

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6888 of 2016

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Kunti Devi

.... Petitioner/s

Versus

Bhrigu Prasad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

3 28-07-2016 Heard the learned counsel, Mr. Ranjan Kumar Dubey for the petitioner and the learned counsel, Mr. Anis Chandra Sinha for the respondent.

By the impugned order dated 10.12.2015, the learned Sub Judge I, Ara recalled all the witnesses except one of the plaintiffs for re-cross-examination by the defendant in exercise of jurisdiction under Order 18 Rule 17 C.P.C.

From perusal of the order, it appears that the Court below has only considered that some questions were not put by the defendant at the time of cross-examination of the witnesses of the plaintiff and, therefore, allowed the application.

The Hon'ble Supreme Court in the case of **Vadiraj Naggappa Vernekar (deceased by L. Rs.) v. Sharad Chand Prabhakar Gogate** AIR 2009 Supreme Court 1604 has held that



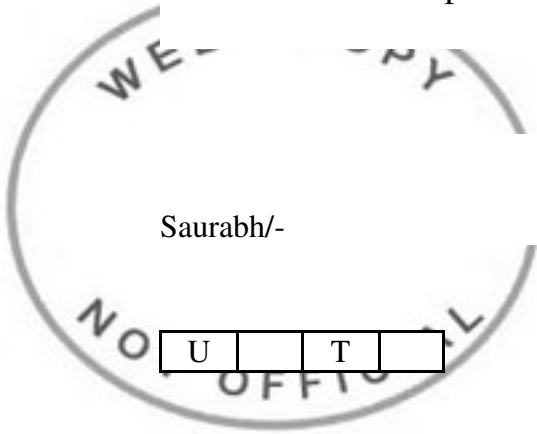
though the provisions of Order 18 Rule 17 CPC have been interpreted to include applications to be filed by the parties for recall of witnesses, the main purpose of the said rule is to enable the Court, while trying a suit, to clarify any doubts which it may have with regard to the evidence led by the parties. The said provisions are not intended to be used to fill up omissions in the evidence of a witness who has already been examined. The power under the provisions of O. 18 R. 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. That is not the scheme or intention of Order 18 Rule 17 C.P.C.”

In the present case, the only point that has been raised by the defendant-respondent is that some questions regarding the vacation of a godown was not put to the witnesses of the plaintiffs in the cross-examination although, there was pleading in the written statement.

In view of the above settled proposition of law, in my opinion, the Court below has exceeded his jurisdiction and passed the impugned order in the manner not permitted by law.

Therefore, the impugned order is set aside. This writ application is allowed. The application filed by the defendant-

respondent for further cross-examination of the witnesses of the
plaintiff is hereby rejected.



Saurabh/-

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(Mungeshwar Sahoo, J)