

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14255 of 2015

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Kalawati Devi

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Navin Nikunj

For the Respondent/s : Mr. Ga2-Prasoon Sinha

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 11-01-2016

Heard the learned counsel, Mr. Nagendra Rai for the petitioner and the learned counsel, Mr. Prabhat Kumar, A.C. to G.A.2 for the State.

The petitioner filed probate case being Probate Case No.61 of 2012 which was converted to Title Suit No.10 of 2014. In that case, one Om Prakash was examined as P.W.1. Subsequently, application was filed by the petitioner for recall of that P.W.1 for further examination on the ground that he could not depose with regard to the attestation of Will. The Court below, by the impugned order dated 23.06.2015, rejected the said application recording finding that the father's name of Om Prakash and village of his residence mentioned in the Will is different than the Om Prakash who has been examined as P.W.1. According to the Court below, both the persons are different persons.



The learned counsel, Mr. Nagendra Rai for the petitioner submitted that it appears that there are some discrepancies and it further appears that both the persons are same but by mistake, name of father is differently mentioned and the village is differently mentioned. So far this submission is concerned, that cannot be subject matter of supervisory jurisdiction. This Court is neither exercising appellate jurisdiction nor revisional jurisdiction. The Court below has recorded clear finding of fact and in fact, for this error of record, the petitioner may move for review but in supervisory jurisdiction, the same cannot be interfered with.

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 "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. Such power is to be invoked not to fill up the 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 his examination."

In view of the above settled proposition of law, the order passed by the Court below recording finding of fact, cannot be interfered with in exercise of supervisory jurisdiction.

Accordingly, this writ application is dismissed.

Saurabh/-

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(Mungeshwar Sahoo, J)