

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18602 of 2010

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1. Satyendra Prasad Sinha.
 2. Harendra Prasad Sinha.
 3. Bijay Prasad Singh.
Sons of Late Saryu Prasad Singh.
All residents of village- Gorakhari, P.S.- Bikram, District- Patna.

.... Petitioners.

Versus

1. Shri Chandra Bhushan Prasad Singh, son of Late Janardan Prasad Singh.
2. Rajeev Ranjan, son of Sri Chandra Bhushan Prasad Singh.
Both residents of village-Gorakhari, P.S. Bikram, District-Patna.

....Respondent 1st Set.

3. Ratnesh Kumar.
4. Rajnish Kumar.
Both sons of Satyendra Prasad Singh, residents of village- Gorakhari,
P.S.- Bikram, District-Patna.
5. Smt. Pushpa Devi, wife of Sri Vijay Prasad Singh, resident of village-
Gorakhari, P.S.- Bikram, District-Patna.
6. Smt. Prabhawati Devi, wife of Late Suresh Sharma, resident of village-
Sarthua, P.S.- Jehanabad and District- Jehanabad.
7. Smt. Krishna Devi, wife of Sri Subhash Sharma, resident of village-
Akwari, P.S.- Akwari, District-Bhojpur.
8. Smt. Sharda Devi, wife of Sri Vinod Sharma, resident of village-
Akwari, P.S.- Akwari, District- Bhojpur.
9. Smt. Suman Devi, wife of Sri Ashok Kumar Sharma, resident of village-
Narhi, P.S.- Narhi, District- Balia (U.P.).
10. Smt. Asha Devi, wife of Sri Baiju Sharma, resident of village- Pitwas,
P.S.- Naubatpur, District-Patna.

.... Respondent 2nd Set.

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Appearance :

For the Petitioners : Mr. Jashawir Singh Arora, Advocate.
For the Respondents : M/s. Arjun Prasad Singh and Anil Kumar Singh,
Advocates.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
CAV ORDER

7 28-11-2014 This writ application, under Article 227 of the

Constitution of India, is directed against the order dated

15.09.2010 passed in Title Partition Suit No.320 of 1998, whereby

the learned Sub Judge-VI, Patna, allowed the application dated 21.07.2010 filed on behalf of the plaintiffs-Respondent 1st set to mark the photocopy of the award/partition deed dated 26.08.1998 as exhibit.

2. It appears that the plaintiffs-Respondent 1st set filed the Title Partition Suit No.320 of 1998 for partition of their half share in respect to immovable properties as detailed in Schedule-I and Schedule-II of the plaint as also the movable property, i.e., one Maruti Car, as detailed in Schedule-III of the plaint. The defendants-petitioners appeared in the suit and filed the written statement with the contention that the properties, as detailed in Schedule-I of the plaint, have been partitioned by metes and bounds between the branch of the plaintiffs-Respondent 1st set and the defendants-petitioners half and half. The properties, as detailed in Schedule-I of written statement, was allotted to the plaintiffs-Respondent 1st set and the properties, as detailed in Schedule-II of written statement was allotted to defendants/petitioners, while the some properties, as detailed in Schedule-I of the plaint, were left joint at that time which is detailed in Schedule-III of the written statement. The properties, as detailed in Schedule-II of the plaint, is self acquired properties of the Saryug Prasad Singh, father of the defendants/petitioners from

his own fund and the Maruti Car, as detailed in Schedule-III of the
plaint, has also been purchased from the income of exclusive
business of the defendants-petitioners. At the stage of argument,
the plaintiffs-Respondent 1st set filed an application dated
16.02.2010 under Section 151 of the Code of Civil Procedure with
a prayer to mark the photo copy of the award/partition deed dated
26.08.1998 as exhibit. The defendants-petitioners filed rejoinder
on 23.02.2010 to the said petition with the contention that the
alleged award/partition deed dated 26.08.1998 is forged and
fabricated document and the same could not be marked as exhibit.
Thereafter, the plaintiffs-Respondent 1st set filed an application on
29.03.2010 for re-examination of P.W.14 (the plaintiff-
Respondent no.1). The said application was allowed and in re-
examination, the plaintiff-Respondent no.1 stated about the new
story to the effect that the Panchayati with respect to the dispute
between the parties was held, in which the Panches decided that in
all the properties, 50% share will be of the plaintiffs-Respondent
1st set and 50% share will of defendants-petitioners and,
accordingly, award/partition deed was prepared, copy of which is
with him and photocopy of award/partition deed was marked as
Ext. 'X' for identification. The plaintiffs-Respondent 1st set filed
an application on 21.07.2010 with a prayer to mark the photocopy

of the aforesaid award/partition deed dated 26.08.1998 as Exhibit. The learned Sub Judge-VI, Patna, through the impugned order allowed the said application dated 21.07.2010 of the plaintiffs-Respondent 1st set to mark the photocopy of the award/partition deed dated 26.08.1998 as exhibit.

