

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16707 of 2014

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Ram Kishore Prasad

.... Petitioner/s

Versus

Shashi Kiran Sinha

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Prasad Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 11-10-2017 Heard the learned counsel for the petitioner and the

learned counsel for the respondent.

The plaintiff-petitioner has filed this writ application under Article 227 of the Constitution of India for setting aside the order dated 14.07.2014 passed by Sub Judge VII, Bihar Sharif in Title Suit No.177 of 2005 whereby the learned Sub Judge has refused to mark the legal notice issued by the plaintiff to the defendant-respondent on the ground that hearing of the suit is going on.

The learned counsel for the petitioner submitted that it is specifically pleaded in the plaint by the plaintiff that when the defendant did not execute the sale deed pursuant to the agreement, he repeatedly requested and then issued legal notice on 24.08.2004. The witness examined on behalf of the plaintiff i.e. P.W.2 has specifically in paragraph 31 has stated that legal notice



was issued to the defendant on 24.08.2004 but inadvertently the notice could not be marked as an exhibit although it was filed which is available on record. Subsequently, another notice was issued on 18.09.2004 which was also filed and was in the record but that also could not be marked as an exhibit. The learned counsel further submitted that the genuineness of the said notices are not disputed by the defendant-respondent which would be evident from cross-examination of P.W.2 nor the genuineness has been disputed in the written statement.

On the other hand, the learned counsel for the respondent submitted that these documents which are sought to be exhibited in the suit are not genuine document and substantially the suit has already been heard by the learned Sub Judge and at this stage this application was filed, therefore, the learned Sub Judge has rightly rejected the application.

The evidence of P.W.2 has been annexed in the supplementary affidavit filed by the petitioner. From perusal of this evidence of P.W.2, it appears that in cross-examination nowhere the defendant has challenged the genuineness of the legal notice. It is also not the case of the defendant that the legal notices are not on record. However, it appears that the P.W.2 has specifically stated the date of the notice issued by the plaintiff.



The Hon'ble Supreme Court in (2011)11 Supreme Court Cases 275 has held that the court has the jurisdiction to reopen the case even after the case has been heard and concluded and it has been posted for judgment, if according to the court it is necessary to reopen the case and re-examine the witness or mark any document as exhibit.

In the present case that is specifically pleaded in the plaint and the P.W.2 has specifically pleaded to adduce evidence in support of the pleading in the plaint. The genuineness of the legal notices has not been denied which would be evident from cross-examination of P.W.2. Therefore, what will be the relevancy of these evidences i.e. the matter that can be considered at the time of final argument of the case.

It may be mentioned here that the presiding officer who has substantially heard the suit must have been transferred now because this writ application itself is of the year 2014, therefore, there may be de novo argument before another presiding officer.

In view of the above facts and circumstances of the case, in my opinion, the learned trial court has refused to exercise the jurisdiction vested in it by law and, therefore, this writ application is allowed. The impugned order is set aside and the



court below is directed to mark both the legal notices as exhibit in the case. The application filed by the plaintiff for marking the notices as exhibit is allowed.

(Mungeshwar Sahoo, J)

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