

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9668 of 2015

=====

Binay Kumar Singh

.... Petitioner/s

Versus

Jailal Rai & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Bhubneshwar Prasad

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 26-11-2015 Heard learned counsel Mr. Bhubneshwar Prasad on
behalf of the petitioner on the Interlocutory Application No.7197
of 2015.

2. This interlocutory application has been filed by the
petitioner praying for stay of further proceeding in Title Suit
No.543 of 2001 pending in the court of Subordinate
Judge-VIII, Vaishali at Hajipur. The learned counsel for the
petitioner submitted that the writ application may also be heard on
merit in admission matter also. Accordingly, I heard him.

3. This application under Article 227 of the Constitution
of India has been filed by the plaintiff-petitioner against the order
dated 17.04.2015 passed by the learned Subordinate Judge-VIII,
Vaishali at Hajipur in Title Suit No.543 of 2001 whereby the court
below in exercise of jurisdiction under Order 18 Rule 16 CPC has
allowed the application filed by the defendant no.8 for recording

his evidence first.

4. The learned counsel for the petitioner submitted that in fact the plaintiff filed the suit for declaration that the defendant no.8 is not the daughter-in-law of Maharaj Singh and also Bishwanath Singh is not the son of Maharaj Singh and further prayed for declaration that the two sale deeds alleged to have been executed by defendant no.8 in favour of other defendants are forged, fabricated, therefore, the onus was on the plaintiff to prove this fact. In such circumstances, the plaintiff should have been directed to adduce evidence prior to the evidence produced by the defendant but the court below allowed the application of the defendant no.8, which was filed on false grounds. In fact defendant no.8 is not ailing and in fact she is not the daughter-in-law of Maharaj Singh, therefore, if her evidence is recorded first under Order 18 Rule 16 CPC then it will cause prejudice and also cause grave injustice to the petitioner.

5. Order 18 Rule 16 CPC provides that where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in the manner



hereinbefore provided. In the present case the defendant no.8 filed application for recording her evidence as special witness under the said provision on the ground that her age is about 85 to 90 years and she is ailing and may die at any time. The court below on these grounds allowed the application. Now, therefore, whether she is aged about 85 or 90 years or she is not ailing cannot be examined at this stage in exercise of jurisdiction under Article 227 of the Constitution of India because the Court before whom the application was filed has to be satisfied on the facts of the case and the court below on his satisfaction allowed the application.

6. It is settled principles of law that the power under Article 227 of the Constitution of India is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases of occasioning grave injustice or failure of justice such as the court or tribunal has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have and that the jurisdiction though available is being exercised in a manner which tantamounts to overstepping limits of jurisdiction. In my opinion, none of these settled principles are applicable in the present case and there is no

question of any injustice to the plaintiff arises in view of the present facts and circumstances of the case.

7. Accordingly, I find no merit in this writ application and thus it is dismissed. Consequently, the interlocutory application is also rejected.

(Mungeshwar Sahoo, J)

Harish/-

U			
---	--	--	--