3. Learned counsel appearing on behalf of the defendants-petitioners made submission the alleged award/partition deed dated 26.08.1998 is in respect of the immovable property, as detailed in Schedule-I and Schedule-II of the plaint, the value of which is more than Rs.100/-, as such, the same was to be registered as per Section 17 of the Registration Act. Admittedly, the alleged award/partition deed dated 26.08.1998 is unregistered, hence, in view of the provisions of Section 49 of the Registration Act, the award/partition deed dated 26.08.1998 could not be taken into evidence but the learned Sub Judge-VI, Patna, illegally allowed the application dated 21.07.2010 filed on behalf of the plaintiffs-Respondent 1st set to mark the photocopy of the award/partition deed dated 26.08.1998 as exhibit, saying that the genuineness of the same would be considered at the time of final hearing of the case. Learned counsel for the defendants-petitioners further submitted that the learned court below has illegally allowed the application dated

21.07.2010 of the plaintiffs-Respondent 1st set to mark the photocopy of the award/partition deed dated 26.08.1998 as exhibit without compliance of the requirement of Section 65 of the Evidence Act.

On the other hand, learned counsel appearing on behalf of the Respondents made submission that the photocopy of the document could be marked as exhibit and placed reliance on a decision in the case of **Ganga Sagar Gond and others Versus Ganesh Gond and others {2002(2) PLJR 772}**.

4. Admittedly, the plaintiffs-Respondent 1st set has filed Title Partition Suit No.320 of 1998 for partition of their half share in the suit properties. At the time of argument, the plaintiffs-Respondent 1st set filed an application dated 21.07.2010 to mark the photocopy of the award/partition deed dated 26.08.1998 as exhibit saying that the original award is with the defendants-petitioners and they are not willing to produce the same before the court. It is also alleged in the said application that the original award/partition deed dated 26.08.1998 was given to Suresh Sharma by the plaintiff no.1 to get the photocopy of the same and Suresh Sharma handed over the original as well as the photo copy of the award/partition deed dated 26.08.1998 to the plaintiff no.1 and the plaintiff no.1 in terms of the award gave the

original copy of the award to the defendants-petitioners.

5. The alleged award/partition deed is in respect to the partition of the property of the suit land creating right and title to the parties, the value of which is more than Rs.100/-. Admittedly, the award/partition deed dated 26.08.1998 is not registered as required under Section 17 of the Registration Act. According to provisions of Section 49 of the Registration Act, unregistered document, which is required to be registered under Section 17 of the Registration Act, cannot be taken in the evidence. More so, the case of the plaintiffs/Respondent 1st set is that the original award/partition deed was handed over to Suresh Sharma to get the photocopy of the same but there is no evidence of Suresh Sharma on the record to show that the photocopy of the award/partition deed is the photocopy of the original award/partition deed dated 26.08.1998. Unless and until the evidence is not come to the effect that the photocopy of the award was made to the original as per Section 63(3) of the Evidence Act, the same could not be accepted in the evidence. As such, the impugned order dated 15.09.2010 passed by the Sub Judge-VI, Patna, in Title Partition Suit No.320 of 1998, allowing the application dated 21.07.2010 of the plaintiffs/Respondent 1st set to mark the photocopy of the unregistered award/partition deed dated 26.08.1998 is illegal and

not in accordance with law.

The decision in the case of **Ganga Sagar Gond and others Versus Ganesh Gond and others {2002(2) PLJR 772}** on which the reliance has been placed by the learned counsel for the plaintiffs-Respondents would not be applicable in the present case as in that case the photocopy of the original sale deed was ordered to be marked as exhibit taking into consideration the facts that there was specific case of the petitioners in that case that the original sale deed has been lost and the two witnesses have specifically stated that the photocopy of the sale deed was made in their presence.

6. Having regard to the facts and the circumstances of the case and the discussions, made above, the impugned order dated 15.09.2010 passed by the Sub Judge-VI, Patna, in Title Partition Suit No.320 of 1998, allowing the application dated 21.07.2010 of the plaintiffs/Respondent 1st set to mark the photocopy of the award/partition deed dated 26.08.1998, is set aside and this writ application is allowed.

(Rajendra Kumar Mishra, J)

P.S./-N.A.F.R.

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