

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17309 of 2010

1. Jai Prakash Singh S/O Late Dhanush Dhari Singh R/O Vill.- Sonadih, P.S.- Kargahar, Distt.- Rohtas at Sasaram.
2. Suman Kumar Singh S/O Shri Jai Prakash Singh R/O Vill.- Sonadih, P.S.- Kargahar, Distt.- Rohtas at Sasaram.
3. Rajni Kant Singh S/O Shri Jai Prakash Singh R/O Vill.- Sonadih, P.S.- Kargahar, Distt.- Rohtas at Sasaram.
4. Maya Devi W/O Shri Suman Kumar Singh R/O Vill.- Sonadih, P.S.- Kargahar, Distt.- Rohtas at Sasaram.

.... Petitioner/s

Versus

Smt. Kalawati Devi, W/O Late Muni Singh, R/O Vill.- Sonadih, P.S.- Kargahar, Distt.- Rohtas at Sasaram.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Ram Chandra Singh
Mr. Jitendra Kumar Singh
Mr. Shankar Kumar

For the Respondent/s : Mr. Akhauri Vibin Bihari Shrivastava

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 29-06-2016

Heard Mr. Ram Chandra Singh, learned counsel for the petitioner and Mr. Akhauri Vipin Bihari Shrivastava, learned counsel for the sole respondent.

The petitioners are aggrieved by the order dated 19.8.2010 passed by the learned Subordinate Judge-IV, Rohtas in Title Suit no.38 of 2001 whereby the application filed on behalf of the petitioner dated 10.6.2010 for recall of the order dated 14.9.2006 whereby the evidence of the defendants have been closed, has been rejected by the trial court below.

Facts of the case briefly stated is that the title suit in question was filed by the husband of the sole respondent for setting



aside the registered saledeeds bearing nos.16423, 16424 and 16425 dated 25.11.2000 executed in favour of the petitioner nos.2 to 4 herein. The certified copy of the entire ordersheet has been placed on record by way of a supplementary affidavit and a bare perusal thereof manifests that while the plaintiff evidence was closed on 14.7.2005, the defendants examined their witnesses until 13.9.2005 when six of the nine witnesses have been examined and cross examined. Enabling the defendants to examine their remaining witnesses that the matter was adjourned to 22.9.2005 but the Presiding Officer was transferred and which situation continued for next one year almost. Under the orders of the District Judge, Rohtas the records of the case was transferred to the Court of Sub-Judge-5 on 27.7.2006 and the matter was taken up on 28.7.2006 when the defendants were directed to conclude their evidence.

A time petition was filed on behalf of the defendant-petitioners on the next three dates i.e. 9.8.2006, 28.8.2006 and again on 14.9.2006 and when the trial court closed the defendants evidence and the matter was fixed on 20.10.2006 for hearing. On the said date the defendant filed the Examination-in-Chief of defendant Suman Kumar Singh but it was not proceeded with. The Presiding Officer again thereafter got transferred and the matter was taken up only on 18.12.2006.

That the parties were directed to be ready for hearing on



12.1.2007, an application was filed by the defendants as manifest from the ordersheet, a copy of which is also present at Annexure-5 whereby a prayer for recall of the order dated 14.9.2006 and to permit them to examine their remaining witnesses was made by the defendants which application remained pending and the matter progressed which led to the filing of a second application on 10.6.2010 and which has been rejected by the order impugned dated 19.8.2010 and hence this application.

While it is the argument of Mr. Shrivastava appearing for the plaintiff that the delay in disposal of the suit is entirely attributable to the defendants, it is the argument of Mr. Singh, learned counsel appearing for the petitioner that the defendants were examining their witnesses when the Court got transferred and the matter got delayed and thus the delay cannot be entirely attributable to these petitioners. He however while admitting that after the transfer of the record the petitioners filed time petition seeking accommodation further submits that a reasonable time being granted to the defendants that they would close their evidence without causing any delay.

I have heard learned counsel for the parties and I have perused the record.

It is a matter of record that while the defendant-petitioners were examining their witnesses and after six of the nine witnesses



were examined and cross examined that the court got transferred leading to the delay in the proceedings from 22.9.2005 until 22.7.2006 i.e. almost an year. It is again true that after the records got transferred on 28.8.2006, three time petitions were filed by the petitioners on 9.8.2006, 28.8.2006 and 14.9.2006 but the orders rejecting the prayer do not reflect that any warning was given to the defendants regarding closure of their evidence. That the evidence was closed without opportunity to the defendants, in my opinion, an extreme action has been taken by the trial court especially where the Court itself was not available for a long time. It is not a case where the defendants have continuously defaulted rather the very fact that six of the nine witnesses have been examined and cross examined, the defendants should have been given opportunity of closure and if the Court was of the opinion that they are causing delay then it should have been made known to them that the evidence would be closed if they continued to seek adjournment.

In my opinion extreme action has been taken by the trial Court against the defendants infringing their right of reasonable opportunity to a fair trial. It is again incorrect to hold that the petitioners slept over their rights to file proper petition only on 10.6.2010 rather a recall petition was filed on 12.1.2007 itself but remained pending which stands confirmed from the ordersheet as well as Annexure-5. But then it is also true that the suit disposal

has been delayed.

In result the order dated 19.8.2010 is set aside and the application filed by the defendant-petitioners for recall of the order of closure of evidence dated 14.9.2006 is allowed subject to payment of cost of Rs.2000/- payable to the plaintiff.

The trial court is directed to grant two opportunity to the defendant-petitioners to conclude their remaining evidence and if the defendant-petitioners fail to conclude their evidence in the opportunity so granted by the trial court that their evidence should be closed.

Let the petitioners appear before the trial court below on or before 25.7.2016 and when the trial court shall dispose of the suit in the manner stipulated above.

(Jyoti Saran, J)

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