

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12720 of 2014

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1. Rajendra Prasad
2. Surendra Prasad
3. Mahendra Prasad
4. Om Prakash @ Naga Prasad
All Son of Late Gupteshwar Sah
5. Raju Prasad
6. Dilip Prasad
7. Om Prakash @ Om Ji
All sons of Rajendra Prasad
All resident of Village Nokha, P.O. Nokha, P.S. Nokha, Distt. Rohtas at Sasaram

.... Petitioners

Versus

1. Brij Bihari Prasad Son of Late Damadi Sah
2. Vishal Kumar Son of Brij Bihari Prasad
All resident of village Nokha, P.O. Nokha, P.s. Nokha, Distt., Rohtas at Sasaram.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Jai Prakash Singh, Advocate
Mrs. Arti Kumari, Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 09-05-2018

This writ application has been filed for setting aside the order dated 02.04.2014 passed by learned Munsif II, Sasaram (Rohtas) in Title Suit No.20 of 2010 whereunder the prayer of the petitioner to recall the plaintiff's witnesses namely Vishal Kumar and Angad Pandey for their cross-examination was rejected and the defendant was directed to produce evidence.

2. Heard learned counsel for the petitioner. Nobody appeared on behalf of the respondents.



3. It appears that the respondents filed the aforesaid suit against the petitioner. After filing of written statement, the trial commenced and the plaintiff-respondent examined his witnesses. Out of them, witness Vishal Kumar and Angad Pandey were discharged after examination-in-chief as the learned counsel for the petitioner did not appear to cross-examine them. The petitioner filed two petitions for recalling the said witnesses which after hearing was rejected. The plaintiff's witness Vishal Kumar was discharged, as the petitioner-defendant in spite of adjournment given to him subject to payment of cost, did not appear to cross-examine.

4. It has been submitted that the petitioner had prayed to exonerate him from making payment of cost which was refused and the petitioner deposited the cost in nazarat. The petitioner filed petition explaining the reason that on the date of cross-examination, the petitioner was ill. In support of his contention a medical certificate was produced. The defendant was directed to deposit the cost as ordered earlier. From order dated 12.03.2014, it appears that the petitioner deposited an amount of Rs.250/- vide receipt no.913. The cross-examination of plaintiff's witnesses could not be done on account of engagement of his counsel in another court. A report was called for from the court below as regards the stage of trial. The court below has reported that the plaintiff has filed a petition for re-opening



the case for examining the witnesses and the matter is pending for hearing on the said petition.

5. Considering the stage of trial, and for the ends of justice, the order refusing to recall the plaintiff's witnesses for their cross-examination is set aside and this writ application is allowed. The court below is directed to give an opportunity to the petitioner to cross-examine the said witnesses within a time frame subject to payment of cost of Rs.2,000/- by the defendant to the plaintiff-respondent.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.05.2018
Transmission Date	

