

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23878 of 2013

In
MA 506 of 2012

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Phoolmati Devi & Ors

.... Petitioner/s

Versus

Shankar Yadav & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shri Prakash Srivastava

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, Sri Prakash Srivastava, on behalf of the petitioner.

This application has been filed under Article 227 of the Constitution of India by the plaintiff petitioner for setting aside the order dated 15.05.2012 passed by learned Sub Judge VIII, Motihari in Title Suit No.490 of 2004 whereby the learned Sub Judge has rejected the application filed by the plaintiff petitioner praying for examination of the defendant 3rd set as witness on commission.

The learned counsel for the petitioner submitted that the defendant 3rd set is the vendor of the plaintiff. He shifted to Allahabad and is residing there. His evidence in the present suit is necessary but the defendant third set is neither examining himself as witness in the case nor he is coming to give evidence on behalf of the plaintiff in spite of request made by the plaintiff. Therefore, the plaintiff filed the application for examining the defendant third set as witness on



commission but the Court below rejected on the ground that he has already filed written statement, therefore, evidence is not necessary.

Perused the impugned order. It appears that the Court below considered the fact that the only ground taken by the plaintiff is that the defendant No.6 is residing at Allahabad. The defendant respondent herein expressed their inability to cross-examine the defendant No.6 at Allahabad on the ground that they are very poor person and they cannot engage Advocate at Allahabad.

In view of the above fact, in my opinion, no case for examination of the defendant No.6 as witnesses on commission on behalf of the plaintiff has been made out and, therefore, the learned Court below has rightly rejected the application filed by the plaintiff for examining the defendant No.6 as witnesses in the case on commission.

Thus, no case for interference in exercise of supervisory jurisdiction is made out. Accordingly, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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