

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16827 of 2014

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Ranjan Kumar Singh @ Pappu Singh

.... Petitioner/s

Versus

Smt. Kalawati Devi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raghunandan Kumar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 04-02-2016 **1.** Heard the learned counsel, Mr. Raghunandan Kumar Singh,
for the petitioner and the learned counsel, Mr. Manas Prakash, on
behalf of the respondent.

2. This application under Article 227 of the Constitution of
India has been filed by the petitioner for setting aside the order dated
2.8.2014 passed by learned Ad hoc Second Addl. District Judge,
Rohtas in Probate Case No.37 of 2009 whereby the learned Court
below refused to recall the order dated 25.02.2014 by which the
evidence of the petitioner was closed.

3. The learned counsel for the petitioner submitted that two
witnesses have been examined but subsequently, because criminal
case was filed by the respondent against the petitioner and witnesses,
no witness could be examined and the petitioner's case has been
closed on 25.02.2014. Therefore, subsequently the application was
filed by the petitioner to recall the order but the learned Court below

without considering this aspect of the matter has rejected the application.

4. On the other hand the learned counsel for the respondent submitted that this fact was not pleaded in the application before the Court below and in the ordersheet also, the Court below has not noticed this fact. Moreover, the Court below has found that since three years, no witnesses were examined in spite of the repeated directions and adjournments then the Court below has closed the evidence as such rejected to recall the same.

5. Perused the order passed by the Court below. It appears that the Court below recorded a finding that from 22.07.2011, many adjournments were granted with direction to the petitioner to produce evidences / examination of witnesses but no witnesses were produced and, therefore, after giving last chance, the evidence was closed on 25th February, 2014. Since sufficient opportunity was granted to the petitioner, the order passed on 25.02.2014 cannot be recalled.

6. Although nothing has been mentioned about the details of criminal case but at the time of hearing of this writ application, a copy of the ordersheet of G.R. No.850 of 2012 was produced before this Court. From perusal of the order dated 30.10.2012, it appears that the petitioner was granted anticipatory bail by the Sessions Judge, Rohtas itself. Therefore, since 30.10.2012 till 25.02.2014 two years even

after grant of bail, the petitioner did not examine any witness. Therefore, the ground that criminal case was filed is not available to the petitioner and moreover because criminal case is pending, the petitioner cannot be absolved from examining the witnesses in civil matters which has been instituted by him and for that purpose, the Court will not await indefinitely.

7. It appears that probate application has been filed under Section 276 of the Indian Succession Act by the petitioner claiming that the deceased father of the respondent has bequeathed his entire property to the petitioner. It is admitted fact that the respondent is the daughter and is residing in Sasural in U.P. Now, therefore, it further appears that only with a view to delay the disposal of the probate case, the tactics has been adopted by the petitioner and on the ground that criminal case is pending, the Court cannot recall the reasoned order passed by the Court. The Court below, therefore, has rightly rejected the same and thus no interference can be made in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Thus, this writ application is dismissed.

Sanjeev/-

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(Mungeshwar Sahoo, J)