

(2016) 10 PAT CK 0074

PATNA HIGH COURT

Case No: Civil Writ Jurisdiction Case No. 4559 of 2016

Md. Nuruddin @ Noor
Mohammad

APPELLANT

Vs

Md. Abbas

RESPONDENT

Date of Decision: Oct. 24, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 13 Rule 1

Citation: (2017) 1 BBCJ 127 : (2017) 1 CivilJ 557 : (2016) 4 PLJR 951

Hon'ble Judges: Mr. Mungeshwar Sahoo, J.

Bench: Single Bench

Advocate: Mr. Shashi Nath Jha, Advocate, for the Petitioners; None, for the Respondents

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Mungeshwar Sahoo, J.(Oral) - Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. Perused the impugned order dated 10.11.2015 passed by Sub Judge Ist, Araria in Title Suit No.51 of 2000 whereby the learned Court below rejected the application filed by the plaintiff petitioner for admitting the Trace - Map in evidence.

3. The learned counsel for the petitioner submitted that the Court below has rejected the application on the ground of delay only. The Court below has not recorded any finding as to whether the document sought to be admitted in evidence, his relief for admission of the real controversy between the parties or not. On the ground of delay only, the application could not have been rejected, particularly when the other side is not making any case that the document is a forged document.

4. On the other hand, the learned counsel for the respondent submitted that the finding of the Court below is that the case is of the year 2000 and according to Order 13, Rule 13 CPC, the documents requires to be produced, prior to framing but the document is now sought to be produced at the stage of argument. The learned counsel for the petitioner submitted that the document is not at all relevant for deciding the case and that the documents was available to the plaintiff from the very beginning but he did not produce the same prior to the filing of the suit. In such circumstances, when the Court below has exercised a jurisdiction, the same cannot be interfered with on the ground that the jurisdiction has been exercised wrongly.

5. From perusal of the impugned order, it appears that the Court below mentioned that in the schedule of the plaint, only khata number and khesra number has been mentioned and at the same places, cadastral survey record has been mentioned. The application has been filed by the State when the evidence of both the parties have already been concluded. The Court below nowhere decided as to whether the document is relevant or not. Only on the ground that the evidences of both the parties have been closed, the application has been rejected.

6. It is settled principal of law that cut short the delay or multiplicity of proceeding cannot be made the ground for flouting the fundamental principle of Code of Civil Procedure. Reference may be made in this respect to the decision of the Hon"ble Supreme Court in the case of **Bachhaj Nahar v. Nilima Mandal AIR 2009 SC 1103 : (2008) 17 SCC 491**.

7. So far admitting the document in the evidence is concerned, it may be mentioned that the plaintiff is praying for admitting the document in evidence, the Trace - Map is there and from perusal of the plaint, it appears that the plaintiff has specifically mentioned about the fact that from C.S. plot, which R.S. plot has been carved out, therefore, it is the plaintiff to prove the fact.

8. In the case of **Rukaiyabibi Ahmad Ali Ismail v. Musa Ismail Mahmed Khusal (2014) 16 SCC 422** the Supreme Court has held that "when the authenticity of the documents is not questioned by the other side, the same can be admitted in evidence although the case has been fixed for argument." It appears that in that case up to the High Court, the application filed by the plaintiff was rejected considering Order 13, Rule 1 CPC. The Hon"ble Supreme Court in this decision set aside the order of the High Court and held that the Courts below should have received the document in evidence.

9. The Hon"ble Supreme Court in the case of **K.K. Velusamy v. N. Palanisamy 2011 (11) SCC 275** has held that "the Courts have the jurisdiction to reopen the case of any party and allow a party to adduce further evidence for the ends of justice even after the case has been fixed for judgment. Since there is no provision for permitting the document for taking it in evidence at the stage of argument, the

Court can exercise inherent jurisdiction under Section 151 CPC."

10. In the present case, the plaintiff is praying for admitting the document in evidence. The plaintiff has filed the suit for partition of the suit mentioned in R.S. plot which is curved out of cadastral survey plot number. Therefore, it is for him to prove this fact. In such circumstances, in my opinion, the Court below has wrongly refused to exercise a jurisdiction vested in it by law and thereby occasioned failure of justice.

11. In the result, this writ application is allowed. The impugned order dated 10.11.2015 passed by Sub Judge Ist, Araria in Title Suit No.51 of 2000 is set aside. The plaintiff application for admitting the Trace - Map in evidence is hereby allowed.