

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9561 of 2014

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Ravindra Prasad Singh S/o Late Hiyawal Singh Resident of Village Pachvhinda,
P.O. Purushottampur Halai, Police Station Tajpur (Halai O.P.), District Samastipur.

.... Petitioner/s

Versus

1. Urmila Devi W/o Late Basudeo Singh Resident of Village Pachbhinda, P.O.
Purushottampur Halai, Police Station Tajpur (Halai O.P.), District Samastipur.
2. Kirti Narayan Singh S/o Late Bhagwat Singh
3. Sushil Kumar Singh S/o Late Basudeo Singh
4. Bijay Kumar Singh S/o Late Ram Prit Singh
5. Sulekha Devi W/o Late Pawan Kumar Singh
6. Sonu
7. Monu Both minor S/o Late Pawan Kumar Singh through and under the natural
guardianship of their mother All Residents of Village Pachbhinda, P.O.
Purushottampur Halai, Police Station Tajpur Sub Division, District Samastipur.
8. Janardan Singh
9. Birendra Singh Both S/o Late Hiywal Singh
10. Amaresh Prasad Singh
11. Kamlesh Prasad Singh Both S/o Late Anjani Singh All Residents of Village
Pachbhinda, P.O. Purushottampur Halai, Police Station Tajpur Sub Division,
District Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Anand, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 17-05-2016

Heard Mr. Vijay Anand, learned counsel for the
petitioner.

One of the defendants in the suit has filed the present

application questioning the legal sustainability of the impugned order by which the learned court below has refused the prayer of the defendant 1st set for recall of the witnesses examined on behalf of the plaintiff on different dates.

The fact has not been denied by the learned counsel for the petitioner that the written statement has been filed on behalf of the defendants in the suit in the year 2009 itself. Thereafter, the suit has been posted for evidence and the plaintiff examined his witnesses on 19.11.2013, 20.11.2013, 26.11.2013, 03.12.2013 and 11.12.2013. It is also not in dispute that the defendants did not participate in the proceeding of the suit and the matter was posted for argument on 17.01.2014. The petition has been filed by the defendant 1st set on 02.04.2014 praying for recall of the witnesses examined on behalf of the plaintiff. By the impugned order, the learned court below has declined the prayer made by the defendant 1st set as mentioned above. One of the defendants has filed this application praying for quashing of the impugned order.

Learned counsel for the petitioner has submitted that there were valid reasons assigned by the defendant 1st set explaining their non-appearance and non-examination of the witnesses and not cross examining the witnesses of the plaintiff but the learned court below has wrongly rejected the said prayer. Learned counsel has,



however, accepted the fact that no prayer has been made by the defendant-petitioner for recall of the order by which the evidence on behalf of the defendants in the suit has been closed. Learned counsel however, has prayed that the present application may be allowed and the impugned order may also be quashed as the learned court below has committed illegality and material irregularity in passing the impugned order.

After considering the materials on record as well as submissions, it is evident that the suit has been filed in the year 2009 and the defendants appeared and filed their written statement on 08.10.2009. Thereafter the issues were framed and the trial of the suit commenced. The plaintiff examined his witnesses on 19.11.2013, 20.11.2013, 26.11.2013, 03.12.2013 and 11.12.2013. None on behalf of the defendants appeared to cross-examine those witnesses. It also transpires from the impugned order that the suit was posted for argument on 17.01.2014. It is not the case of the defendant-petitioner that the learned counsel engaged on his behalf had ever informed the court explaining the non-appearance of the defendant in the suit at any point of time and prayed for adjournment. It has also been accepted on behalf of the petitioner that there is no prayer on behalf of the defendant-petitioner for recall of the order closing their evidence and thereafter posting the suit for argument. In the background of these

facts, this Court is not inclined to interdict the impugned order as it does not suffer from error of jurisdiction or material irregularity.

In result, this application is dismissed. However, the petitioner, if such occasion arises, shall be at liberty to raise his objection in accordance with the provision of Section 105 (1) C.P.C.

(V. Nath, J)

Devendra/-

AFR/NAFR	NA
CAV DATE	NA
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