

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1020 of 2017**

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Smt. Renu Devi wife of Shri Kusheshwar Prasad Singh @ Kailu Singh,
resident of Village- Rampur Nandapatti, P.S. Bahera, District Darbhanga.

... .. Petitioner/s

Versus

Ramawatar Singh son of Late Shobhit Singh, resident of Village- Rampur
Nandapatti, P.O. Antaur, P.S. Bahera, District Darbhanga.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Bhubneshwar Prasad
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 07-12-2018 Heard both sides.

The petitioner has filed this civil miscellaneous petition against the order dated 16.03.2017 passed by learned District Judge, Darbhanga in Probate Case No.25 of 2014 by which the petition of the applicant of the probate case for issuance of warrant for procuring the attesting witness under Order XVI Rule 10(2) and (3) C.P.C. has been rejected on the ground that it is duty of the petitioner to procure the witness.

From perusal of the order itself, it appears that summon was issued to the attesting witness but the process server reported that both the attesting witnesses were outside the village. The attesting witnesses did not attend the court.

Learned counsel for the respondent submits that one of the attesting witnesses namely, Rajendra Prasad Singh died



on 25.04.2018.

I find that if any person who is added as witness to the suit or in a petition of probate case and he does not appear even after issuance of summon by the Court, the Court is vested with the power to procure the attendance of such witness in accordance with law as prescribed under Order XVI Rule 10(2) C.P.C. but the learned District Judge without looking into the provisions committed jurisdictional error by rejecting the petition of the petitioner for issuance of warrant for procuring the attendance of the attesting witness in the probate case. Thus, I find that learned District Judge has committed jurisdictional error and accordingly, the order dated 16.03.2017 is set aside. This civil miscellaneous petition is allowed. The matter is remitted to the District Judge to pass order afresh in accordance with law on the petition of the petitioner.

(Prabhat Kumar Jha, J)

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