

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.163 of 2017

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1. Akhilanand Chaudhary, S/o Ayodhya Prasad, resident of Vill.- Jokaha,
P.S.- Bettiah Mufassil, District- West Champaran.

.... Appellant/s

Versus

1. Benedict Joseph Osta, Son of Late Joseph Alexander Osta, Resident of Mohalla- Christian Quarter, P.S. Bettiah Town, Dist.- West Champaran, at present resident of Mohalla- Kamalnath Nagar, P.S. Bettiah Town, Dist.- West Champaran.
2. Harendra Yadav, S/o Late Nathuni Yadav, resident of Mohalla- Chhawani, P.S.- Bettiah Town, Dist.- West Champaran.
3. Md. Haroon, S/o Late Sobrati Mian, resident of Village- Guruwalia, Beldar Tola, Bharpatia, P.O.- Chapatia, P.S.- Bettiah Mufassil, Dist.- West Champaran.
4. Robert Denial, S/o Late Edger Denial.
5. Robin Denial, S/o Late Edger Denial, Smt. Rachel Sahu Wife of Mannual Sahu, D/o Late Edger Denial.
6. Mrs. Anjeela Denial, D/ Late Edger Denial.
7. Mrs. Brijeeet Denial, D/ Late Edger Denial. All Resident of Mohalla- Naya Gaown, East Colony, P.S.- East Colony Jamalpur, Dist.- Munger.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sanjeev Kumar
For the Respondent/s : Mr. Surendra Kishore Thakur

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 18-08-2018 Heard both sides.

The petitioner filed this Civil Misc. petition against the order dated 07.12.2016 passed in Title Suit No. 66 of 1999 by which the learned Sub Judge-IX West Champaran, Bettiah allowed the petitioner to file written statement but at the same time prohibited the petitioner to cross examine the witnesses of the plaintiff and defendant no. 1.



The facts relevant for disposal of the case are that the plaintiff filed the suit for declaration of the sale deed executed by father of the defendant 3rd set in favour of defendant 2nd set is forged, fabricated, void and inoperative as the sale deed was executed without any consideration. The defendant no. 2 and 3 (defendant 2nd set) sold the land to defendant no. 1 (defendant 1st set) and consequently both the sale deeds to be declared void and inoperative. The plaintiff is the brother of the father of defendant 3rd set, who claimed that the father of defendant 3rd set was separate from him and the disputed land fell in his share. The petitioner is defendant no. 3 and petitioner and defendant no. 2 are said to have purchased the land from father of defendant 3rd set. Defendant no. 2 appeared earlier and filed written statement. Defendant no. 2 cross examined the witnesses of the plaintiff and defendant no. 1.

The learned counsel for the petitioner submits that the petitioner filed the petition to allow him to file written statement and contest the suit and petitioner was allowed to contest the suit by filing written statement but he was not allowed to cross examine the plaintiff witnesses and that will cause irreparable loss and injustice to his case.

Mr. Surendra Kishore Thakur, the learned counsel



for the plaintiff/respondent, submits that the suit is of the year 1999. The defendant no. 3/petitioner appeared in the suit only in the year 2016 when the plaintiff had already examined the witnesses. Even defendant no. 1 (defendant 1st set) and defendant no. 2 who purchased the land along with defendant no. 3 (defendant 2nd set) cross examined the witnesses and plaintiff and defendant no. 1 also examined their witnesses. The case of defendant no. 2 and 3 (defendant 2nd set) is similar and same and no new facts remained to be cross examined by defendant no. 3 as all the relevant facts have been cross examined by defendant no. 2 himself. Therefore, the order does not require any interference.

Having considered the submission of both sides, I find that certainly the case of defendant no. 2 and 3 are same as they are purchaser from the father of the defendant 3rd set. Defendant no. 2 appeared and filed written statement but defendant no. 3 could not appear as no notice is alleged to have been served upon him. The Court allowed the defendant no. 3 to appear and contest the suit by filing written statement but he was not allowed to examine the witnesses of the plaintiff. If the petitioner is not allowed to cross examine the witnesses of the plaintiff, in my view, injustice would be caused to him. In this view of the fact, I set aside the order dated 07.12.2016, passed in



Title Suit no. 66 of 1999 to the extent that petitioner should be allowed to cross examine the witness of the plaintiff on day do day basis subject to payment of cost of Rs. 20,000/- and the cross examination shall be done within two months from the date of receipt/production of a copy of this order and plaintiff shall ensure the attendance of his witnesses who are alive.

With this direction, this Civil Misc. petition is allowed.

(Prabhat Kumar Jha, J)

BKS/Rajan

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