

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13645 of 2014

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Shri Arbind Poddar Son of Shiv Bhagwan Poddar, resident of mohalla- Jawaharlal Road, Post Office- Muzaffarpur, Police Staton- Town, District- Muzaffarpur.

.... Petitioner/s

Versus

1. Rajesh Kumar Son of Late Vishwanath Prasad Choudhary
2. Abha Kumari Choudhary D/o Late Vishwanath Prasad Choudhary
Both are resident of Mohalla- Suta Patti, Post Office- Muzaffarpur, Police Station + Town and District- Muzaffarpur.
3. Mostt. Bindu Devi wife of Late Vishwanath Prasad Choudhary
4. Choudhary Suman Daughter of Late Vishwanath Prasad Choudhary
5. Vijeta Kumari Choudhary
6. Ruchi Kumari Choudhary
7. Komal Kumari
All Minor daughters of Late Bishwanath Prasad Choudhary
8. Rohit Choudhary (Minor) Son of Late Bishwanath Prasad Choudhary
All Minor sons and daughters of under the guardianship of their natural friend and mother. All resident of Mohalla Sutapatti, Post Office- Muzaffarpur, Police Station Town, District- Muzaffarpur.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 11824 of 2015

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Arbind Poddar S/o Shiv Bhagwan Poddar, resident of Mohalla - Jawaharlal Road, P.O. - Muzaffarpur, P.S. - Town, District - Muzaffarpur.

.... Petitioner/s

Versus

1. Rajesh Kumar Son of Late Vishwanath Prasad Choudhary,
2. Abha Kumari Choudhary, D/o Late Vishwanath Prasad Choudhary,
Both residents of Mohalla - Suta Patti, Town & P.O. & P.S. - Muzaffarpur,
District - Muzaffarpur.
3. Most. Bindu Devi, W/o Late Vishwanath Prasad Choudhary,
4. Choudhary Suman D/o Late Vishwanath Prasad Choudhary,
5. Vijeta Kumari Choudhary,
6. Ruchi Kumari Choudhary,
7. Komal Kumari, All minor daughters of Late Vishwanath Prasad Choudhary,
8. Rohit Choudhary (Minor), Son of Late Vishwanath Prasad Choudhary, All minor sons and daughters are under the guardianship of their natural friend and mother Most. Bindu Devi. All residents of Mohalla - Suta Patti, Town & P.O. & P.S. - Muzaffarpur, District - Muzaffarpur.

.... Respondent/s



Appearance :

(In CWJC No.13645 of 2014)

For the Petitioner/s : Mr. Ranjan Kumar Dubey

For the Respondent/s :

(In CWJC No.11824 of 2015)

For the Petitioner/s : Mr. Ranjan Kumar Dubey

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 16-04-2018

C.W.J.C. No. 13645 of 2014 and C.W.J.C. No. 11824 of 2015 have been filed by the defendant of Title Suit No. 585 of 2004 for setting aside the order dated 05.07.2014 and 06.07.2015 respectively passed by Sub-Judge-V, Muzaffarpur. As per order dated 05.07.2014 the petition of plaintiff for recording her evidence was allowed subject to payment of cost of Rs.8,000/- to the contesting defendants and as per order dated 06.07.2015 the plaintiff-respondent was allowed to file fresh examination-in-chief of witness Rajiv Kumar Tulsyan after examination of last witness of plaintiff subject to payment of cost of Rs.500/- payable to the defendant. The plaintiffs were further allowed to produce the witnesses one by one on each date positively.

2. Heard learned counsels for the petitioner and the respondents.

3. The plaintiffs (respondent nos. 1 and 2) filed the aforesaid Title Suit no. 585 of 2004 for declaration that the lease deed dated 26.03.1996 executed by their father late Vishwanath Prasad



Choudhary in favour of the defendant 1st party (petitioner) is illegal, invalid, forged, fabricated, fraudulent and void document and the same is not binding upon the legal heirs of late Vishwanath Prasad Choudhary. The plaintiffs and defendant 2nd party are heirs of late Vishwanath Prasad Choudhary. The defendants 3rd set are tenants of Lakshmi Bhawan which is subject matter of lease deed. According to plaintiffs, the suit property mentioned in schedule-I of the plaint is the ancestral property of plaintiffs and defendant 2nd party which was acquired by late Lakshmi Prasad Choudhary. The father of Vishwanath Prasad Choudhary was little educated person and was engaged in cloth business and about 13 years ago due to wound, his right leg developed gangrene. Subsequently he started suffering from high blood pressure and diabetic. The said Vishwanath Prasad Choudhary had no male issue and so he had adopted the plaintiff no. 1 in the year 1992. But subsequent to adoption, the father of plaintiffs was blessed with a son who is defendant no.7. The defendant no.1 taking advantage of mental and physical condition of the father of plaintiffs, brought into existence an agreement dated 12.04.1994 purported to be executed by their father. The father of plaintiffs had no legal right to execute any document of transfer with respect to property mentioned in schedule-I of the plaint which is ancestral property of the plaintiffs and respondent 2nd set. The defendant no. 1



