

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.776 of 2023**

Madhuri Kumari Wife of Sri Aman Kumar Puri, resident of Village- Manik Pur, P.O. - Gopalganj, P.S. - Gopalganj, District- Gopalganj.

... .. Petitioner/s

Versus

1. Daya Shankar Prasad @ Manu Lal Son of Late Madan Gopal Prasad, resident of Village- Manik Pur, At and P.O. and P.S. - Gopalganj, District- Gopalganj. At present resident of Sareya Ward no. 11, District- Gopalganj.
2. Most. Sangeeta Prasad Wife of Late Uday Shankar Prasad, Resident of Village - Manik Pur, P.O. - Gopalganj, P.S. - Gopalganj, District- Gopalganj, PIN - 841428.
3. Shivam Shankar, Son of Late Uday Shankar Prasad, Resident of Village - Manik Pur, P.O. - Gopalganj, P.S. - Gopalganj, District- Gopalganj, PIN - 841428.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Adv. Mr. Mahesh Narayan Prabhat, Sr. Adv. Mr. Praveen Prabhakar
For the Respondent/s	:	Md. Waliur Rahman Mr. Arbind Kumar Singh

**CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT**

Date : 19-06-2026

Heard learned counsel for both the parties.

2. The instant civil miscellaneous application has been filed for quashing of the order dated 28.02.2023 passed in Title Suit No. 305 of 2016 by which the application dated 11.04.2022 filed by defendant no. 3 as per provision of Section 151 of CPC has been rejected.

3. Learned counsel for the petitioner submits that plaintiff-respondent Daya Shankar Prasad @ Manu Lal has filed Title Suit No. 305 of 2016 for declaration of the fact that sale deed



dated 28.12.2015 executed by defendant no. 1 and 2 in favour of defendant no. 3 is forged and fabricated and not binding upon the plaintiff apart from other ancillary relief.

4. Learned counsel for the petitioner submits that, according to the case of the plaintiff/respondent no. 1, one Ram Nirekhan Singh of Village Bhikha Chapra was the owner of the land in dispute comprised in Survey No. 1597, measuring a total area of 3 Katha 10 Dhur. It is alleged that he had transferred the said land in favour of one Babu Madan Gopal Prasad for valid consideration. Learned counsel further submits that the said Madan Gopal Prasad instituted Partition Suit No. 182 of 1970 in the court of the learned Sub-Judge, Chapra, against his brothers and mother seeking partition of the joint family properties, including the land appertaining to Survey No. 1597. The said suit was subsequently compromised among the parties. In terms of the compromise, the northern portion of the land under Survey No. 1597 measuring 1 Katha 5 Dhur fell to the share of Madan Gopal Prasad, whereas the southern portion measuring 2 Katha 5 Dhur fell to the share of his brother, Dwarika Prasad. The remaining brothers and their mother did not receive any share in the said land under the compromise.



5. The further case of the plaintiff/respondent no. 1 is that on 01.01.2016 he came to know that defendant nos. 1 and 2 had executed certain documents in favour of defendant no. 3 with respect to the land in dispute. Upon making enquiries at the Registry Office, Gopalganj, he obtained a certified copy of the said document on 04.01.2016. After examining its contents, he allegedly discovered that the document had been brought into existence by committing forgery. According to the plaintiff/respondent no. 1, the said document is forged and fabricated and is liable to be declared void and cancelled on the grounds specifically pleaded in the plaint. Consequently, he instituted Title Suit No. 305 of 2016 seeking, inter alia, a declaration that the document in question is not binding upon him.

6. Learned counsel further submits that defendant no. 3 appeared in response to the summons issued by the court and filed a written statement on his behalf contesting the suit. It is the case of defendant no. 3 that Madan Gopal Prasad, during his lifetime, had partitioned all his properties amongst his four sons, who thereafter came into possession of their respective shares and were dealing with the same independently according to their needs. It is further stated that the land in dispute, along with other properties, fell into the share of Most. Sangita Prasad. Since the said Most.



Sangita Prasad was in need of money for the marriage of her daughter and for the higher education of her son, Shivam Kumar (defendant no. 2), she sold the land in question to defendant no. 3 (the petitioner) for valid consideration and delivered possession thereof. The defendant has also denied the other allegations made in the plaint and has prayed for dismissal of the suit with costs.

7. After filing of the written statement, defendant no. 3 filed a petition on 11.04.2022 praying that the alleged compromise decree passed in Partition Suit No. 182 of 1970, as referred to in the plaint, be directed to be produced by the plaintiff. Learned counsel further submits that despite directions/orders passed by Trial Court, the plaintiff failed to file the said compromise decree. Several adjournments and opportunities were granted for the said purpose, but the plaintiff did not comply with the direction of the Court. Ultimately, defendant no. 3 prayed that the suit be dismissed on account of non-compliance with the order of the Court.

8. The aforesaid petition of defendant no. 3 was finally rejected by the impugned order dated 28.02.2023 which is under challenge before this Court.

