

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10854 of 2012

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Puneshwari Devi @ Prameshwari Devi D/O Late Jugeshwar Mahto R/O Village -
Choti Pahari, P.O. + P.S.- Sohsarai, District - Nalanda

.... Petitioner/s

Versus

1. Vijay Kumar Son Of Late Jugeshwar Mahto R/O Village - Ashanagar, P.O. +
P.S.- Sohsarai, District - Nalanda
2. Hiriya Devi W/O Loknath Prasad , D/O Late Jugeshwar Mahto R/O Village -
Sahdih, P.O. + P.S.- Sohsarai, District - Nalanda
3. Premshila Devi W/O Kishori Prasad, D/O Late Jugeshwar Mahto R/O Village -
Badi Pahari, P.O. + P.S.- Sohsarai, District - Nalanda
4. Yashoda Devi Wife Of Late Jugeshwar Mahto R/O Village - Ashanagar, P.O. +
P.S.- Sohsarai, District - Nalanda
5. Biresh Kumar S/O Late Jugeshwar Mahto R/O Village - Ashanagar, P.O. +
P.S.- Sohsarai, District - Nalanda
6. Rajesh Kumar @ Naresh Kumar S/O Late Jugeshwar Mahto R/O Village -
Ashanagar, P.O. + P.S.- Sohsarai, District - Nalanda
7. Jaisri Devi W/O Bagwat Prasad D/O Late Jugeshwar Mahto R/O Village -
Sahadih, P.O. + P.S.- Sohsarai, District - Nalanda
8. Chandraprabha Devi Wife Of Jugeshwar Prasad, D/O Late Jugeshwar Matho
R/O Village - Sahadih Near Pani Tanki P.O. + P.S. Sohsarai, District - Nalanda

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.S.Dwivedi, Sr. Advocate
For the Respondent/s : Mr. Sanjeev Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 08-05-2018

This application has been filed for setting aside the order dated 16.04.2012 passed by Sub Judge-VII, Biharsharif, Nalanda whereby and whereunder the learned court below allowed the petition dated 12.01.2011 filed on behalf of plaintiff (respondent no.1) and deleted paragraph nos.7 to 17 of the examination-in-chief of DW-1 of defendant no.1A.



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

3. The respondent no.1 filed the aforesaid title suit for partition claiming 1/3rd share in the disputed property mentioned in the plaint. After issuance of summons, the defendants appeared and filed written statement. After framing of issues, the trial proceeded. During the pendency of the suit, the defendant nos.3 to 5 and 6 to 7 were added as party to the suit. After impleading them as party to the suit, the defendant nos.3 to 5 filed written statement. After the death of defendant no.1, Jugeshwar Mahto, his heirs were substituted as defendant no.1 to 1/B. After getting knowledge about the suit, they appeared and filed written statement which was accepted as per order dated 30.06.2010. The defendant no.1 has supported the case of defendant no.2. In course of evidence, the defendant filed affidavit of examination-in-chief on 22.12.2010 mentioning the documents which were filed by defendant nos.3 to 5 with a submission to mark the same as exhibits. The plaintiff respondent no.1 filed a petition on 12.01.2011 to expunge para nos.7 to 17 of said examination-in-chief which after hearing was allowed.

4. The counsel for the petitioner submits that the court below has exceeded its jurisdiction in expunging the said paragraphs from examination-in-chief. There is absolutely no provision to



expunge any portion of examination-in-chief of any party during the evidence. The admissibility of such evidence has to be considered at the time of evaluating the evidence of parties deciding the suit and so the impugned order expunging paragraph nos.7 to 17 is fit to be set aside. The learned counsel for the respondents on the other hand submitted that the petitioner has referred about some documents which were filed by defendant nos.3 to 5. These documents were filed at belated stage and so the court below had refused to accept the same. The defendants filed Civil Revision No.1934 of 2008 before this Court against the said order which after hearing was dismissed. Thereafter, the defendant nos.3 to 5 moved to Hon'ble Apex Court where also it was dismissed. The order refusing to accept those documents have become final and so the said document cannot be accepted in evidence.

5. On perusal of record, it appears that the documents referred to in the examination-in-chief were filed by other sets of defendants. The petitioner's witness DW-1 has categorically stated about those documents from paragraph nos.7 to 17 of the examination-in-chief. The admissibility and relevancy of those documents has to be considered at the time of evaluating the evidence. The court below while refusing to accept those documents has observed in order dated 21.06.2008 that it would cause great



prejudice to the plaintiff and the plaintiff will not get chance to rebut the said documents filed by the intervenor defendants. The court below refused to accept those documents only for the reason that it was filed at belated stage. The genuineness of those documents has not been challenged by the respondents. The court below has exceeded in jurisdiction of expunging the paragraph nos.7 to 17 of examination-in-chief at the stage of evidence as the matter of its admissibility is required to be seen at the time of deciding the suit.

6. In view of above discussions, the order expunging paragraph nos.7 to 17 of examination-in-chief of DW-1 is set aside and this application is accordingly allowed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	19.05.2018
Transmission Date	19.05.2018

