

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7751 of 2014

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1. Awadhesh Pandey son of Late Ramchander Pandey
2. Bali Ram Pandey son of Late Ram Bilash Pandey
3. Braj Kishore Pandey son of Late Anirudh Pandey
4. Mangleshwar Pandey son of Late Anirudh Pandey
5. Gopi Nath Pandey son of Late Rameshwar Pandey
6. Dilip Kumar Pandey son of Late Rameshwar Pandey
7. Ram Nath Pandey son of Late Ram Pratap Pandey
8. Shanti Devi wife of Late Parash Nath Pandey
9. Murari Pandey son of Late Bakshoo Pandey @ Parmeshwar Dayal Pandey
10. Baban Pandey son of Late Praduman Pandey All residents of Village -
Paluhar, P.S. Tekari, District – Gaya Petitioners.

Versus

1. Pintoo Pandey son of Ram Janam Pandey
2. Birendra Pandey son of Ramsharay Pandey Both residents of Village - Paluhar,
P.S. Tekari, District – Gaya Respondents.

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Appearance :

For the Petitioner/s : Mr. Ashutosh Ranjan Pandey, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-06-2016

V.Nath, J.

Heard Mr. Ashutosh Ranjan Pandey, learned
counsel appearing for the petitioners.

At the outset, the learned counsel for the
petitioners has submitted that in the suit at present the evidence of the
plaintiff has been closed after examination of the witnesses but the
evidence (examination of witnesses) on behalf of the defendant has
not started as yet.

Earlier notice was issued to the respondents by
order dated 27.08.2014. However, no body has appeared on behalf of
the respondents when this matter has been taken up.

By the impugned order the learned court below has



refused the prayer of the defendants to recall the witnesses of the plaintiff who could not be cross examined by the defendants. Mr. Pandey, learned counsel for the petitioners has submitted that it was due to unavoidable circumstances that the defendants could not cross examine the witnesses examined on behalf of the plaintiff and therefore they promptly filed the petition for recall of those witnesses for the purpose of cross examination. It has also been pointed out by the learned counsel that during the pendency of the prayer for recall, another witness has also been examined and released and again the defendants could not cross examine that witness. It has been canvassed that in the interest of justice and for complete and effective adjudication of the issues arising between the parties the grant of opportunity to the defendants for cross examination of the witnesses examined on behalf of the plaintiffs, as prayed, should have been allowed.

After considering the submissions and the materials on record, it is manifest that the defendants initially filed the petition for recall of P.W.1 and P.W.2 for the purpose of cross examination. During the pendency of the said recall petition, as stated in the present application, another witness was also examined and could not be cross examined by the defendants. This Court in the interest of justice is inclined to allow the prayer of the petitioners for recall of the plaintiff's witnesses after compensating the plaintiffs by

awarding cost.

In result, this application is allowed and the impugned order rejecting the petition dated 02.01.2014 is quashed. The learned court below shall allow the prayer as made by the defendants in the petition for recall and cross examination of the plaintiff's witnesses as prayed subject to payment of cost of Rs.5,000/- to be paid to the plaintiff within two weeks from the date of receipt/production of a copy of this order. The cross examination by the defendants of those witnesses of the plaintiffs must be completed within two weeks from the date on which the court directs those witnesses to be present for cross examination.

The application is accordingly allowed with directions.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.07.2016
Transmission Date	