

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16765 of 2015

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Ram Birendra Singh & Ors

.... Petitioner/s

Versus

Bishwanath Singh & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shivendra Kumar Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 22-06-2016

Heard the learned counsel, Mr. Shivendra Kumar Sinha

for the petitioners.

By the order dated 17.09.2015, the learned Sub Judge IV, Danapur in Title Suit No.61 of 2005 rejected the application filed by the petitioner under Section 151 C.P.C. to recall all the plaintiff's witnesses for further cross-examination.

It appears that partition suit was filed. After closure of evidence of both the parties, the partition suit was placed for hearing. At this stage, amendment application was filed by the plaintiff seeking amendment of the schedule of the plaint and some properties were added. The application was allowed by the trial court. The writ application was filed before the High Court which was rejected by the High Court. No additional written statement was filed by the petitioner. Thereafter, application has been filed for recall of the witnesses for further cross-examination.

The Court below by the impugned order has rejected this application on the ground that the plaintiff has not adduced further evidence in support of his amendment in the Schedule and rejected the application as the petitioner had already effectively cross-examined all the witnesses.

It may be mentioned here that the application was filed under Section 151 C.P.C. Section 151 C.P.C. speaks about the inherent jurisdiction of the Court. When the Court below has exercised his inherent jurisdiction in one way, the High Court in supervisory jurisdiction under Article 227 cannot take the other view even if it is possible only for the purpose of supervising the impugned order.

The Hon'ble Supreme Court in the case of **Vadiraj Naggappa Vernekar (deceased by L. Rs.) v. Sharad Chand Prabhakar Gogate, AIR 2009 Supreme Court 1604** has held that "the power under the provisions of O. 18 R. 17 is to be sparingly exercised and in appropriate cases and not as a general rule merely on the ground that his recall and reexamination would not cause any prejudice to the parties. Such power is to be invoked not to fill up the lacunae in the evidence of the witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination."

In view of the above facts and circumstances, when all the witnesses have already been examined effectively by the defendants, only because the Schedule has been changed by amendment, no further cross-examination is required for the ends of justice. Therefore, the learned Court below has rightly rejected the same.

Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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