9. Learned counsel for the respondent/plaintiff submits that, despite due diligence and best efforts, the plaintiff could not



obtain a certified copy of the compromise decree passed in Partition Suit No. 182 of 1970. However, an application for obtaining the same has already been filed before the Civil Court at Chapra. It is further submitted that the plaintiff has annexed a certified copy of the suit register in support of his contention. It is also submitted that defendant no. 3 has not specifically denied the averment regarding the aforesaid compromise decree in his written statement. The plaintiff further submits that he is making earnest efforts to procure the said document and shall produce it before the Court immediately upon receipt from the Civil Court, Chapra.

10. Learned counsel for both the parties argued on the legal provision of order 11 Rule 15, 21(1) and Section 151 of CPC and learned counsel for the petitioner submits that if a direction of the Court is not complied by the plaintiff the suit is bound to be dismissed for non-compliance.

11. Per contra learned counsel for the respondent submits that there is no such provision for dismissal of the suit for want of non-production of any document which is directed by the Court to be produced.

12. To decide this legal aspect that, whether at this initial stage, for want of production of any document whether the suit can be dismissed after admission of the suit or not or whether trial may



commence or not to adjudicate the issue. For this purpose, I want to have a glance on the procedure laid down in CPC. First of all it is relevant to consider here that suit has already been admitted and on behalf of defendant no. 3 written statement has also been filed, so here the required document cannot be treated as basis of the suit, because the Court has already applied its judicial mind and thereafter the Trial Court has admitted the suit. In this regard the provision of Order VII Rule 14 is also relevant which deals with documents relied in plaint, Rule 14 of CPC reads as under:-

“14. Production of document on which plaintiff sues or relies. – (1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall time deliver the document and a copy thereof, to be filed with the plaint.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in



evidence on his behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to document produced for the cross-examination of the plaintiffs witnesses, or handed over to a witness merely to refresh his memory.”

13. After going through the Rule 14(2) it clearly transpires that there is specific provision, where any such document is not in the possession or power of the plaintiff, he shall state wherever possible that in whose possession or power it is available. The plaintiff asserts on this point that he is trying his best to obtain the certified copy of the aforesaid compromise decree passed in Partition Suit No. 182 of 1970 and he has also annexed the copy of concerned suit register of partition suit. Sub rule 3 of Section 14 also empowers the Court and plaintiff as well to produce any document by taking leave of the Court. Further, Order XIII specifically deals with the provision regarding production impounding and return of documents Rule (1) of Order XIII reads as under:-

“1. Original documents to be produced at or before the settlement of issues.

– (1) The parties or their pleader shall produce on or before the settlement of issues, all the documentary evidence in original where



*the copies thereof have been filed along with
plaint or written statement.*

*(2) The Court shall receive the documents so
produced:*

*Provided that they are accompanied
by an accurate list thereof prepared in such
form as the High Court directs.*

*(3) Nothing in sub-rule (1) shall apply to
documents-*

*(a) Produced for the cross
examination of the witnesses of
the other party;*

*(b) Handed over to a witness
merely to refresh his memory.”*

14. During course of argument much emphasis was given by the learned counsel for the petitioner on Order XI Rule 15 & 21 of CPC and as per his submission non-compliance of the order passed by the Court will result into dismissal of the suit for want of prosecution.

15. After going through the Order XI, it appears that this Order deals with discovery and inspection and Rule 21 will apply only when any party fails to comply with any order to answer interrogatories or for discovery or inspection of documents. For this purpose, the party must have comply the provision enshrined in Rule 15 of Order XI. For this, firstly he has to give notice to other party in whose pleading or affidavit reference is made to any



documents and mode of notice is mentioned in Order XI Rule 16 which reads as under:-

“16. Notice to produce. – Notice to any party to produce any documents referred to in his pleading or affidavits shall be in Form No. 7 in Appendix C, with such variations as circumstances may require.”

16. The case in hand, there is no whisper of any notice which was to be given to the plaintiff by the petitioner-defendant and that provision has not been followed, hence, the result of non-compliance as mentioned in Order XI Rule 21 of CPC will not follow in this case and hence the suit cannot be dismissed for want of non-production of document and hence it can be said that this provision has been misconstrued in the present context.

17. Furthermore, if the plaintiff's case is based upon the alleged compromise decree passed in Partition Suit No. 182 of 1970 and he ultimately fails to produce the said document, his suit may be dismissed on merit, even with exemplary costs, subject to appreciation of evidence during trial. However, at this stage, when issues have not yet been framed and the suit has not reached the stage of first hearing, the suit cannot be dismissed merely on that ground.

18. In view of the aforesaid discussion, this Court finds no illegality, impropriety, or infirmity in the impugned order.



Accordingly, the same is affirmed and the present application stands dismissed.

(S. B. Pd. Singh, J)

Ankit Kumar/-

AFR/NAFR	AFR
CAV DATE	11.05.2026
Uploading Date	19.06.2026
Transmission Date	

