

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13281 of 2015

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1. Ram Ayodhya Ray @ Yodha Ray son of late Jagdish Ray
 2. Sarvajeet Ray son late Janak Ray
 3. Chhotelal Ray son of late Janak Ray
 4. Mohan Ray son of late Uma Ray
 5. Anandi Ray son Uma Ray All are residents of Village - Vishunpur Puruk, P.O. and P.S. - Parsa, District - Saran.

.... Petitioner/s

Versus

1. Dharamnath Thakur son late Dev Narayan Thakur
2. Dhurva Kumar son Dharamnath Thakur Both are residents of village - Bishunpur Puruk, P.O. and P.S. - Parsa, District - Saran.
3. Chameliya Devi @ Bhuari D/o late Aganu Ray and wife of Bhikhari Ray resident of Village - Shitalpur Chhattar, P.O. - Shitalpur, P.S. - Dighwara, District - Saran at present resides at Village - Vishunpur Puruk, P.O. and P.S. Parsa, District - Saran.
4. Dinesh Ray son of late Laldeo Ray
5. Vijesh Ray son of late Laldeo Ray
6. Lalti Devi D/o Late Laldeo Ray
7. Anita Devi D/o late Laldeo Ray
8. Sunita Devi D/o late Laldeo Ray All (the respondent 4 to 8 are substituted heirs of the Defendant No. 4) are residents of Village - Vishunpur Puruk, P.O. and P.S. - Parsa, District - Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Madhaw Prasad Yadaw

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 12-05-2016 Heard Mr. Madhaw Prasad Yadaw, learned counsel for the petitioner.

From perusal of the impugned order it appears that the learned Sub Judge- VI, Saran at Chapra has rejected the application filed by the petitioners to recall D.W.4 for further examination in Title Suit No. 303 of 2006.

It appears that the petitioners filed an application,

which has been annexed as Annexure 3 to this writ application, wherein only ground has been taken by the petitioners is that some important questions have been left to be asked to D.W.4, therefore, witness may be recalled.

The Hon'ble Supreme Court in the case of Vidiraj Naggappa Vernekat –v- Sharad Chand Prabhakar Gogate, AIR 2009 SC 1604, has held that the power under the provisions of Order 18, Rule 17 is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and re-examination would not cause any prejudice to the parties. Such power is to be invoked not to fill up lacunae in the evidence of the witness, which has already been recorded but to clear any ambiguity that may have arisen during the course of examination.

In view of the aforesaid settled proposition of law when the court below has exercised the jurisdiction I do not find any reason to interfere with the impugned order in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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