

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1046 of 2016

=====

1. Ashok Kumar Chopra, Son of Late Mangal Sen Chopra, Resident of 404, Ambition Residency of Exhibition Road, P.S.- Gandhi Maidan, District- Patna.

.... Appellant/s

Versus

1. Smt. Babita Chopra, Wife of Pankaj Kumar Chopra, Resident of Village- Silao, P.O. & P.S.- Silao, District- Nalanda.
2. Pankaj Kumar Chopra, Son of Late Mangal Sen Chopra, Resident of Village- Silao, P.O. & P.S.- Silao, District- Nalanda.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Vinod Shanker Modi

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

ORAL ORDER

3 17-11-2016 Heard learned Senior Counsel, Mr.T.N.Maity, for the petitioner and learned counsel appearing for the respondents.

Perused the impugned order dated 10.08.2016 passed by learned Additional District Judge- 7th, Biharsharif, Nalanda, in Letters of Administration Case No. 01 of 1995 whereby the learned court below rejected the application filed by the petitioner to recall the witnesses of the plaintiff for cross examination by him and directed the respondents to produce two witnesses for cross examination i.e. A.W.2 and A.W.3.

It appears that the court below has observed that while allowing the Miscellaneous Appeal No. 199 of 2012, the High Court has allowed the petitioner to cross examine only two



plaintiff witnesses. However, from perusal of the order of the High Court in Miscellaneous Appeal No. 199 of 2012, which is annexed as Annexure 1 to this miscellaneous application, it appears that the miscellaneous appeal arising out of Order 9, Rule 13 CPC was allowed on payment of cost of Rs. 25,000/-. Nowhere in order there is any such direction by the High Court that the petitioner, herein, is allowed to cross examine only two witnesses of the plaintiff.

It is admitted fact that earlier Letters of Administration Case was dismissed as not maintainable and thereafter Miscellaneous Appeal was filed by the respondents before the High Court and the High Court set aside the order and directed the concerned court to decide Letters of Administration Case on merit. From perusal of the order passed by the High Court arising out of Order 9, Rule 13 CPC it appears that the High Court in para 7 has clearly held that no notice was served on the present petitioner and therefore ex parte order has been set aside. After setting aside of the ex parte order, the petitioner is entitled to cross examine the witnesses of the plaintiff and if any witness is not produced by the plaintiff for cross examination of the petitioner, the evidence of the witness cannot be read against the present case, particularly opportunity has already been granted to the

petitioner by allowing the application under Order 9 Rule 13 CPC.

In view of the facts and circumstances of the case, in my opinion, the learned trial court has mis-understood the order passed by the High Court in Miscellaneous Appeal No.199 of 2012.

Accordingly, this civil miscellaneous application is allowed. The impugned order is set aside and the plaintiff-respondent is directed to produce the witnesses for cross examination by the petitioner. Considering the history of the case it is expected that the parties shall not take unnecessary adjournment and shall assist the court to dispose of the matter within a reasonable period preferably within a period of three months.

(Mungeshwar Sahoo, J)

singh/-

U			
---	--	--	--