

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.188 of 2016**

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Biktar Pandit & Anr

.... Petitioner/s

Versus

Suresh Pd. Sah & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anshuman Jaipuriyar

For the Respondent/s : Mr.

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

4 07-02-2017 Heard the learned counsel, Mr. P.K.Jaipuriyar for the petitioners and the learned counsel, Mr. Satish Chandra Sinha for the respondents on I.A. No.9985 of 2016.

This application has been filed by the petitioner for substitution of the legal representatives of the deceased petitioner no.1.

In view of the submission of the learned counsel for the petitioners, this substitution application is allowed and the legal representatives of the petitioner No.1 are substituted in place of the deceased after deleting his name. All of them have already appeared by filing vakalatnama.

Perused the impugned order dated 18.04.2016 passed by the learned Sub Judge, Baisi, Purnea in Title Suit No.17 of 2012 whereby the learned Sub Judge rejected the application filed by the defendants-petitioners to recall the P.W.1 to P.W.4 for their



cross-examination.

The learned counsel, Mr. P.K.Jaipuriyar for the petitioners submitted that because of illness of petitioner No.1, during the period when P.W.1 to P.W.4 were examined by the plaintiff, they could not be cross-examined by the petitioners and subsequently, the petitioner No.1 also died. Medical prescriptions and certificate of the doctors were produced before the court below but the court below rejected the application for recall.

On the other hand, the learned counsel for the respondents vehemently opposed the prayer of the petitioners and submitted that this is nothing but dilatory tactics and if now it is allowed then also there is no guarantee that the petitioner will cross-examine the witnesses whenever they will be produced.

It is admitted fact that petitioner No.1 has died. It was the case pleaded in the court below that because of illness of this petitioner No.1, the aforesaid witnesses of the plaintiffs have not been cross-examined by the petitioners. Now therefore, if the order is allowed to stand then it will naturally cause irreparable loss to the petitioner and shall occasion failure of justice. However, considering the delay, in my opinion, the plaintiffs-respondents should be compensated by the petitioners. Accordingly, I allow this civil miscellaneous application and set



aside the impugned order dated 18.04.2016 passed by Sub Judge, Baisi, Purnea in Title Suit No.17 of 2012 subject to payment of cost of Rs.2,500/- to the plaintiffs-respondents on or before the witnesses are produced by the plaintiffs-respondents in the court below. The petitioners shall not pray for adjournment when the plaintiffs-respondents will present the witnesses for cross-examination. Both the learned counsels submitted that if possible all the cross-examination can be made within one month and they undertake before this court that both of them will not pray unnecessary adjournment in the court below.

Thus, this civil miscellaneous application is allowed with the aforesaid direction.

(Mungeshwar Sahoo, J)

Saurabh/-

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