

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21280 of 2012

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1. Manohar Prasad S/O Yogendra Prasad Resident of Village and P.S. - Andar, District - Siwan
 2. Pawan Kumar Minor S/O Yogendra Prasad under the Guardianship of Father and Natural Guardian Resident of Village and P.S. - Andar, District - Siwan

.... Petitioners

Versus

Lalita Devi W/O Late Hansnath Kanu Resident Of Village - Andar , P.O. + P.S. - Andar, District - Siwan

.... Respondent

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Appearance :

For the Petitioners : Mr. Ranjan Kumar Dubey, Advocate

For the Respondent :

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

2 08-01-2016

Heard learned counsel for the petitioner.

Petitioner is aggrieved by an order dated 26.09.2012 Passed by the Learned Lower Court relating to Title Suit No. 454 of 2011 whereby and whereunder prayer of the plaintiff has been allowed in terms of order XVIII Rule 16 of C.P.C.

Contention on behalf of the petitioner is that the aforesaid prayer on behalf of plaintiff was not maintainable because of the fact that similar kind of prayer has already been rejected vide order dated 03.08.2012. Having her physical condition fit as she on her own came to Court and sworn an affidavit and further she could not be able to substantiate the any other circumstance. Apart from this, it has also been submitted that instead of praying for subsequently, a prayer should have

been on behalf of plaintiff regarding recall of order dated 03.08.2012. That being so the order impugned is bad.

Presence of Order XVIII Rule 16 of the C.P.C. is with a purpose and that purpose, the legislature while framing the rule had perceived. It happens to be a privilege to either of the parties to avail the same in case the witnesses or the parties are not in a position to have their appearance in normal phenomena of the trial, being at least on death bed or physical deformity, presence could not be procured in ordinary course of nature.

It is out of controversy that dispute relates amongst the parties, who are interrelated. It is also beyond controversy with regard to status of plaintiff being a grandmother while the petitioners are grandsons out of whom, petitioner No. 2 has been shown as minor. Being minor, the gift might have been accepted by his natural guardian, his father as shown and pleaded. Therefore, presence of plaintiff to be an aged woman cannot be disputed. Learned counsel for the petitioner at the present moment has stated that she happens to be aged about 72 years and on that very score, it must be construed that she happens to be at the last span of her life. That being so, her prayer in terms of Order XVIII Rule 16 is found maintainable. Moreover, by such action, petitioner is not going to be prejudiced.

Now coming to another aspect, from perusal of Order dated 03.08.2012 it is evident that the prayer was rejected simply on the ground that the prayer of the plaintiff was not supported with any kind of document. From the order impugned it is evident that apart from voter list, medical prescription has also been filed. That being so, the deficiency which was perceived at an earlier occasion has been renewed whereupon the learned lower court allowed her prayer and in the aforesaid background, there was no occasion for asking for recalling of the order dated 03.08.2012 as the Court was quite competent to give some privilege apart from invoking inherent jurisdiction.

The petition is rejected.

(Aditya Kumar Trivedi, J.)

Amit/veena

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