

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.144 of 2016

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Ramkaran Seth son of Late Ramjagi Seth, resident of village - Odar, P.S. Sonhan,
District - Kaimur at present mohalla - Jakkhi Shaheed, P.O. + P.S.-Sasaram,
District – Rohtas. Petitioner/s

Versus

Shivji Prasad son of Late Basudeo Prasad, resident of mohalla - Nooranganj, P.O.
+ P.S. Sasaram, District – Rohtas. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siddharth Harsh, Adv.

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 12-09-2018

Petitioner before this Court is plaintiff in Title Suit No.576 of 2012 pending in the court of Sub-Judge-IX, Sasaram. He has filed this application for quashing the order dated 18.09.2015 whereby and whereunder his prayer to recall the order dated 05.05.2015 for re-examination of witness P.W.5 namely Dev Shankar Seth was rejected.

2. Heard learned counsels for the petitioner as well as the respondent and perused the record.

3. It appears that the petitioner examined five witnesses and on his failure to examine remaining witness, his evidence was closed.

4. The contention of the learned counsel for the petitioner is that this is a suit for specific performance of contract on the basis of an agreement. The case was pending for evidence of only witness Shivpujan Seth, who in spite of best effort, did not appear to depose on his behalf. The agreement in question is a very important document for deciding the suit. One of the witness namely Dev Shankar Seth was examined as P.W. 5, but



inadvertently he could not prove the said agreement deed. The petitioner wants to recall the said witness for proving the said deed of agreement.

5. The learned counsel for the respondent on the other hand submits that the petitioner in order to prolong the disposal of the suit, is in habit of filing frivolous petitions and so the court below has rightly rejected his prayer.

6. On going through the impugned order and document on record, I find that the petitioner wants to recall his witness namely Dev Shankar Seth for his re-examination for proving the deed of agreement and except that no other witness is to be examined.

7. Considering the submission of learned counsel for the petitioner and also for the ends of justice, the impugned order refusing to recall Dev Shankar Seth, who has already been examined as P.W. 5, is set aside and this writ application is allowed. The court below is directed to give an opportunity to the petitioner to re-examine the said witness.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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