

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8963 of 2014

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Anis Ahmad @ Anish Ahmad son of late Md. Akhtar, at present resident of 32 Bright Street, Police station-Karaya, District-Chobis Pargana, Kolkata-17 (West Bengal), permanent resident of mohalla-New Azimabad Colony, Police Station-Sultanganj, District-Patna. Petitioner/s

Versus

Rahat Ehtesham wife of Md. Abu Darda Mallick, resident of Mohalla-Sonshari, Police station Mufassil, District-Nawada, at present resident of Mohalla-New Azimabad Colony, P.S. Sultanganj, District-Patna. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Syed Wazir Ali, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 26-04-2016

Heard Mr. Singh, learned counsel for the petitioner.

The present application under Article 227 of the Constitution of India has been filed calling in question the legal sustainability of the impugned order by which the learned court below has directed to re-examine P.W.-1 after recall granting the right to the defendant for cross examination.

The necessitous facts are that the suit for specific performance of contract was filed by the plaintiff praying for a decree against the defendant for execution of a deed of sale in favour of the plaintiff for the suit land on the basis of the sale agreement dated 06.06.2009. The plaintiff himself was examined as P.W.-1 and during



her deposition she made statement with regard to the sale agreement as well as the signature of the defendant appearing thereupon. It is the case of the plaintiff-respondent that the said sale agreement was not marked as exhibit in the suit by mistake of the ministerial staff of the court who marked only the signature of the defendant as identified by P.W.-1 on the said agreement as exhibit. The petition, therefore, was filed before the court praying for marking the said sale agreement as exhibit in the suit.

By the impugned order, the learned court below, after considering the submissions on behalf of the parties to the suit as well as the facts and circumstances including the different orders and materials on record, has passed the order for recall of P.W.-1 as witness for re-examination granting opportunity of cross examination to the defendant.

Mr. Singh, learned counsel for the defendant-petitioner has submitted that the prayer made by the plaintiff was at a very belated stage when the argument in the suit was going on. It has been contended that there was no mistake of the ministerial staff of the court and in fact the plaintiff omitted to get the said sale agreement marked as exhibit in the suit. It has also been submitted that the prejudice would be caused to the defendant-petitioner if the P.W.-1 (plaintiff) is recalled and re-examined in the suit.

After perusal of the impugned order and considering the submissions on behalf of the petitioner, it is evident that the suit has been filed for specific performance of contract on the basis of the sale agreement. It also transpires from the impugned order that during her examination as P.W.-1, the plaintiff has made statements regarding the said sale agreement and has further also identified the signature of the defendant on the said sale agreement. Though, the learned court below has held that the plaintiff has acted with gross negligence in the matter still for complete and effective adjudication of the questions arising between the parties in the suit, the learned court below has directed for recall of P.W.-1 for re-examination allowing the right to the defendant for cross-examination. This Court does not find that the impugned order passed by the learned court below can be interdicted on the ground of illegality or material irregularity. Manifestly, the impugned order has been passed in order to do complete justice between the parties.

In this view of the matter, this Court does not find merit in this writ application, which is, accordingly, dismissed.

Devendra/-

(V. Nath, J)

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