

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1039 of 2014

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Sumitra Devi & Anr

.... Petitioner/s

Versus

Sri Sri 108 Narsingh Bhagwan Lalmatiya Thakurbari & Anr.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dr. Manoj Kumar

For the Respondent/s : Mr. Ganpati Trivedi

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 08-12-2015

Heard learned counsel Mrs. Sweaty Sinha for the petitioners and learned senior counsel Mr. Ganpati Trivedi on behalf of the respondents.

2. By the impugned order dated 01.10.2013 passed by learned Subordinate Judged-VIII, Bhagalpur in Miscellaneous Case No.03 of 1995 the court below rejected the application filed by the petitioners to recall the order dated 04.05.2013.

3. It appears that Title Suit No.117 of 1988 was filed by the plaintiffs-petitioners. The suit was decreed ex-parte against the defendants-respondents. Thereafter the defendants filed an application under Order 9 Rule 13 CPC which was registered as Miscellaneous Case No.03 of 1995. The court below by terms of order dated 04.05.2013 closed the evidence of the petitioners and directed the parties to come ready for argument.

4. According to the learned counsel for the petitioners

on that date the petitioners and the relations of the petitioners were not present because the daughter of petitioner no.1 had died but the court below rejected the application to recall the order dated 04.05.2013.

5. On the other hand, the learned senior counsel appearing on behalf of the respondents submitted that since 1995 only one witness has been examined by the petitioners that too after giving opportunity to them. Earlier in 2007 their case was closed but then subsequently on their application the case was re-opened and subsequently again it was closed. The court below has, therefore, rightly rejected the application.

6. Perused the order passed by the court below. From perusal of the order, it appears that in the year 2007 i.e. 06.01.2007 the evidence of the respondents was closed and the petitioners were directed to produce their evidence and since thereafter no witness was produced by the present petitioners, therefore, on 21.03.2009 their evidence was closed. Then on their application the said order was recalled by order dated 06.04.2009 and the petitioners were directed to produce evidence. Since 2009 only one witness has been examined and the case was adjourned and lastly on 04.05.2013 since no witness was produced, the court below closed the evidence of the petitioners.

7. In view of the above facts stated by the court below it appears that the petitioners are negligent and are lingering the matter. The miscellaneous case filed in the year 1995 is still pending before the court below. So far the application filed by the petitioners that the daughter of petitioner no.1 was dead is concerned, it may be mentioned here that no date has been mentioned as to when the daughter died and whether they had gone to attend the “shraddh” or for what purpose is also not clear. Therefore, the order passed by the court below is within the jurisdiction of the Court and that cannot be interfered with in supervisory jurisdiction under Article 227 of the Constitution of India.

8. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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