

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16232 of 2015

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Shashi Bhushan Kumar & Anr

.... Petitioner/s

Versus

Deo Prasad Sen & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 20-05-2016 **1.** Heard the learned counsel, Mr. J.S. Arora, for the petitioner and the learned counsel, Mr. Ajit Kumar Singh, for the respondent.

2. It appears that notices were issued in admission matter on 27.11.2015. After notice the respondents have appeared and have filed an interlocutory application being I.A. No.2279 of 2016 for vacating the stay order granted while issuing notice. It was directed that the stay application be considered at the time of hearing of the writ application in admission matter and accordingly, this writ application has been listed today for hearing in admission matter along with the stay vacating application.

3. It appears that the plaintiff petitioner filed Title Suit No.383 of 1995 for declaration of title on the basis of the registered sale deed said to have been purchased from the



defendant No.7 and 8. The defendants challenged the title of the plaintiff on the ground that in fact defendant No.7 and 8 are not the sons of the owner of the property, namely, Late Bhagwat Prasad Sen Gupta. In view of the contest, it was necessary for the plaintiff to prove the parentage of defendant No.7 and 8, therefore, he filed documentary evidences including the pension papers and application was filed for calling for the original pension paper wherein the photographs of defendant No.7 and 8 along with Bagwat Prasad Sen Gupta has been attached and defendant No.7 and 8 have been shown as the son of Bhagwat Prasad Sen Gupta. The Court below by the impugned order rejected the application only on the ground that pension paper has already been marked as exhibit '7' and then rejected the application and closed the plaintiff evidence.

4. According to the learned counsel, Mr. J.S. Arora, submitted that exhibit '7' only shows the amount which is being as paid but the original pension paper will show that the photographs of defendant No.7 and 8 have been considered and attested by Bhagwat Prasad Sen Gupta and his photo is also there. Therefore, this original pension paper is necessary for just decision of the controversies between the parties but the Court below without considering the fact that the petitioner evidence was not closed has

rejected the application and closed the evidence of the petitioner and if the order is allowed to stand, it will not only occasion failure of justice but shall greatly prejudice the petitioner also.

5. On the other hand, the learned counsel for the respondent submitted that the pension papers which are being sought to be adduced as evidence in this case is entirely false, fabricated, manipulated document, therefore, it cannot be admitted in the case as evidence. The respondent No.8 is not the son of Bhagwan Prasad Sen Gupta. His father is Bokna Nath Sen Gupta. In support of the same, documentary evidences have already been produced by the defendants.

6. From the record, the impugned order and the trend of arguments of the learned counsels, now it becomes clear that the dispute between the parties is whether the defendant No.7 and 8 are the sons of Bhagwat Prasad Sen Gupta or not. For that purpose, the petitioner filed the application for calling for the original pension papers of Bhagwat Prasad Sen Gupta from Collectorate, Purnea where he was an employee. So far the ground of rejection is concerned, it appears that the Court below has not decided the question as to whether the document sought to be called for is essential in this suit or not and has rejected only on



the ground that Ext.'7' is already there. The Court below has not considered that ext.'7' is only a document which shows the amount which is being drawn as pension and nothing else. It further appears that the Court below also rejected the application on the ground that High Court had directed to dispose of the suit within six months twice. So far this ground is concerned, it may be mentioned here that it is settled principal of law that **'any anxiety to cut the delay or further litigation should not be a ground to flout the settled fundamental rules of CPC.'** Therefore, only because High Court has directed, the Court will not shut the door of justice and close the evidence without considering as to whether the evidence sought to be brought on record is relevant for just decision of the controversies between the parties.

7. The Hon'ble Supreme Court in the case of *K. K. Velusamy Vs. N. Palanisamy 2011 (11) SCC 275* has held that 'the Court in appropriate cases can exercise its discretion and permit a party to produce evidence even after the case has been posted for judgment, if ends of justice so warrant. In my opinion, therefore, the learned Court below has not exercised a jurisdiction vested in it by law and rejected the application for calling for the documentary evidences which are essential for just decision of the

controversies between the parties. If the order is allowed to stand then naturally, it will not only prejudice the petitioner but also shall occasion failure of justice.

8. Accordingly, this writ application is allowed. The impugned order is set aside and the petitioner's application is dated 08.05.2015 is allowed.

9. However, considering the age of the suit, the Court below shall expedite the disposal. The learned counsel for the respondent assured this Court that he will not take any unnecessary adjournments before the Court below.

(Mungeshwar Sahoo, J)

Sanjeev/-

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