

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5114 of 2015

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Surendra Sah

.... Petitioner/s

Versus

Bikrama Sah & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj Narain Yadav

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

- 2 08-03-2016
1. At the time of hearing of the interlocutory application being I.A. No.1844 of 2016, the learned counsel, Mr. Suraj Narain Yadav, for the petitioner submitted that the writ application itself may be heard on merit in admission matter on merit. Accordingly, I heard him on merit in admission matter.
 2. By the impugned order dated 05.02.2015, the learned Munsif, IV, Chapra rejected the application filed by the petitioner to recall P.W.1, Vikrama Singh for further cross-examination.
 3. Perused the order passed by the Court below. It appears that after closure of the evidence of the plaintiff, the defendant was granted time to examine witnesses from 12.12.2013 and he examined witnesses till 07.01.2015. This application has been filed thereafter for recall of P.W.1 for further cross-examination on the ground that the sale deed executed by father of P.W.1 was not exhibited earlier by the defendant.
 4. The Hon'ble Supreme Court in the case of *Vadiraj*

Naggappa Vernekar Vs. 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 the lacunae in the evidence of the witnesses which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination. Of course, if the evidence on re-examination of a witness has a bearing on the ultimate decision of the suit, it is always within the discretion of the trial Court.’

5. In the present case, this application has been filed by the defendant after examination of witnesses only to cross-examine to fill up the lacunae which he did not cross-examine earlier. Therefore, no case for interference in supervisory jurisdiction is made out.

6. Thus, this writ application is dismissed.

Sanjeev/-

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(Mungeshwar Sahoo, J)