

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15406 of 2014

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Shiv Shankar Singh S/o Satrajit Singh Resident of Village Dharmdiha,
Police Station Phulparas, District Madhubani.

.... Petitioner/s

Versus

1. Parishit Mandal S/o Late Pitambar Mandal Resident of Village Dharmdiha, Police Station Phulparas, District Madhubani.
2. Durganand Kamat S/o Sri Ramesh Kamat Resident of Village Dharmdiha, Police Station Phulparas, District Madhubani.
3. Chandra Shekhar Singh S/o Late Satrajit Singh Resident of Village Dharmdiha, Police Station Phulparas, District Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shankar Kumar Thakur
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

3 19-08-2015 Heard the learned counsel for the petitioner.

Calling in question the order dated 19.06.2014 passed by the learned court below turning down the prayer of the petitioner to lead evidence, the present application under Article 227 of the Constitution of India has been filed.

The Title Suit No. 23 of 2009 was filed by the plaintiff-respondent no. 1 for declaration of his title and confirmation of possession and in the alternative for recovery of possession. The plaintiff-respondent no. 1 has claimed his title on the basis of the registered sale deed dated 26.05.2008 executed by the writ



petitioner (defendant no. 3 in the suit) for the suit land. The plaintiff-respondent no. 1 has claimed to be in peaceful possession over the suit land with full right, title and interest over the same. The suit has been filed when the defendant no. 1 (respondent no. 2 here) claimed his entitlement over the suit land on the basis of purchase by registered sale deed from the defendant no. 2 (respondent no. 3 here) by alleging that the defendant no. 1 has fraudulently got the sale deed executed for the suit land.

The petitioner (defendant no. 3 in the suit) has filed his written statement supporting the case of the plaintiff. The plaintiff led his evidence in the suit and thereafter the contesting defendant no. 1 and 2 also led their evidence and then the suit has been posted for argument. At that stage, the petitioner (defendant no. 3 in the suit) filed the petition praying for opportunity to lead evidence. It has been stated in the petition (Annexure-1) that no opportunity was given to the defendant no. 3 to lead evidence. The contesting defendants filed their rejoinder (Annexure-2) resisting the prayer of the petitioner to lead evidence stating that the petitioner did not choose to adduce his evidence in spite of grant of several opportunities.

The learned counsel for the petitioner has submitted that the



petitioner, who is defendant in the suit, is legally entitled to an opportunity to lead evidence and the learned court below has committed error in rejecting the prayer in this regard. It has, however, been accepted by the learned counsel for the petitioner that the petitioner has fully supported the case of the plaintiff. On behalf of the petitioner, it could not be pointed out that after the closure of the evidence of the plaintiff, the prayer was made on his behalf for opportunity to lead evidence.

The principle in this regard has been laid down by a Bench of this Court in **Motiram Narwari Vs. Lalit Mohan Ghose, A.I.R. 1920 Pat. 94** as follows:

“.....The usual practice in cases, where some of the defendants support the plaintiff’s case and others oppose it, is to order that those who support the plaintiff’s case should cross-examine plaintiff’s witnesses first if they desire to do so, and to call their evidence and address the court before the defendants who oppose the plaintiff’s case do so. Any other practice would be inconvenient and might work an injustice to those defendants who oppose the plaintiff’s case.....”

(Emphasis supplied)

As it is not the case of the petitioner that he had made a prayer before the court to lead evidence immediately after the closure of the evidence of the plaintiff, this Court does not find any error in the impugned order declining the prayer as made by the petitioner to lead evidence after closure of the evidence of the contesting defendants.

The writ application is, accordingly, dismissed.

(V. Nath, J)

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