

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3590 of 2014

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Rampati Singh Son Of Late Rambali Singh Alias Baliram Singh Resident Of
Village- Takiya Kasba, P.S.- Sasaram, Dist.- Rohtas

.... Petitioner

Versus

1. Mira Kuer Wife Of Late Laxman Singh
2. Prabhunath Singh
3. Dhananjay Singh Sons Of Late Laxman Singh
4. Indu Kumari
5. Nilam Kumari
6. Sandhya Kumari All Are Daughters Of Late Laxman Singh
7. Mostt. Paudhari Kuer Wife Of Late Laxman Singh
8. Sharda Devi Daughter Of Late Laxman Singh All Are Resident Of Village-
Yusuf Chak Takiya, P.O.+P.S.- Sasaram, Distt.- Rohtas

.... Respondents

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Appearance :

For the Petitioner : Mr. RAJANI KANT SINGH, Advocate
For the Respondents : Mr. Alok, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 12-04-2018

The petitioner is defendant in Title Suit No.135 of 1997 pending in the Court of Sub Judge-V, Rohtas at Sasaram. He has filed this application for setting aside the order dated 10.12.2013 whereby and whereunder the prayer of the petitioner to recall the order closing the evidence of witnesses was rejected and the case was fixed for argument.

2. Heard learned counsel for the petitioner as well as the respondents.

3. It appears that the respondents are heirs of one Laxman Singh who had filed the aforesaid suit against the petitioner for specific performance of contract on the basis of agreement dated



06.11.1995 with respect to land mentioned in schedule-I of the plaint. The defendants appeared and filed written statement. His evidence was closed and the case was fixed for argument as per impugned order dated 10.12.2013. The learned counsel for the petitioner submits that the defendants appeared and filed written statement on 19.07.1999. After framing of the suit, the plaintiffs examined their witnesses and their evidence was closed on 03.05.2000. The plaintiffs filed amendment petition on 06.06.2012 which was allowed. After closing the evidence of plaintiff, the defendants examined the witnesses and on account of non-production of witnesses his case was closed. If the defendants are not allowed to examine his witness, the defendants would be seriously prejudiced. The learned counsel for the respondents on the other hand opposed the submission. It has been submitted on behalf of the respondents that the defendants deliberately did not produce his evidence. His evidence was closed earlier also but on his petition, he was again given opportunity to examine the witness. The defendants did not produce witness for a period of about one decade and so the court below has rightly closed the evidence and fixed the case for argument.

4. On perusal of record, it appears that on 30.01.2012, the defendants filed a petition for time for producing witness. The case was fixed on 21.02.2012 and it was again adjourned for his evidence



as a last chance. On 14.03.2012 the defendant produced witnesses along with the statement on affidavit on which date the plaintiff was present. The defendant again filed Haziri on 04.04.2012 but on call, nobody appeared from either side and the case was adjourned to 27.04.2012. The plaintiff filed amendment petition on 06.02.2012 and on the following day, the defendant examined his witness Rampati Singh as DW-2 on 22.06.2012. This witness was cross-examined and the case was deferred to 09.07.2012 for further cross-examination. The case remained pending for cross-examination of DW-2 from 09.07.2012 to 08.04.2013 and, lastly, his evidence was closed. It appears that the petitioner's witness was partly cross-examined on 22.06.2012, 27.04.2012, 24.08.2012 and 14.09.2012 as the learned counsel for the plaintiff took time for cross-examination. The court work remained affected on 28.09.2012 on account of death of local Advocate and on 8.10.2012 and 04.12.2012, the Presiding Officer was on leave and so the cross-examination could not be completed. Thus I find that the case remained pending for evidence for long period for several reasons. The Hon'ble Apex Court in *Jai Singh vs. MCD* reported in (2010) 9 Supreme Court Cases 385 at para-15 has discussed the principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. The Apex Court has observed that:-

“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.”

5. In view of above discussions and for the ends of justice, the impugned order closing the evidence of defendants is set aside subject to payment of cost of Rs.3,000/- to the plaintiff with a direction to the court below to give opportunity to this petitioner to adduce evidence within a time frame to be fixed by the court below. This application is, accordingly, allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

