

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5515 of 2013

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Bhupendra Kumar Singh @ Dipu & Anr

.... Petitioner/s

Versus

Parwati Devi @ Parwatiya Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

5 08-08-2017 Heard learned counsel Mr. Anish Chandra Sinha for the petitioners and learned counsel Mr. Gopal Govind Mishra for the respondents.

2. This writ application under Article 227 of the Constitution of India has been filed by the plaintiffs-petitioners against the order dated 16.02.2013 passed by learned Subordinate Judge-VII, Ara in Title Suit No.166 of 2004 whereby the learned court below has accepted some of the documentary evidences and marked the same as exhibit in the case.

3. The learned counsel Mr. Anish Chandra Sinha for the petitioners submitted that according to the provision as contained in Order 8 Rule 1 of the Code of Civil Procedure the documents were not filed along with the written statement by the defendants and earlier also some prayer was made before the court below which was rejected against which the defendants filed writ



application before the High Court which was dismissed but subsequently gain same application was filed which has been allowed by the court below by the impugned order. The learned counsel submitted that it is very belated stage and in fact the defendants have examined 4 or 5 witnesses. The court below, therefore, has wrongly allowed the defendants to produce documentary evidences and wrongly marked the documents as exhibit in the case.

4. On the other hand, the learned counsel Mr. Mishra appearing on behalf of the respondents submitted that earlier an application of the defendants was rejected on the ground that the defendants had not disclosed the nature of the document which they wanted to produce as documentary evidences and, therefore, the writ application was withdrawn with liberty to pursue the matter before appropriate forum. The documents were produced by filing application and the court below recorded clear finding that the documents have got relevancy in the suit and are thus necessary for deciding the controversy between the parties. Therefore, the court below has rightly allowed the application.

5. From perusal of the impugned order, it appears that the court below has clearly recorded finding that the defendants have shown the relevancy of the documents and the court below



further held that for deciding the real controversy between the parties, it is necessary to mark the said documents as exhibit. Most of the documents are public documents.

6. So far the submission of learned counsel for the petitioners that the court has no jurisdiction to allow the defendants to produce the documentary evidences at such a belated stage is concerned, it is mentioned here that the Hon'ble Supreme Court in the case of **K.K. Velusamy Vs. N. Palanisamy, (2011) 11 Supreme Court Cases 275** has held that power under Section 151 can be exercised to deal with any particular procedural aspect which is not provided expressly or impliedly in CPC, if ends of justice so warranted and to prevent abuse of process of Court. The Court in appropriate cases can exercise its discretion to permit reopening of evidences and/or recalling of witnesses for further examination/cross-examination after evidence laid by the parties. Therefore, in view of the decision of the Supreme Court the Court has the jurisdiction even to reopen the evidences even if the same has been closed what to speak of jurisdiction of the Court during the course of trial. Admittedly the evidence of the defendants is going on and only the documents have been marked as exhibit. How can it be said that by mere marking of documents any prejudice is caused to the plaintiffs-



petitioners? However, from perusal of the impugned order, it appears that the court below has found that the documents are relevant for deciding the controversy between the parties. Thus, I find no jurisdictional error or illegalities in the impugned order.

7. In the result, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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