

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13399 of 2015

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Sri Awadh Kishore Prasad & Ors

.... Petitioner/s

Versus

Smt. Girija Devi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bal Bhushan Choudhary

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 23-06-2016 Heard learned counsel for the parties on the
interlocutory application being I.A. No. 3144 of 2016.

This application has been filed for substitution of the
legal representatives of the petitioner No.2, Ramawatar Saw. The
legal representatives have already filed vakalatanma. Accordinlgy,
the substitution application is allowed and the legal representatives
are substituted.

Learned counsel, Mr. R.K.P. Singh, appearing for the
petitioners submitted that although the petitioners have filed this
application against the order dated 22.07.2015 passed by the Sub-
Judge-I, Sheikhpura in Partition Suit No. 35 of 2010, he may be
permitted to challenge the order dated 28.04.2015, whereby the
evidence of the defendants-petitioners has been closed and the

order annexed by the respondent herein, which is Annexure-R-4 to the counter affidavit.

The learned counsel, Mr. Ramchandra Prasad, appearing for the respondents submitted that he has no grievance if the petitioners are allowed to challenge the said order but he must be heard at length.

In view of the submission of the parties and in view of the fact that the case has been transferred to another court of competent jurisdiction, I permit the petitioner to challenge the order dated 28.04.2015 and heard the parties treating this application under Article 227 as application directed against the order dated 28.04.2015.

From perusal of the order dated 28.04.2015, which is annexure to the counter affidavit, it appears that on that day evidence of the defendants has been closed. Admittedly, the suit is of the year 2010 and the evidence of the plaintiff was closed on 02.03.2015. The learned counsel for the petitioners submitted that none of the defendants were parties and have been examined as witnesses and if the petitioners are not permitted to examine any of them, it will occasion failure of justice. Therefore, he submitted that a time may be prescribed for adducing evidence of the

defendants-petitioners for avoiding delay in disposal of the suit.

Learned counsel for the respondents did not dispute the aforesaid position.

From perusal of the order sheet, which is annexure to the counter affidavit, it is clear that on the said date, the plaintiffs' evidence was closed and thereafter the defendants have examined four witnesses and then on 28.04.2015, evidence has been closed.

Learned counsel for the respondents submitted that the petitioners may be granted time for examining the important witnesses but time should be prescribed.

In view of the aforesaid submission of the parties and the concession made by the learned counsel, Mr. Ramchandra Prasad, appearing for the plaintiff-respondent, who is also the husband of the plaintiff herself, the order dated 28.04.2015, whereby the evidence of the petitioners has been closed is set aside and the case of the petitioners is reopened. The petitioners are directed to examine their witnesses positively within four months from today. After expiry of four months, the court below shall not grant any further time to the petitioners. It is for the petitioners to choose which witness is to be examined within the aforesaid period. Thus this writ application is, accordingly,

allowed and the order dated 28.04.2015 is hereby set aside.

So far the order dated 20.07.2015, which is challenged originally in this writ application is concerned, it is admitted fact that now the case has been transferred to the other court, therefore, it is not necessary to pass any order with respect to order dated 20.07.2015.

(Mungeshwar Sahoo, J)

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