

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18635 of 2013

=====

Shyam Bihari Mahto S/O Late Shri Sarjug Mahto Resident Of Village+ P.O- Bibi Bankatwa, P.S- Chowtarwa, District-West Champaran.

.... Petitioner/s

Versus

1. Saheb Mishra S/O Late Janak Mishra Resident Of Village+ P.O- Bibi Bankatwa, P.S-Chowtarwa, District- West Champaran.
2. Shambhu Mahto.
3. Rambhu Mahto.
4. Narain Mahto all S/O Late Ramji Mahto Resident Of Village+ P.O- Bibi Bankatwa, P.S- Chowtarwa, District- West Champaran.
5. Neur Mahto S/O Late Ramnath Koiri Resident Of Village- Nimuia, P.O- Nawalpur, P.S- Jogapatti, District- West Champaran.
6. Jagarnath Koiri S/O Kishun Mahto.
7. Mahendra Mahto S/O Jagarnath Mahto both Resident Of Village- Semari, P.O- Nawalpur, P.S- Jogapatti, District- West Champaran.
8. Mathura Mahto S/O Late Baliram Mahto Resident Of Village+ P.O- Bibi Bankatwa, P.S- Chowtarwa, District- West Champaran At Present Resident Of Village+ P.O- Bariarwa, P.S- Chowtarwa, District- West Champaran.
9. Arjun Mahto S/O Late Baliram Mahto Resident Of Village+ P.O- Bibi Bankatwa, P.S- Chowtarwa, District- West Champaran At Present Resident Of Village+ P.O- Bariarwa, P.S- Chotarwa, District- West Champaran.
10. Ramayan Mahto
11. Dhruv Mahto
12. Ramashish Mahto
13. Nandlal Mahto
14. Vishwmitra Mahto all S/O Late Chokat Mahto Resident Of Village+ P.O- Bibi Bankatwa, P.S- Chowtarwa, District- West Champaran
15. Bachcha Mahto S/O Sukai Mahto Resident Of Village+ P.O- Bibi Bankatwa, P.S- Chowtarwa, District- West Champaran
16. Ragho Mahto.
17. Abhiman Mahto.
18. Gobardhan Mahto all S/O Late Ramayan Mahto.



19. Roshan Mahto S/O Late Labbabu Mahto all Resident Of Village- Belaspur,
P.O- Belaspur, P.S- Ramnagar, District- West Champaran.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Shri Prakash Srivastava, Adv.

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-11-2016

The petitioner is permitted to make correction in the provision of law in the main application in course of the day.

Heard Mr. S.P. Srivastava, learned counsel for the petitioner in the admission matter along with the interlocutory application (I.A. No. 8972 of 2016) which has been filed praying for stay of the further proceeding of the appeal in the learned court below.

The petitioner was defendant in the suit and has questioned the legal sustainability of the impugned order by which the learned court below has turned down the prayer of the petitioner for adducing additional evidence.

After considering the submissions and from the perusal of the impugned order, it is manifest that the petitioner even at the earlier stage of the appeal has filed the similar petition under Order 41 Rule 27 C.P.C. for adducing the R.S. Khatiyan as additional evidence. It further appears that the said prayer was rejected by order dated 7.04.2012 (Annexure-6) holding that the petitioner as appellant



wanted to make out a third case contrary to the pleading and deposition in the suit, at the appellate stage. The petitioner thereafter has again filed another petition under Order 41 Rule 27 C.P.C. for praying to adduce some more survey khatyan and other related document as additional evidence in order to establish the same fact which the petitioner sought to establish by making earlier prayer for adducing additional evidence. It is seemly to notice here that earlier order dated 07.04.2012 was not challenged by the petitioner before the superior court. In view of the finding recorded by the appellate court below after considering the facts and circumstances of the case as well as the findings recorded in the previous order dated 07.04.2012 that the petitioner is not legally entitled to adduce additional evidence as prayed, this Court does not find it a fit case to interdict the impugned order under Article 227 of the Constitution of India. The submission made by learned counsel for the petitioner that the petitioner is illiterate person and is not acquainted with the intricacies of law does not appear to cut more ice in view of the fact that at the earlier stage the petitioner had made similar prayer and had faced an adverse order.

The application, sans merit, is, accordingly, dismissed.

Devendra/-

(V. Nath, J)

U			
---	--	--	--

