

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18981 of 2015

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Bihar State Board Of Religious Trust

.... Petitioner/s

Versus

Rajeshwar Prasad Singh & Anr

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shekhar Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 06-09-2016

Heard learned Senior counsel, Mr. Ganpati Trivedi,
appearing for the petitioner and learned counsel, Mr. A.K. Sinha,
appearing for respondent No.2.

2. It appears that the plaintiff-respondent No.1 filed the
suit for declaration that the suit property is the property of
Sinduari Math and the Bihar State Board of Religious Trust is
managing the property. The Trust-Board has constituted a
Committee appointing the plaintiff as Joint Secretary, who is
acting, as such, on behalf of the Bihar State Board of Religious
Trust. Defendant No.1, respondent No. 2, herein, filed contesting
written statement taking stand that, in fact, the property is not of
the Sinduari Math rather it belonged to vendor of defendant No.1,
respondent No.2, herein. It further appears that after closure of the
evidence of the plaintiff, the evidence of defendant No.1 was also
closed. The evidence of defendant No.2, the petitioner, is going



on. The application was filed by defendant No.2, petitioner, for marking the notification issued by the petitioner appointing the plaintiff as Joint Secretary of the Committee. After hearing the parties, by the impugned order dated 28.09.2015, the learned Sub Judge-VI, Vaishali at Hajipur has rejected the application on the ground that the evidence of defendant No.1 has already been closed and in the written statement filed by defendant No.2, there is no mention regarding the notification, which is sought to be adduced as evidence by the defendant No.2, petitioner.

3. Learned Senior counsel for the petitioner submitted that in the written statement clearly, it has been mentioned that the Bihar State Board of Religious Trust has constituted a Committee appointing the plaintiff as Joint Secretary of the Committee. Now, in support of this pleading, the document i.e. notification is sought to be filed by the defendant No.2, petitioner for marking the same. The approach of the court that there is no mention in the written statement is wrong as according to law, the evidence is not required to be pleaded. The facts have already been pleaded in the written statement. So far delay is concerned, according to the learned Senior counsel, the Court has power to receive evidence prior to disposal of the suit and at the evidence stage, the evidence of any party should not be shut so as to deny the justice to any

party.

4. Learned Senior counsel further submitted that no doubt there is mis-description of the party in the plaint but the Board is protecting the interest of the Board. In the plaint, the plaintiff has made the Chairman of the Board as party instead of the petitioner, Bihar State Board of Religious Trust as party.

5. On the other hand, learned counsel for the respondent No.1 submitted that the document is not a public document and that the evidence of defendant No.1 has already been closed and further there is no mention in the written statement of the defendant No.2 about the notification and, therefore, the court below has rightly rejected the said application.

6. The plaint and written statement of the petitioner has been annexed with this writ application. From perusal of the plaint, it appears that there is mis-description of the party in the plaint. Instead of making the present petitioner as defendant No.2, the plaintiff has made the Chairman of the Board as defendant No.2. In my opinion, it is only a mis-description. From perusal of the plaint, it further appears that the matter involved in this case relates to the Bihar State Board of Religious Trust and, therefore, the religious Trust Board is a necessary party. Accordingly, I heard the petitioner treating him as defendant No.2.

7. From perusal of the written statement, Annexure-2 to this writ application, it appears that in the written statement, at paragraph-3, it is clearly mentioned that the religious Trust Board has constituted a Committee and the plaintiff has been appointed as Joint Secretary of the Committee. Order 6 Rule 4 of the C.P.C. laid down that a party is required to plead the necessary facts. Evidence is not required to be adduced here. The basic pleading regarding the constitution of the Committee and appointment of the plaintiff as Joint Secretary of the Committee is already noted. In support of this pleading, the defendant No.2 is filing the documents i.e the evidence to prove this fact. Therefore, the court below wrongly refused to exercise the jurisdiction vested in it by law on the ground that there is no pleading in the written statement regarding this document. So far delay in filing this document is concerned, it may be mentioned here that the Hon'ble Supreme Court in the case of ***K.K. Valusamy Vs. N. Palaanisamy*** reported in ***2011 (11) SCC 275*** has held that in appropriate cases, the Court can reopen the case and permit a party to adduce further evidence even the judgment of the case has been reserved after conclusion of the argument, in exercise of power under Section 151 C.P.C. In the present case, admittedly, the evidence of the petitioner is going on. In my opinion, therefore, the court below has not exercised the

jurisdiction vested in it by law, thereby, it occasioned failure of justice. Accordingly, this writ application is allowed and the impugned order is set aside. The application filed by the petitioner seeking permission to adduce the document as exhibit in the case is, hereby, allowed.

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(Mungeshwar Sahoo, J)