on behalf of the defendants remains incomplete. The conduct of the substituted defendants including the petitioner clearly reflects a concerted attempt through collusion and delay tactics to protract the proceeding by adopting unwarranted and obstructive means as evident from the records of the case. Learned counsel further submitted that after



lapse of nearly two decades, the petitioner sprang a surprise and filed an additional written statement on 02.07.2014 praying for its acceptance, feigning ignorance about pendency of Title Suit No. 89 of 1986 and denying the fact that he ever appointed Sri B. Chaudhary, Advocate for executing the *vakalatnama* in his favour. But the plea of the petitioner that his signatures were obtained on a blank *vakalatnama* by his own brother is completely devoid of merit and appears to be a deliberate attempt to delay the adjudication of the suit. Such unsubstantiated allegation made without any cogent material cannot be accepted or relied on at this highly belated stage of the proceeding. The petitioner has developed a false and fabricated story under the pretext of lack of knowledge, non-service of summons and other baseless allegations but all these grounds were considered by the learned trial court and were rightly rejected. The story of the petitioner is not believable and conduct of the petitioner dis-entitles him to any equitable relief from this court. Rather the conduct of the petitioner amounts to abuse of the process of law. By attempting to reopen settled issues after a lapse of nearly two decades shows the petitioner wants to circumvent the principles of laches and estoppel which bars such belated claims. Learned counsel further submitted that



the ground taken by the petitioner regarding his right to file an additional written statement is wholly unsustainable. Further the petitioner can take a defence not contrary to the defence raised by the deceased defendants since the substituted defendants step into the shoes of the deceased defendants. Moreover in a suit for specific performance the substituted defendants cannot be permitted to take plea that are inconsistent or contrary to those taken by the original defendants. Learned counsel further submitted that all the three brothers, including the petitioner, appear to be acting in collusion with each other and are deliberately making baseless and inconsistent allegations solely with the intention to obstruct the fair trial of the present suit. One of the brothers, namely Shailesh Kumar Sinha, who appeared as D.W. 1, during his cross examination admitted the execution of agreement to sale by his mother in favour of the plaintiffs and confirmed that a substantial amount of consideration money had been received. In order to counter this admission, the substituted defendants, under mutual understanding and under legal advice, began making false and contrary claims attempting to deviate from the original written statement filed by the deceased defendants wherein the original defendants had already admitted the material facts and receipt of



consideration. Thus, the learned counsel submitted that the present civil miscellaneous petition is completely frivolous, vexatious and has been filed by the petitioner with the sole objective of obstructing and delaying the final adjudication of the suit for specific performance which has been pending since the year 1986. Therefore, the learned trial court rightly rejected the application of the petitioner dated 02.07.2014 after giving due opportunity of hearing to all the concerned parties including the petitioner herein. Thus, the impugned order dated 26.04.2018 has been passed after due appreciation of the facts, pleadings on record and applicable legal provisions. Therefore, there is no illegality or infirmity in the said order warranting interference of this Court and hence the present petition deserves to be dismissed with heavy cost.

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

07. Perusal of the lower court record which has been called for in this case shows the petitioner Laliteshwar Kumar Sinha appeared in this case, along with defendants Shailendra Kumar Sinha, Shailesh Kumar Sinha and Malti Devi, on 25.08.1994. Perusal of *vakalatnama* shows the substituted defendants Shailesh Kumar Sinha, Shailendra Kumar Sinha,



