

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.554 of 2017

Meena Devi, wife of Rabindra Sharma, resident of Village- Sonediha, P.S.-
Konch, District- Gaya.

... .. Petitioner/s

Versus

1. Parikha Singh, son of Late Chandra Dip Singh, resident of Village- Sonediha, P.S.- Konch, District- Gaya.
2. Shyam Bihari Sharma, son of Late Ram Jatan Singh,
3. Ravi Kumar, son of Late Ram Jatan Singh, Both resident of Village- Bharaundha, P.S.- Guraru, District- Gaya.
4. Shyam Kishore Sharma, son of Late Rajal Singh,
5. Gongi Devi, Daughter of Late Rajal Singh,
6. Nilam Devi, Daughter of Late Rajal Singh, All resident of Village+P.S.- Konch, District- Gaya.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rajesh Kumar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 10-12-2018 Heard both sides.

The petitioner filed this civil miscellaneous petition against the order dated 23.01.2017 passed by 4th Additional District Judge, Gaya in Title Suit No.5 of 2000 by which learned 4th Additional District Judge rejected the petition of the petitioner for accepting his written statement and further to allow him to cross-examine the witnesses of the plaintiffs after recalling him.

Mr. Ramakant Sharma, learned senior counsel for the petitioner appearing on behalf of the petitioner submits that admittedly there is a gross laches and negligence on the part of



the petitioner that the petitioner did not file written statement even after her appearance but the vendors of the petitioner already died and if the petitioner is not allowed to contest the suit arising out of the probate case, the same would occasion in failure of justice. The petitioner is ready to deposit appropriate cost to the applicant/plaintiff of the probate case, on such, learned counsel appearing on behalf of the respondent No.1-plaintiff submits that order itself speaks that the petitioner was sitting on the fence and watching the proceeding of probate case since 03.08.2000 and order restraining the defendant from interfering into the peaceful possession was passed on 03.08.2000. The petitioner preferred Misc. Appeal No.434 of 2000 in this High Court and the order of the court below was set aside vide order dated 22.03.2007 with a direction to the trial court to dispose of the injunction petition after hearing both sides in accordance with law but thereafter the plaintiff did not press that application. It is submitted that issues were framed on 25.11.2008 and eight witnesses have already been examined but the petitioner who is a purchaser from the objector of the Will did not cross-examine the witness and now the suit is at the fag end of hearing of evidence.

Having considered the facts and submission of both



sides, I find that of course from the facts of the case, it is evident and apparent that the petitioner was sitting on the fence and keeping watch on the proceeding of probate case for more than eight years and the vendor of the petitioner has already died. If the petitioner is not allowed to contest the suit in absence of his vendor that would occasion in failure of justice. The petitioner is ready to suitably compensate the plaintiff. In this view of the fact, the order dated 23.01.2017 is set aside and the civil miscellaneous petition is allowed subject to the payment of cost of Rs.25,000/-(Rupees Twenty Five Thousand) which shall be paid to the plaintiff within one month from the date of receipt of this order. Learned 4th Additional District Judge, Gaya is directed to conclude the hearing of the suit within four months from the date of receipt of this order.

(Prabhat Kumar Jha, J)

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