

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.310 of 2016**

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Bhuvaneshwar Singh & Ors

.... Petitioner/s

Versus

Jagmania Devi & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manoj Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

3 25-01-2017 Heard the learned senior counsel, Mr. J.S.Arora for the petitioners and the learned counsel, Mr. Dinbandhu Singh for the respondents.

This application under Article 227 of the Constitution of India has been filed by the plaintiffs-petitioners for setting aside the order dated 17.03.2016 passed by Subordinate Judge I, Patna in Title Suit No.835 of 2011 whereby the learned court below allowed the application filed by the defendant No.1 under Order 18 Rule 16 C.P.C. for being examined as special witness.

The learned senior counsel, Mr. Arora for the plaintiffs-petitioners submitted that nothing was brought on record before the court that the defendant No.1 was unable to come to the court or that the witness i.e. defendant No.1 is to leave the jurisdiction of the court or there is any sufficient cause for her examination as special witness except the statement of the defendant No.1 herself.



The learned senior counsel further submitted that she is aged about 63 years as has been stated in paragraph 2 of the application and this medical certificate which was submitted before the court below is dated 15.07.2015 i.e. six months after the filing of the application dated 04.02.2015. The court below did not scrutinize this fact and has allowed the application.

On the other hand, the learned counsel for the defendants-respondents submitted that no prejudice will be caused to the petitioner if she will be examined as special witness and age is not the only factor for consideration. The defendant No.1 is suffering from many ailments and, therefore, the court below has rightly allowed the application.

Perused the impugned order dated 17.03.2016. From perusal of the impugned order, it appears that the court below has only reiterated in the ordersheet what has been stated in the application filed by the defendant No.1. The court below observed that defendant No.1 is an old lady. It may be mentioned here that she is only aged about 63 years. So far ailment is concerned, the certificate only shows that she is suffering from hypertension and palpitation which are not sufficient enough for attending the court for her examination as special witness under Order 18 Rule 16 C.P.C. It is also admitted fact that still today, no issues have been



framed and the application has been filed only on the ground that the defendant No.1 is suffering from many ailments and is aged about 63 years.

As stated above, the court below has not considered all these aspects of the matter and only on the statement of the defendant No.1 has allowed the application.

Thus, this civil miscellaneous application is allowed. The impugned order is set aside. The court below shall proceed according to law.

(Mungeshwar Sahoo, J)

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