

In the court of Civil Judge (Sr. Division)-VI, Patna City

T.S. 67/1995

04-10-2024

Plaintiff, Sanjay Kumar Sinha & Defendant No.1 & 2, 3, 8 to 8/b, 10 to 13 are in attendance and they are represented through their learned counsel.

Today the record is put for order on two petitions dt. 16-03-2024 filed on behalf of defendant No. 8 to 8/b. Plaintiff, as well as defendant No. 1 & 2 filed their separate rejoinders dt. 27-03-2024 in reply to the above both petitions.

Heard both the parties and perused the case record. From the perusal of case record it appears that the present petition was filed on 16-03-2024 by defendant No. 8 to 8/b and through his petition he contended that these defendants in support of their case have filed documents which are on record and are necessary to be marked as exhibit, which are (i) Certified copy of Survey Khatiyani relates to Plot No. 2215, Area 5 Acre 51 decimal under Tauzi No. 303, Thana No. 11, (ii) Certified copy of return in the name of Sayed Shah Israr Hussain, (iii) Certified copy of Register-D in the name of Ex-landlord Syed Hamid Hussain the brother of Syed Shah Israr Hussain, (iv) Certified copy of order relates to fixation of rent passed in Rent Fixation Case No. 11/4 of 2015-16 with Karamchari Report. In reply to the present petition, plaintiff by way of his rejoinder argued that document, serial No. (i) as mentioned in para No. 1 of the petition under rejoinder, has already been marked on the side of the plaintiff and in spite of that if these defendants want to mark the same as an exhibit, then the plaintiff has got no objection upon the same, whereas document serial No. (ii & iii) is forged & fabricated more-over the same is secondary evidence which must be proved by primary evidence, more-over document serial No. (iv) has already been set aside by the ADM Patna as final order, therefore, petition dt. 16-03-

2024 filed by the defendant No. 8 to 8/b be rejected. Defendant No. 1 & 2 by way of reply to the present petition argued that petition under reply is barred U/s 74 of the Evidence Act, further, the contention in para-1 Sub-para (i) to (iii) of the petition under reply is public document and rest documents are not public documents hence those documents are not liable to be marked exhibit as a public document and also, those documents have been filed by defendant No. 8 Aftab Hussain after completion of his evidence only to delay the disposal of the suit, therefore present petition of the plaintiff is fit to be rejected.

Through his another petition, again defendant No. 8 to 8/b prayed that these defendants are filing three Zamindari Receipts in the name of Syed Shah Israr Hussain relates to the suit land granted by Ex-landlord along with the list of documents, earlier these documents were misplaced, these three Zamindari Receipts are the most important piece of evidence and relevant to adjudicate the dispute between the parties and thus above document may kindly be admitted and the above three Zamindari Receipts are more than 30 years old, thus these documents be made U/s 90 of the Indian Evidence Act. In reply to the above petition, by way of rejoinder dt. 27-03-2024, plaintiff contended that all three Zamindari receipts are forged, fabricated and anti-dated document and have been prepared by the defendant 8 to 8/b during the pendency of the present suit, further, statement made in para-2 of the petition under rejoinder are totally false and fabricated one and just against the criteria of the Order 7 Rule 14 (2) CPC, further, shelter of S. 90 of the Evidence Act as taken by the defendant No. 8 to 8/b is also not permissible, since these defendants have not proved that under whose custody such documents had been coming, as well as failed to prove that in whose writing the same has been written and signed, therefore petition under rejoinder is fit to be rejected. Defendant No 1 & 2 by way of reply to the present petition

filed by defendant No. 8 to 8/b contended that the petition under rejoinder is barred U/o 13 Rule 1 of the CPC, further, the above mentioned Zamindari Rent receipts are forged and fabricated and filed during pendency of the suit and have not been proved by any witnesses, so those documents are not liable to be accepted in evidence and marked at this stage, therefore, petition under rejoinder is fit to be rejected.

This court is of view that the certified copy of Survey Khatiyani relates to Plot No. 2215, Area 5 Acre 51 decimal under Tauzi No. 303, Thana No. 11 as mentioned and Certified copy of order relates to fixation of rent passed in Rent Fixation Case No. 11/4 of 2015-16 with Karamchari Report as mentioned in 1 (i) & 1 (iv) are public document. Document mentioned in 1 (ii) Certified copy of return in the name of Sayed Shah Israr Hussain and 1 (iii) Certified copy of Register-D in the name of Ex-landlord Syed Hamid Hussain the brother of Syed Shah Israr Hussain, are not public documents. The documents referred in 1 (ii) & 1 (iii) must be proved by primary evidence and secondary evidence is allowed as per S. 65 of Indian Evidence Act.

The three Zamindari receipts filed on behalf of defendant No. 1 to 8/b are more than 30 years old. The custody of the aforesaid documents have not been proven by any witness. Leave of the court has also not been taken for producing the documents. Defendant No. 8 to 8/b has not proved that under whose custody such documents had been coming, as well as failed to prove in which the sale has been written & signed. This is beyond the pleading and it appears that the same has been filed just to delay the case.

Hence, after considering the above facts and circumstances this court in the interest of justice partly allows the relief, i.e. Serial 1 (i) & 1 (iv); and disallows the relief, i.e. Serial 1 (ii) & 1 (iii) mentioned in the petition dt. 16-03-2024 filed on behalf of defendant

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T.S. 67/1995

No. 8 to 8/b.

Also, this court in the interest of justice deems it proper to reject the relief sought for in second petition, i.e. relief related to three Zamindari receipts filed on behalf of defendant No. 8 to 8/b.

O/C is directed to act accordingly. Put up on 21-10-24 for further proceeding.

Civil Judge (Sr. Division)-VI
Patna City