

## Durga Sonar Vs Prahlad Kumar Burman

**Court:** Jharkhand High Court

**Date of Decision:** Jan. 20, 2025

**Acts Referred:** Code of Civil Procedure, 1908 " Order 8 Rule 1A

**Hon'ble Judges:** Sanjay Kumar Dwivedi, J

**Bench:** Single Bench

**Advocate:** Ram Pravesh Prajapati, Shashank Shekhar

**Final Decision:** Allowed

### Judgement

Sanjay Kumar Dwivedi, J

1. Heard the learned counsel appearing on behalf of the petitioner as well as the Opposite party nos.1 to 5.

2. This petition has been filed for quashing of the order dated 04.12.2023 whereby the petition filed under Order VIII Rule 1A CPC in Original Suit

No.79 of 2017 has been rejected by the learned court.

3. Learned counsel for the petitioner submits that the documents are necessary for deciding the partition suit. He submits that the petitioner and

defendants are own brothers and gift deed, photocopy of the affidavit and the deed of agreement has been sought to be brought on record and the

learned court has been pleased to reject the same.

4. Mr. Shashank Shekhar, the learned counsel appearing on behalf of the Opposite parties nos. 1 to 5 submits that there is no whisper in the written

statement of the defendant about the said gift deed and that gift deed is not registered and in view of that it is not admissible. He further submits that

the affidavit is a notary public affidavit which is also not admissible. He submits that by way of only entering into an agreement, right, title and interest

cannot be transferred to anybody. He submits that in view of that the learned court has rightly passed the order. He submits that the due diligence is

also lacking in the case.

5. It is an admitted position that the said documents are relating to the property which are the subject matter of the partition suit and if such a situation

is there, admissibility of the said documents can be subject matter of the trial. The relevance of which can be examined by the learned trial court on

the basis of the evidence to be led by the, but to deprive a party to the suit not to file any document even if there is some delay that will lead to denial

of justice. It is well settled that the rules of procedure is hand made of justice and therefore even if there is some delay the trial court should have

imposed some cost rather than to decline the production of the document itself.

6. Consequently, this writ petition is allowed. The order of the learned trial court dated 04.12.2023 is set aside.

7. The petitioner-defendant/ sole defendant is permitted to file the document and prove the same in accordance with law.

8. The plaintiff/ respondents shall be permitted to lead additional evidence if any on the basis of documents now produced by the defendant.

9. This order is subject to cost of Rs.1000/- (one thousand) to be paid to the plaintiff.

10. The learned court will proceed with the said suit in accordance with law.

11. This petition is allowed in the above terms and disposed of.