

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19362 of 2010

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1. Shyam Rati Devi W/O Mishri Paswan R/O Vill.- Pusauli, P.S.- Mohania,
Distt.- Kaimur (Bhabua)

.... Defendant/ Petitioner

Versus

1. Awadh Ram @ Ram Awadh Dusadh S/O Late Lakhan Ram R/O Vill.-
Mokaran Pachhim Patti, P.S.- Bhagwanpur, P.O.- Jaitpur, Distt.- Kaimur
(Bhabua) .

.... Plaintiff/ Respondent

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Appearance :

For the Petitioner/s : Mr. Ravi Shankar Sahay

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

13 11-08-2015

Heard Mr. Ravi Shankar Sahay in support of the writ

application which has been filed by the defendant of Title Suit no.
177 of 2002 for setting aside the order dated 27.5.2009 passed by
the learned trial Court rejecting the application (Annexure-1) filed
by the defendant for exhibiting documents in support of the case.

In spite of notice, no one has appeared on behalf of
the plaintiff- respondent to oppose the prayer.

The suit was filed for declaration of title and
confirmation of possession. The defendant appeared and filed
written statement. Issues were settled on 8.11.2004. Realizing the
mistake in not filing various documents in support of the case the
defendant promptly filed an application (Annexure-1) on
30.11.2004 for exhibiting those documents some of which were



public documents and 30 years old on behalf of the defendant. 30.11.2004 was the date fixed for examination of the witness on behalf of the plaintiff. Be it noted that prior thereto no evidence on behalf of the plaintiff was recorded. The court took notice of such filing of the application and thereafter adjourned the case by imposing cost on the plaintiff for not producing witness. The matter thereafter remained pending on account of diverse reasons including non availability of the Presiding Officer of the Court. On 26.3.2009 the suit was taken up when the trial Court rejected the application of the defendant on amongst other the grounds that such documents in support of the case ought to have been filed prior to settlement of the issue(s). Obviously, the court referred to the provisions contained in Order 13 Rule 1 of the CPC.

The contention of the petitioner is that in the ends of justice the court ought to have allowed the application albeit after imposing cost for the delay. The court has to do substantial justice between the parties. Non production of the document shall severely prejudice the case of the defendant. It has also been highlighted from the list of the documents that many of them are public documents whereas some of them are 30 years old documents the foundation thereof were led in the written

statement filed on behalf of the defendant. No serious prejudice shall be caused to the contesting party.

In order to do complete justice the court ought to have allowed the said application seeking production/exhibition of the documents in the suit. It is not the case that by doing so the defendant would be setting up an entirely different case. Pleadings are on record in the shape of the plaint and the written statement. The documents sought to be produced are in support of the pleadings of the defendant. The stage of the case is also relevant. It appears from the impugned order that on 30.11.2004, when the application was filed none of the witness on behalf of the plaintiff was examined. The cause of justice is ultimate. The procedures are formulated to achieve the said goal of resolving the real controversy between the parties on merit.

Regard being had to the above, in my view, the power of superintendence vested in this court under Article 227 of the Constitution of India merits to be exercised in favour of the petitioner in order to do complete justice between the parties. Consequently, the application is allowed. The order dated 27.5.2009 passed in Title Suit no. 177 of 2002 refusing to accept the documents filed on behalf of the defendant vide Annexure-1 is quashed and set aside. The trial court shall accept those

documents filed on behalf of the defendant and thereafter proceed to dispose of the suit in accordance with law. There appears to be delay in praying for court for marking the documents as exhibits or accepting them in evidence in support of the case of the defendant. To mitigate the inconvenience caused this court directs that on payment of cost in the sum of Rs. 600/- in favour of the plaintiff the documents shall be allowed to be taken in evidence as exhibits.

The petitioner undertakes to appear in the said proceeding along with a copy of this order within four weeks for expeditious disposal of the suit in accordance with law.

(Kishore Kumar Mandal, J)

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