

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.69 of 2013

=====

Chandrakala Devi Wife Of Late Veerchandra Chaudhary Resident Of
Village- Saidpur Idrish @ Jadhua, P.S. Hajipur Nagar, District Vaishali.

.... Petitioner/s

Versus

1. Shankar Prasad Sah @ Shankar Pd. Gupta Son Of Jagan Sah.
2. Rajmati Devi Wife Of Shankar Prasad Sah Residence Of Village-
Saidpur Idrish @ Jadhua, P.S. Hajipur Nagar, District Vaishali.
3. Munilal Chaudhary.
4. Ranjit Singh.
5. Shankar Chaudhary 3 to 5 is Sons Of Late Jamun Chaudhary.
6. Suresh Chaudhary Son Of Late Veerchandra Chaudhary respondent 3 to
6 are Resident of Village Saidpur Idrish @ Jadhua, P.S. Hajipur Nagar,
District Vaishali.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Surya Kant Mishra, Adv.

For the Respondent/s : Mr. Ratan Kumar Sinha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

5 01-12-2015 Heard the learned counsel for the petitioner and the

learned counsel for the plaintiff-respondent no. 1.

Calling in question the impugned order by which the
prayer on behalf of the petitioner for examination of a witness has
been turned down, the present application under Article 227 of the
Constitution of India has been filed.

The facts are not in dispute that earlier the suit was
decreed ex parte against the petitioner. The petitioner thereafter
filed a petition under Order 9 Rule 13 C.P.C. praying for setting



aside the ex parte decree and on the said petition the Misc. Case No. 13 of 2010 was initiated. From the perusal of the order dated 07.04.2012, it transpires that the prayer of the petitioner for adducing evidence was allowed only to the extent granting opportunity to the petitioner to examine only herself in the proceeding after payment of cost of Rs. 1800/- to the plaintiffs. It further transpires from the later order dated 19.05.2012 that the petitioner examined herself in pursuance to the said order and thereafter the evidence on behalf of the petitioner was closed. The petitioner thereafter filed another petition on 25.05.2012 for permission to examine one Surendra Chaudhary as witness. The petition filed by the petitioner on 25.05.2012 has been brought on record as Annexure-1 to this writ application. From the perusal of the said petition, it transpires that there was no prayer for recall of the order dated 19.05.2012 by which the evidence on behalf of the petitioner was closed. From the impugned order, it further transpires that the learned court below has taken into notice the conduct of the petitioner and grant of several opportunities by the court to adduce evidence, before rejecting the prayer of the petitioner to examine one Surendra Chaudhary as another witness.

From the perusal of the averments made in the petition dated 25.05.2012, it further transpires the petitioner has

stated that the fact regarding the ex parte decree against her was disclosed by Surendra Chaudhary. It is, therefore, manifest that the petitioner had the knowledge of the said fact through Surendra Chaudhary before filing of the petition under Order 9 Rule 13. In this backdrop, this Court does not find any error or illegality in the impugned order refusing the prayer of the petitioner to examine Surendra Chaudhary as a witness.

In result, the writ application is dismissed.

(V. Nath, J)

Devendra/-

U			
---	--	--	--