Malti Devi and Laliteshwar Kumar Sinha have executed the *vakalatnama* in favour of one Sri B. Chaudhary, Advocate on 25.08.1994. It is pertinent to take note of the fact that the petitioner has not been denying his signature on the *vakalatnama* but has been merely stating that he has not executed the *vakalatnama* in favour of Advocate B. Chaudhary and has not instructed him for adoption of written statement. Once the petitioner admitted his signature on *vakalatnama* and the same has been duly accepted by the learned advocate, the executant cannot resile and say that he has not engaged the said counsel and has not passed any instructions. Any claim of the petitioner about not executing the *vakalatnama* is on very shaky grounds. The matter does not end there. Further perusal of the lower court records shows same advocate namely Mr. B. Chaudhary and one more learned advocate namely D. P. Arya were again given a *vakalatnama* by the three brothers on 03.12.2010. This shows the petitioner has not come up before this Court with clean hands, more so, when he says he came to know about the pending Title Suit No. 89 of 1986 for the first time on 29.06.2014 and *vakalatnama* has been filed on behalf of the petitioner on 30.06.2014 by Sri Suraj Kumar, learned advocate. The petitioner and his brothers also engaged Sri



Bachan Prasad Srivastava and Sri Raushan Rakesh Tiwary and Lala Hirendra Prasad Sinha as their advocates by executing *vakalatnama* dated 16.12.2013. The petitioner and his brothers further executed *vakalatnama* in favour of learned counsel Shri Shambhu Bhushan Sharma on 06.03.2014. These facts conclusively demolish the claim of the petitioner having no knowledge of the suit prior to 29.06.2014. But these facts are only academic in interest and are relevant only for the purpose of showing the conduct of the petitioner that he has made palpably false claim before this Court with impunity since *vakalatnama* dated 25.08.1994 executed by the petitioner is already on record and as the signature on it has been admitted by the petitioner, this Court needs look no further about service of summons on the petitioner and his consequent appearance before the learned trial court on 25.08.1994.

08. Once the petitioner as substituted defendant made his appearance before the learned trial court, he was within his rights to take a defence commensurate with his status as legal representative of the deceased defendant as provided under Order 22 Rule 4(1) and Order 22 Rule 4(2) of the Code which reads as under:-

“4. Procedure in case of death of one of several defendants or of sole defendant.



(1)Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2)Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.”

But this provision is to be read along with Order 8 Rule 1 of the Code which provides that the defendant shall, within 30 days from the date of service of summons on him present a written statement on his defence. It further provides that where the defendant fails to file written statement within such period of 30 days, he shall be allowed to file it on such other day as may be specified by the Court for reasons to be recorded in writing but shall not be greater than 90 days. Therefore, the petitioner was supposed to make his defence within 90 days from the date of his appearance i.e., 25.08.1994. But the petitioner chose not to take any such defence within the stipulated period provided under Order 8 Rule 1 of the Code. The petitioner slept over the matter for 20 years and all of a



sudden approached the learned trial court with a completely false and concocted plea of having no knowledge/information about pending Title Suit No. 89 of 1986 instituted against his parents and duly contested by his brothers and sister.

09. One of the grounds to deny his appearance on 25.08.1994 is that the petition adopting the written statement is not signed by the petitioner or his brothers but when *vakalatnama* has been executed by the petitioner and his siblings, the substituted defendants, they cannot disown the petition seeking adoption of the written statement of their parents. The petitioner is also being economical with truth as none of the siblings denied the adoption and have been prosecuting the case on the basis of the said written statement. So submission of the learned counsel for the petitioner even on this point is without merit.

10. Therefore in the light of discussion made hereinbefore, I am of the considered opinion that the petitioner has utterly failed to show any error of jurisdiction in passing the impugned order dated 26.04.2018 by the learned trial court and hence the said order is affirmed.

11. Further finding that the present civil miscellaneous petition is a clear case of abuse of process of law and the present



petition is completely frivolous, vexatious and evidently filed for the purpose of delaying the disposal of Title Suit No. 89 of 1986, the same is dismissed with cost of Rs.25,000/- to be paid to the answering respondents before the learned trial court by the petitioner on the first date of hearing.

12. Office is directed to immediately send the record to the learned trial court and the learned trial court is requested to take steps for early disposal of the Title Suit No. 89 of 1986 considering its antiquity.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	07.08.2025
Uploading Date	03.09.2025
Transmission Date	N/A

