

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8750 of 2014

- =====
1. Smt. Lilawati Devi wife of Sri Ramchandra Pandey
 2. Smt. Kailash Pati Devi wife of Sri Deweshwar Sharma Both resident of village - Paras Pakari, Post Office - Chanain band, Police Station - Majhauria, District - West Champaran.

.... Petitioner/s

Versus

1. Smt. Kanti Devi wife of Sri Rameshwar Pandey @ Paras Pandey
2. Rameshwar Pandey @ Paras Pandey son of Late Chandradeo Pandey Both resident of village - Paras Pakari, Post Office - Chanain band, Police Station - Majhauria, District - West Champaran

.... Respondents 1Set-Defendants 1st Party

3. Murari Pandey son of Late Sakaldeep Pandey resident of village - Paras Pakari, Post Office - Chainband, Police Station - Majhauria, District - West Champaran.

.... Respondent 2nd Set-Defendant 2nd Party

=====

Appearance :

For the Petitioner/s : Mr. Shiv Kumar Dwivedy

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

3 11-04-2016 Heard Mr. S.K. Dwivedy, learned counsel appearing on behalf of the petitioners.

2. By the impugned order the learned court below has turned down the prayer made on behalf of the plaintiffs in the petition dated 02.12.2013 for examination of the plaintiff no. 2, Kailash Pati Devi as witness in the suit.

3. From the perusal of the materials on record as well as



the impugned order, it is evident that the suit was filed by the plaintiffs in the year 1996. The written statement was filed by the defendants and in the said written statement the assertion was also made that the sale deed dated 05.03.1991 had been executed by the defendants in favour of the plaintiff no. 2. The hearing of the suit commenced and the evidence of the plaintiffs was closed on 12.09.2001 on completion. Upon the closure of the evidence on behalf of the defendants also, the suit was posted for argument. At that stage the petition dated 02.12.2013 was filed on behalf of the plaintiffs praying for permission to examine the plaintiff no. 2 Kailash Pati Devi as witness in the suit. The learned court below after considering the fact and circumstances of the case has passed the impugned order wherein besides other findings, it has also held that the omission of non-examination of the plaintiff no.2 was not a bonafide mistake and rather it was a willful omission on the part of the plaintiffs.

4. Mr. Dwivedi, learned counsel appearing for the plaintiff-petitioners has submitted that the examination of the plaintiff no. 2 is essential in the facts and circumstances of the case and the fact that Kailash Pati Devi was not examined in the suit was not deliberate. It has been contended that due to



inadvertence and bonafide mistake on the part of the plaintiffs that plaintiff no. 2 Kailash Pati Devi, could not be examined in the suit. It has also been submitted that in the interest of justice plaintiff no. 2 Kailash Pati Devi may be permitted to be examined as a witness in the suit.

5. After considering the submissions and the materials on record, the fact is evident that the suit was filed in the year 1996. The plaintiffs closed their evidence in the year 2001 and thereafter the defendants also completed adducing their evidence. At none of these stages, the prayer was made on behalf of the plaintiffs for examination of the plaintiff no. 2 as a witness even though in the written statement, the defendants had categorically stated that the plaintiff no. 2 by sale deed dated 05.03.1991 had purchased 4 dhur of land pertaining to khata no. 53 and plot no. 951 from the defendants.

6. In that view of the matter, it cannot be accepted that the plaintiffs had no knowledge of the assertion of the defendants till 2013 when the argument in the suit was to be taken up. The prayer on behalf of the petitioners to permit the examination of plaintiff no. 2 as a witness has rightly been rejected by the learned court below because it would amount to de novo trial of the suit after it has reached to its fag end. This

court therefore, is not inclined to interdict the impugned order by exercising jurisdiction under Article 227 of the Constitution of India.

7. The application is accordingly dismissed. However the petitioners shall be at liberty, if such occasion arises, to take appropriate objection in accordance with law as permitted under Section 105(1) of the C.P.C.

(V. Nath, J)

Ranjan/-

U			
---	--	--	--