

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19715 of 2010

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Birendra Prasad Das S/o Late Thakur Mandal resident of village Japtoli
P.O. Japtoli, P.S. Sahu Parbatta, Bhagalpur

.... Petitioner/s

Versus

1. Raja Kumar Sahu s/o Late Bijendra Prasad Sahu @ Birmendra Sahu
2. Mosomat Savitri Devi W/o Late Bijendra Prasad Sahu @ Birmendra Sahu both residents of village Sahu Parbatta P.S. and P.O. Sahu Parbatta, Bhagalpur

Defendant 1st party/Respondent 1st set

3. Sudho Prasad Sahu
4. Bhanu Prasad Sahu
5. Dilip Prasad Sahu all sons of Late Anirudh Prasad Sahu
6. Upendra Prasad Sahu
7. Rabindra Prasad Sahu
8. Bhupenda Prasad Sahu all sons of Late Shiv Prasad Sahu all resident of village Sahu Parbatta P/S. and P.O. Sahu Parbatta, Bhagalpur

Defendant 2nd Party/Respondent 2nd set.

9. Charitra Prasad Rai
10. Mathura Prasad Rai both sons of Nandlal Rai both resident of village Japtoli P.O. Jagatpur P.S. Sahu Parbatta, Bhagalpur

Defendant 3rd Party/Respondent 3rd^{set}

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh 2

For the Respondent/s : Mr. Ashok Kumar Yadav

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL
ORAL ORDER

6 07-08-2015 Heard counsel for the petitioner and the respondents.

The plaintiff of Title Suit No. 36 of 2004 filed for declaration of right, title and interest in the subject land has filed the present writ application aggrieved by the order dated 01.05.2007 passed by the learned Sub Judge-I, Naugachia. By the aforesaid order the application filed by the plaintiff under Order 47, Rule 1 CPC was considered and rejected

assigning reason(s) therefor.

The factual background in which the aforesaid order has been passed may be noticed. Defendant nos. 9 and 10 who were actually the contesting respondents could not appear in the suit. Other defendants who had appeared in the suit supported the case of the plaintiff. The court below posted the case for ex parte hearing and evidence on behalf of the plaintiff was adduced. At this stage, a petition was filed by the defendant nos.9 and 10 (respondents herein) for permitting them to file a written statement and contest the suit. After hearing both sides, the trial court allowed the said application after imposing cost. The defendant(s) thereafter filed written statement. The application under Order 18, Rule 17 was thereafter filed for recall of some of the witnesses which were already produced and examined on behalf of the plaintiff. Finding the same subservient to the cause of justice, the trial court allowed the said application again after imposing cost. Aggrieved thereby, the petitioner filed a review application under Order 47, Rule 1 CPC for review of the said order. The trial court by the impugned order rejected the said application observing as under:-

“We would like to make it clear that

the defendant would not be entitled to lead any evidence of his own nor can his cross examination be permitted to travel beyond the very limited objective of pointing out of falsity or weaknesses of the plaintiff's case. In no circumstances should the cross-examination be permitted to travel beyond this legitimate scope and to convert itself virtually into a presentation of the defendant's case either directly or in the form of suggestions put to the plaintiff's witnesses."

Counsel for the petitioner made diverse submissions to assail the said order.

Counsel for the respondents, on the other hand, has submitted that the cost which was imposed for permitting the defendant(s) to cross examine has been paid to and accepted by the plaintiff. The defendant(s) for quick disposal of the matter undertakes to cross examine the witnesses on the relevant point as indicated in the order as and when they appear in the court.

Having heard the parties, in my view, discretionary writ jurisdiction under Article 227 of the Constitution of India should not be invoked to interfere with the order which, in the opinion of the Court, is subservient to the cause of

justice.

Without granting relief the application stands disposed of.

(Kishore Kumar Mandal, J)

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