

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6206 of 2011

=====

Chandeshwari Paswan Late Jagin Paswan Resident Of Mauza Rangaon,
P.S. Tarapur, P.O. Rangaon, Distt. Munger

.... Petitioner/s

Versus

1. Jagdish Panda Govind Panda Resident Of Village- Rangaon, P.S. Tarapur, P.O. Rangaon, Distt. Munger
2. Smt. Tala Devi W/O Late Baiju Panda Resident Of Village- Rangaon, P.S. Tarapur, P.O. Rangaon, Distt. Munger
3. Suresh Panda son of Late Baiju Panda Resident Of Village- Rangaon, P.S. Tarapur, P.O. Rangaon, Distt. Munger
4. Niwas Panda son of Late Baiju Panda Resident Of Village- Rangaon, P.S. Tarapur, P.O. Rangaon, Distt. Munger
5. Smt. Manjula Devi W/O Rajendra Modi Resident Of Village- Rangaon, P.S. Tarapur, P.O. Rangaon, Distt. Munger
6. Om Prakash Panda Jagdish Panda Resident Of Village- Rangaon, P.S. Tarapur, P.O. Rangaon, Distt. Munger
7. Shiv Kumari Devi W/O Ayodhya Prasad Resident Of Village- Aurango, P.S. Tarapur, P.O. Rangaon, Distt. Munger

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Amit Prakash

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

4 24-08-2015 Heard Mr. Amit Prakash in support of the application which has been filed by the plaintiff-petitioner of T.S. No. 175 of 1990. The suit was filed in the representative capacity for declaring the subject land as public property. The evidence of the defendant commenced in course whereof a petition under Order XXVI Rule 1 CPC was filed for examination of the defendant (Jagdish Panda) on commission on the ground that he was aged about 97 years and was suffering from fever. The same was objected by the plaintiff by filing

a rejoinder stating therein that in some other suit Jagdish Panda had deposed. It was just a ploy to avoid his appearance before the court.

The trial court, on going through the materials on record and finding the old age of the defendant, allowed the witness to be examined on commission on deposit of cost of Rs. 500/- as lawyer fee to the plaintiff, and Rs. 500/- as the Commissioner fee. Aggrieved thereby, the present writ application has been filed.

It has been submitted that the trial court committed an error in doing so, particularly when there was no sufficient material to show that Jagdish Panda was unable to come to the court. The fee, which has been directed to be paid to the plaintiff, will not offset the cost the plaintiff will incur in getting the witness cross-examined. Such order shall delay disposal of the suit which is pending on the file of the court since 1990.

If the court on the basis of the materials on record has come to the conclusion that the defendant should be examined on commission, in my view, it would not be appropriate for this Court under its supervisory jurisdiction to upset the order passed by the court in exercise of its judicial discretion.

The contention of the petitioner is that the cost quantified for allowing the cross-examination of the witness to be examined on commission is too small. In my view, such contention can

appropriate be raised before the trial court itself for consideration and disposal in accordance with law. No interference is thus called for.

The writ application is disposed of.

(Kishore Kumar Mandal, J)

HR/-

U			
---	--	--	--