

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1036 of 2016

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Krishna Devi

.... Appellant/s

Versus

Smt. Bachchi Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Kumar Mukund

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 02-02-2017 **1.** Heard the learned counsel for the petitioner and the
learned counsel for the respondent. .

2. Perused the impugned order dated 18.08.2016 passed by
learned Sub Judge, Biraul, Darbhanga in Title Suit No.22 of 1994
whereby the learned Court below rejected the application filed by
the present petitioner for cross-examination by the plaintiffs
witnesses except P.W.11, the plaintiff herself.

3. The learned counsel for the petitioner submitted that the
father-in-law of the present petitioner has gifted all the entire suit
property in favour of the petitioner but the partition suit was filed
by the plaintiff respondent No.1 Bachchi Devi, the widow of
brother of Sachhidanand Jha without making the petitioner as
party defendant. The present petitioner has been added as party in
the year 2016 and, thereafter, she filed the application for cross-



examination of all the witnesses examined on behalf of the plaintiff. The Court below granted permission only to cross-examine plaintiff who was examined as P.W.11 and refused to permit the petitioner to cross-examine rest of the witnesses. According to the learned counsel, if she is not allowed to cross-examination all the witnesses, it will occasion failure of justice and the petitioner will be put to great hardship. The Court below rejected the application without considering this aspect of the matter.

4. The learned counsel for the plaintiff respondent submitted that the partition suit is of the year 1994. The husband of the petitioner is contesting the suit and he has already cross-examined all the witnesses examined by the plaintiff. The alleged gift deed is of the year 1994. The husband of the petitioner, namely, Sachhidanand Jha has pleaded this fact in the written statement and evidence has already been adduced to that effect. Cross-examination has also been made by Sachhidanand Jha to the plaintiff witnesses. Moreover by the impugned order, the Court below has permitted the petitioner to cross-examine the plaintiff herself who has been examined as P.W.11 but the petitioner intentionally did not cross-examine the plaintiff respondent No.1 (P.W.11) who was produced before the Court after the impugned



order passed by the Court below. The intention of the petitioner is to delay the disposal of the partition suit wherein the evidence has already been concluded and the case has been fixed for argument from the year 2000. The petitioner and her husband on one ground or the other by adopting dilatory tactics and misusing the provisions of law and procedure of law are not allowing the suit to be concluded.

5. It is admitted fact that the husband of the present petitioner is the defendant. He has contested the suit and has already cross-examined all the witnesses. The Court below considering this aspect of the matter has also granted opportunity to the present petitioner for cross-examining the plaintiff, P.W.11, but according to the learned counsel for the respondent, the petitioner did not cross-examine her also only on the ground that Civil Misc. application has been filed before the High Court. In view of the above facts and circumstances of the case as narrated by the Court below in the impugned order, it appears that the intention of the petitioner is to delay the disposal of the suit and nothing else and for that purpose, the petitioner is adopting dilatory tactics by misusing the provision of law and the procedural of law. The partition suit has been running for hearing by way of argument but because of the conduct of the present



petitioner and her husband the suit could not be disposed of. The plaintiff-respondent is the widow. Her husband has died and, therefore, it appears that she is helpless lady and the present petitioner in collusion with her husband, Sachhidanand Jha is harassing the plaintiff. They have been dragging the matter from 2000 to 2017. As stated above, from perusal of the impugned order, it appears that the Court below has passed a reasoned order assigning reasons for refusal of the prayer for cross-examining other witnesses than the plaintiff P.W.11.

6. Thus, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Accordingly, this Civil Misc. application is dismissed with cost of Rs.10,000/- to be paid by the petitioner to the plaintiff respondent within two months from today failing which the plaintiff respondent shall be at liberty to realize the same through the process of the Court. If she was not cross-examined, the petitioner is debarred from cross-examine her also.

7. The Court below shall start hearing the argument and dispose of the same as directed by the High Court earlier.

Sanjeev/-

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(Mungeshwar Sahoo, J)

