

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1481 of 2016

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Parmatma Singh son of Late RajKishor Singh, Resident of Village-Govindpur, Post Office-Puliyen, Police Station Buxar(M) and District-Buxar, At present Mohalla Nalband Toli, Buxar, Police Station Buxar (T) and DistrictBuxar.

.... Plaintiff-petitioner

Versus

1. Mostt. Malti Devi wife of Late RajKishor Singh
2. Vijay Kumar Singh, son of Late RajKishor Singh
3. Rahul Kumar Singh
4. Mohit Kumar Singh
5. Rohit Kumar Singh.

All (3 to 5) are minor son of Vijay Kumar Singh, All are resident of Village Govindpur, Post Office Puliyen, Police Station Buxar(M), District Buxar. At present Mohalla Nalband Toli, Post Office Buxar, Police Station Buxar, District Buxar.

.... Defendants-Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Kumar Roy
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

5 17-01-2018 Heard both sides.

The petitioner has filed this Civic Misc. petition for setting aside the order dated 13.09.2016 passed by Sub Judge VII, Buxar in Title Suit No.304 of 2011.

The brief facts giving rise to filing this Civil Misc. petition is that the plaintiff filed suit for setting aside the gift deed executed by his mother in favour of son of another brother of the petitioner-plaintiff. During the course of hearing of the suit, the defendant filed petition that defendant No.1, the mother be



examined by pleader Commissioner as a special witnesses under Order XVIII Rule 16 of the CPC. The petition was allowed and the defendant No.1, Malti Devi was examined by the commissioner but the plaintiff could not cross-examine her. Against the order allowing the defendant to be examined as DW1 as special witness was challenged by Atma Prasad by filing C.W.J.C. No.11164 of 2012 and the aforesaid writ petition was dismissed vide order dated 16.09.2014. The petitioner thereafter filed petition to allow him to cross-examine DW-1 even after payment of cost or on commission. The petitioner is ready to bear the cost but the learned Sub Judge rejected the petition of the petitioner on 13.9.2016. Being aggrieved by the aforesaid order, the petitioner preferred this Civil Misc. petition.

The learned counsel for the petitioner submits that if the petitioner is not allowed to cross-examine DW-1 the mother of the plaintiff who executed the deed of gift deed in favour of her grand son, the plaintiff would suffer irreparable loss and injustice be caused to the petitioner. The petitioner is ready to bear the cost of payment of commission, the petitioner may be allowed to cross-examine her.

On the other hand, the learned counsel for the respondents submitted that the petitioner had adopted delaying tactics. The



petitioner did not cross-examine the witnesses on earlier occasion and when the suit is posted for argument, a petition for cross-examination of D.W.1 has been filed which has rightly been rejected.

Having considered the submissions of both the sides, I find that if the petitioner is not allowed to cross-examine D.W.1, he would suffer irreparable loss and injustice is caused to the petitioner. On earlier occasion, this Court against order passed by learned Sub Judge allowed the defendant to examine DW1 as special witness, but the petitioner could not cross-examine the witnesses and, therefore, I find the learned Sub Judge has committed jurisdictional error by not allowing the petitioner to cross-examine D.W. even on payment of cost, therefore, I find that the order dated 13.09.2016 is illegal and not sustainable in the eye of law. Accordingly, the order dated 13.09.2016 is set aside and this Civil Misc. petition is allowed. The petitioner is allowed to cross-examine the witnesses within two months.

(Prabhat Kumar Jha, J)

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