appeared and after filing of his written statement, issues were framed on 11.02.2009. Thereafter, trial commenced and an affidavit of examination-in-chief of P.W.1, namely, Abha Choudhary was filed on 11.02.2010. The case was adjourned on several dates for her cross-examination. Lastly the evidence of P.W. 1 was expunged on 23.05.2011. The plaintiff filed a petition on 13.06.2011 to recall the order dated 23.05.2011. The plaintiff filed examination-in-chief of P.W.2, Rajeev Kumar Tulsian, but he also could not be cross-examined and his evidence was also expunged on 04.09.2012. The plaintiff filed a petition on 07.01.2013 to recall the order dated 04.09.2012. The earlier petition to recall the order dated 23.05.2011 with respect to P.W. 1 was rejected on 11.04.2012. The petition of plaintiff filed on 04.09.2012 to recall the P.W. 2 was also rejected on 14.01.2013 and the evidence of plaintiffs was closed. Thereafter, the plaintiffs filed a petition on 29.08.2013 to recall the said order dated 14.01.2013 which was allowed as per order dated 30.08.2013. Thereafter, the plaintiff filed a petition on 21.12.2013 to recall the order dated 23.05.2011 whereunder the evidence of P.W. 1 was expunged. The said petition was rejected on 29.03.2014. Thereafter, the plaintiff filed a fresh examination-in-chief of P.W. 1 on 24.04.2014 which was allowed on 05.07.2014. Against the said order, the present writ application has been filed.



4. The learned counsel for the petitioner submits that the court below had no jurisdiction to permit the plaintiffs to file or accept the fresh examination-in-chief of any witness in view of the fact that the evidence of P.Ws. 1 and 2 were expunged and the court below had refused to recall the said order on two occasions. On the prayer of the plaintiff, the court below subsequently accepted fresh examination-in-chief and further directed the plaintiff to file fresh examination-in-chief of witness Rajeev Tulsian. The said orders are not sustainable on the principle of *res judicata*. The principle of *res judicata* applies as between the past litigation and future litigation. The learned Trial Court has failed to appreciate that the application of plaintiff no. 2 has been rejected twice and the matter has attained finality as the same has not been challenged before any higher authority. The court below had or has no jurisdiction to accept the fresh examination-in-chief of any witness or permit any party to produce the witness if the witnesses have already been discharged. The impugned orders, as such are not sustainable and are fit to be quashed.

5. The learned counsel for the respondents on the other hand submits that the principle of *res judicata* is not applicable in the present case. The suit has been filed by two plaintiffs. Out of them, plaintiff no. 1 is adopted son of Vishwanath Prasad Choudhary. He has colluded with the defendant and so he is not interested in pursuing



the suit. The plaintiff no. 2 is a lady and she is fighting this case alone. The plaintiff no. 2 mostly resides at Delhi and she could not appear before the court below under compelling circumstance, in consequence of which, her evidence was closed. The court below while allowing the petition of the plaintiff, has observed that since the evidence of plaintiff has been expunged, it would not form part of record and so principle of *res judicata* does not apply.

6. In this regard, the learned counsel for the respondents-plaintiffs cited a ruling reported in (2010) 9 SCC 385 (Jai Singh vs. MCD) wherein the Hon'ble Apex Court at para-15 has discussed the principle governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India, The observations are as follows:-

“Undoubtedly the High Court, under this article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well-established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well-known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must



be within the well-recognised constraints. It can not be exercised like a “bull in a china shop”, to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice.”

7. The court below while allowing the petition of plaintiffs has imposed the cost of Rs.8,000/- for the alleged laches. The plaintiff has deposited the said amount before the court below and the petitioner by filing petition has prayed for time to cross-examine the witness. In such circumstance the petitioner is estopped from raising the said question before this Court. The court below by imposing heavy cost, has compensated the defendant and so no prejudice is caused to the defendant. If the plaintiff is not allowed to be examined herself in support of her case, the entire case would be demolished which will not be compensated in any manner. The learned counsel for the respondents prayed for dismissal of both the writ applications.

8. After going through the submission of both the parties, I find that examination-in-chief of plaintiff was filed before the court below on 11.02.2010 and the case was adjourned on several dates for cross-examination and lastly the evidence P.W. 1 was expunged on 23.05.2011. The petition for recalling the said witness was rejected on 11.04.2012. The examination-in-chief of another P.W.



2 was filed on 12.07.2011, but the same was not cross-examined and his evidence was also expunged. The prayer of plaintiff to recall the said order has been rejected and thereafter, the plaintiff filed fresh examination-in-chief and prayed to accept the same under section 151 of Code of Civil Procedure which was allowed by the impugned order. As per the case of plaintiff no. 2, she was residing at Delhi and the plaintiff no. 1 has colluded with the defendant and is not willing to proceed with the case. The entire case depends upon the evidence of plaintiff no. 2. In her petition, she has stated that she would not leave jurisdiction of court until her cross-examination by the other side is finally concluded. The court below exercising power under section 151 of Code of Civil Procedure has accepted the examination-in-chief subject to payment of cost of Rs.8,000/- to the contesting defendants which appears to be sufficient to compensate them for the harassment caused on account of non-appearance of P.W.2 for her cross-examination. The plaintiff as P.W. 2 participated and took time for cross-examination of plaintiff. The court below, in such circumstance, has not committed any jurisdictional error in accepting the examination-in-chief of plaintiff.

9. In view of above discussion, I find that the court below, as per impugned orders, has rightly allowed her petition accepting the examination-in-chief for her evidence. The impugned



orders do not suffer any illegally requiring any interference under inherent jurisdiction.

10. Both the writ applications are accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.04.2018
Transmission Date	

