

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.127 of 2014

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1. Jan Mohammad Son Of Late Kitab Sai, Resident Of Village- Chak Yoga,
P.S.- Uchkagaon, District- Gopalganj

.... Appellant/s

Versus

1. The State Of Bihar
2. Reyaj Dewan, Son Of Subhash Dewan, Resident Of Village- Chak Yoga,
Pargana- Kuwari, P.S.- Uchkagaon, District- Gopalganj

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjeet Kumar Pandey
For the Respondent/s : Mr. Kundan Bhadur Singh

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL ORDER

5 06-11-2017 Heard learned counsel for the appellant and learned
counsel for the respondent on this Misc. Appeal.

This Misc. Appeal has been filed against order,
dated 03.01.2014, passed by learned ADJ II, Gopalganj in Probate
Case No. 5 of 2012, whereby the learned lower court has debarred
the appellant to be examined after examination of other witnesses.

Factual matrix of the case is that Respondent no. 2
filed a Probate Case No. 5 of 2012 for grant of probate of Will
dated 11.01.2007 executed by Wahidan Khatoon in his favour.

Jan Mohammad, Opposite Party no. 3 of the said
case filed written statement challenging the aforesaid Will.
Thereafter both the parties entered into evidence and after closure



of the evidence of the petitioner of the said suit Jan Mohammad did not examine himself, rather examined his witness. Thereafter, he filed an affidavit on 13.09.2013. But the petitioner of the said case filed an application dated 20.09.2013 raising objection that after examination of his witness, the said opposite party cannot examine himself. Hence, he may be debarred from his examination. After filing objection on the said petition and after hearing the parties the court allowed the said petition of the petitioner of Probate Case No. 05 of 2012 and debarred Jan Mohammad from his examination after examination of other witnesses, finding that in view of order 18 Rule 3A of the Code of Civil Procedure, where the party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined unless the court for reasons to be recorded, permits him to appear as his own witness at a later stage, but as the opposite party did not seek permission of the court to examine himself at a later stage, hence, he is not entitled to get himself examined and is debarred from his examination.

From perusal of the records, it appears that the appellant-opposite party Jan Mohammad had filed affidavit dated 13.09.2013 before the learned court below and by filing affidavit had assailed the aforesaid Will submitting that the said Wahidan



Khatoon had not executed any will in favour of any person. The said will is forged and fabricated. By filing petition dated 13.12.2013 he has prayed to grant permission to examine opposite party with the case that the evidence of opposite party is going on and affidavit of opposite party Jan Mohammad has been filed in the case. But due to mistake of Advocate clerk the petition for examination of the party preceding to his witnesses could not be filed.

From perusal of the Order 18 Rule 3(A) of the C.P.C., it appears that it provides for examination of the parties to the case first, but in case, if he wants to examine himself at the later stage after examining witnesses, he must seek permission of the Court.

In the case under hand, the appellant has examined one witness before him and thereafter filed his affidavit and a petition to examine himself, but due to objection of respondent (petitioner of that case), he was debarred from his examination, on the ground that he has not taken permission for his examination at later stage.

The appellant has assailed the genuineness of the will submitting that the property in question has already been sold out to a different person by the testator during her life time and she



has not executed any will in favour of the petitioner.

Hence, in the aforesaid facts and circumstances, for complete adjudication of the matter and in the interest of justice, the appellant ought to have been given an opportunity to examine himself in the case later to his witness and should not have been debarred from examining himself at a later stage merely on technical ground. It is the settled principle of law that justice should be done after hearing the parties and injustice should not be done by shutting down the opportunity of hearing to the parties on mere technical ground.

In the aforesaid facts and circumstances of the case, the impugned order, dated 03.01.2014, passed by learned lower court is set aside and accordingly this appeal is allowed.

(Prakash Chandra Jaiswal, J.)

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