

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15637 of 2010

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Sudista Mishra S/o Shri Ram Govind Mishir, resident of village - Bhitauli Pargana,
Choubar, P.O.- Kumhati, P.S.- Darauli, Distt.- Siwan

.... Petitioner/s

Versus

1. Prithvi Nath Pandey S/o Late Mahabit Pandey, resident of village Bhitauli,
P.O.- Kumhati, P.S.- Darauli, Paragana, Chaubar, Distt.- Siwan
2. Dadan Upadhyay S/o Balai Upadhyay, resident of village Bhitauli, P.O.-
Kumhati, P.S.- Darauli, Paragana Chaubar, Distt.- Siwan
3. Wakil Upadhyay S/o Balai Upadhyay, resident of village Bhitauli, P.O.-
Kumhati, P.S.- Darauli, Paragana Chaubar, Distt.- Siwan
4. Parshuram Yadav S/o Late Suba Yadav, resident of village Bhitauli, P.O.-
Kumhati, P.S.- Darauli, Paragana Chaubar, Distt.- Siwan
5. Ramjee Yadav S/o Late Suba Yadav, resident of village Bhitauli, P.O.-
Kumhati, P.S.- Darauli, Paragana Chaubar, Distt.- Siwan
6. Manan Yadav S/o Late Suba Yadav, resident of village Bhitauli, P.O.- Kumhati,
P.S.- Darauli, Paragana Chaubar, Distt.- Siwan
7. Badan Yadav S/o Late Suba Yadav, resident of village Bhitauli, P.O.- Kumhati,
P.S.- Darauli, Paragana Chaubar, Distt.- Siwan
8. Lallan Yadav S/o Late Suba Yadav, resident of village Bhitauli, P.O.- Kumhati,
P.S.- Darauli, Paragana Chaubar, Distt.- Siwan
9. Ramesh Choubey S/o Parashuram Choubey, resident of village Nepura, P.S.-
Darauli, P.O.- Nepura, Distt.- Siwan, At Present- resident of village Bhitauli,
P.O.- Khmhati, P.S.- Darauli, Distt.- Siwan
10. Moshmat Batason Widow Of Late Briksha Mishir, resident of village Bhitauli,
P.O.- Kumhati, Pargana Chaubar, P.S.- Darauli, Distt.- Siwan
11. Smt. Meera Devi W/o Bijendra Tiwary, D/o Late Lalji Mishir, resident of
village Vill.- Bhitauli Pargana Chaubar, P.O.- Kumhati, P.S.- Darauli, Distt.-
Siwan, At Present resident of village and P.O.- Kakauri Bari Rampur, P.S.-
Bhatni, Distt.- Deoria (U.P.)
12. Asha Kumari Minor D/o Late Laljee Mishir, resident of village Bharauli, P.S.-
Kumhati, P.S.- Bhatani, Distt.- Deoria (U.P.), at present resident of village
Bhitauli, Pargana Chaubar, P.O.- Kumhati, P.S.- Darauli, Distt.- Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kr.Dubey, Adv.
For the Respondent/s : M/s Chandra Kant, Navin Kumar and
D. Kr. Tiwari, Advs.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 29-10-2018



Petitioner before this Court is plaintiff of Title Suit No.79 of 2001 pending in the court of Sub-Judge-V, Siwan. He has filed this writ application for quashing the order dated 20.08.2010 whereby and whereunder the prayer of the defendant to adduce evidence was allowed.

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

3. It appears that the petitioner has filed the aforesaid suit for declaration of his title over the suit property and also for injunction restraining the defendants from changing the nature of the suit property. In course of trial, the evidence of defendants was closed on 18.12.2003. The defendants filed Civil Revision No. 59 of 2004 which was dismissed as withdrawn with a liberty to the defendants to move before the court below. The defendant examined D.W. 18 and his case was again closed. The defendant filed a petition to permit him to adduce further evidence which was again rejected, against which, the respondents filed Civil Revision No. 52 of 2005 before this Court which was allowed on 09.03.2005 with an observation to hear the case without any adjournment to the respondents. The case was again closed and the respondents filed a petition on 19.07.2010 to re-open the case for recording evidence of Gangadhar Ram. His prayer was allowed as per impugned order dated 20.08.2010 against which the



plaintiff has filed this writ application.

4. The learned counsel for the petitioner in the above background has submitted that on two occasions, the evidence of defendants was closed and so the court below ought to have rejected the petition of the respondents.

5. The learned counsel for the respondents on the other hand submitted that in order to establish the fraudulent act of the plaintiff, the evidence of Gangadhar Ram is essential. The plaintiff has filed family register alleged to be issued by Panchayat Secretary Gangadhar Ram, in which Savitri Kumari has been described as daughter of Briksha Mishir. The respondent filed an affidavit duly sworn by Panchayat Secretary Gangadhar Ram in which he has stated that during the relevant period he was not the Panchayat Secretary of concerned panchayat and further that the family register was not prepared by him. The respondents further want to prove the School Leaving Certificate allegedly issued by the Headmaster. In the said School Leaving Certificate, the father's name of Savitri Kumari has been described as Briksha Mishir. The respondents have alleged that no such record is available in the said school and so in order to establish the fraudulent character of these two documents, he wants to examine Gangadhar Ram and some other witnesses.

6. On going through the impugned order and the



documents on record, I find that the main dispute between the parties relates to parentage of Savitri @ Sarda who was mother-in-law of the vendor of respondent. The evidence of Panchayat Secretary in whose signature, the alleged family register has been prepared appears essential. In this regard, the learned counsel for the respondents cited ruling reported in a case of K. K. Velusamy vs. N. Palanisamy (2011) 11 SCC page 275 wherein the Hon'ble Apex Court has held that "the deletion of provision of Order 18 Rule 17-A CPC does not mean that no evidence can be received at all, after a party closes his evidence. It only means that the amended structure of the Code found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence. The amended provisions of the Code contemplate and expect a trial court to hear the arguments immediately after the completion of evidence and then proceed to judgment. Therefore, it was unnecessary to have an express provision for reopening the evidence to examine a fresh witness or for recalling any witness for further examination. But if there is a time gap between the completion of evidence and hearing of the arguments, for whatsoever reason, and if in that interregnum, a party comes across



some evidence which he could not lay his hands on earlier, or some evidence in regard to the conduct or action of the other party comes into existence, the court may in exercise of its inherent power under Section 151 of the Code, permit the production of such evidence if it is relevant and necessary in the interest of justice, subject to such terms as the court may deem fit to impose.”

7. In view of above discussions and the principle laid down by the Hon’ble Apex Court in the above case, I find that the learned court below by exercising inherent power in order to ascertain the genuineness of family register has rightly permitted the respondents to examine the said witness after re-opening the case. There appears no reason to interfere with the impugned order.

8. This application being devoid of merit is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	02/11/2018
Transmission Date	N/A

