

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1702 of 2014

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Rambati Devi

.... Petitioner/s

Versus

Ashok Kumar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Tiwary

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 11-12-2015 Heard learned counsel Mr. Ajay Kumar Tiwary for the petitioner and learned counsel Mr. Raghav Prasad on behalf of the respondent no.4.

2. By the impugned order dated 26.09.2013 passed by Subordinate Judge-III, Siwan in Title Suit No.323 of 2005 the court below rejected the application filed by the plaintiff-petitioner under Order 18 Rule 17 CPC for permission to cross-examine all the witnesses examined by the defendants.

3. The learned counsel for the petitioner submitted that the petitioner is a lady and because of fault the witnesses examined by the defendants could not be cross-examined. Therefore, the court below should have granted a chance to the petitioner to cross-examine the witnesses.

4. On the other hand, learned counsel Mr. Raghav

Prasad submitted that the court below considering the conduct of the petitioner has rightly rejected the application.

5. Perused the impugned order. It appears that after examination of the plaintiff's witnesses the defendants have also examined their witnesses and then the case of the defendants was closed. Thereafter both the parties argued their case. Thereafter application was filed by the present petitioner for re-opening her case which was rejected by the court below. The petitioner filed C.W.J.C. No.11766 of 2011. This Court on 11.12.2012 in the aforesaid writ application considering the conduct of the petitioner held that the order rejecting the application filed by the petitioner cannot be interfered with but granting one chance to complete evidence directed the petitioner to pay cost of Rs.50,000/- and thereafter the evidence of the petitioner was completed.

6. It may be mentioned here that the witnesses of the defendants by that time had already been examined and in fact the case was also argued. In C.W.J.C. No.11766 of 2011 no prayer was made by the petitioner for cross-examining the petitioner. The order was passed on 11.12.2012 and now after such a long period the petitioner has filed fresh application before the courts below praying for cross-examining the witnesses examined by the other



side i.e. the defendants total being seven in numbers. It appears that since 2009 till the present application filed by the petitioner she never prayed for examining the witnesses. When the arguments were concluded and when this Court granted time to examine witnesses by the petitioner, subsequently this application has been filed. Considering all these aspects of the matter the court below has rejected the application.

7. The Hon'ble Supreme Court in the case of **Vadiraj Naggappa Vernekar Vs. Sharad Chand Prabhakar Gogate, A.I.R. 2009 SC 1604** has held that the power under the provisions of Order 18 Rule 17 is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and reexamination would not cause any prejudice to the parties. Such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination. Considering the above conduct of the petitioner the court below has exercised the discretionary jurisdiction. Therefore, in my opinion, in supervisory jurisdiction even if another view can be taken by this Court, the same cannot be substituted in place of the impugned order passed by the court below.

8. In view of the above discussion I find no reason to interfere with the impugned order considering the conduct of the petitioner. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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