

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.166 of 2019**

Fahmi Bari alias Syed Shah Saulat Bari @ S. Fahmi Bari Son of Syed Shah Abdul Bari resident of Mohalla- Maroofganj, Bari Mangil, Masjid Lane Nala Road, P.S. Kotwali and District- Gaya.

.....plaintiff-petitioner

Versus

1. Md. Jalaluddin Son of Late Ghulam Nabi resident of Mauza- Jhajha, P.S. Bodh Gaya, District- Gaya.
2. Md. Mobarak Ali Son of Abdul Majeed resident of Nai Sarak, Nawab Bahadur Road, Juggi-ka- Chouraha, Patna City, P.S.- Khajekalan and District- Patna, at present residing in Mohalla- Maroofganj, P.S. Kotwali and District- Gaya.

.....Defendants-Opposite parties

Appearance :

For the Appellant/s : Mr.Mohammed Abu Haidar
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 18-04-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India is directed against the order dated 19.12.2018 passed by the learned Sub-Judge-XIV, Gaya in Title Suit No. 06 of 2018 whereby he has rejected the application dated 31.10.2018 for recalling the order dated 28.09.2018 by which evidence of the plaintiff has been closed.

3. Learned counsel appearing for the petitioner submitted that the order impugned is bad in law as also on facts. The trial court erroneously closed the evidence of the plaintiff on 28.09.2018. When an application was filed for recall of the



order, the same was dismissed on the ground that the plaintiff had been given opportunity to adduce the evidence earlier also but deliberately he did not adduce the evidence in order to delay the trial and defeat the ends of justice. He contended that in order to do justice, it is essential that P.W.4 be recalled and subjected to cross-examination.

4. The facts of the case, in brief, are that the plaintiff-petitioner has filed Title Suit No. 06 of 2018 for declaration that the two alleged registered deeds of sale dated 09.09.2002 and 28.05.2002 are of no legal effect and binding upon the plaintiff and further for restraining the defendant from interfering with the peaceful possession of the plaintiff by passing an order of injunction or to maintain status quo till the disposal of the suit or during the pendency of the suit.

5. The defendants-opposite parties are contesting the suit by filing their written statement stating therein that the suit of the plaintiff is not maintainable and the plaintiff has got no cause of action.

6. It would be manifest from the perusal of the order impugned that the trial court had closed the evidence of the plaintiff on 28.09.2018 in the light of the conditional order dated 11.07.2018 whereby it had given opportunity to the plaintiff to



adduce evidence of P.W 4 with cost. The evidence of P.W. 4 was closed on 20.09.2017. Thereafter, twice opportunity was given to the plaintiff to adduce his evidence. However, neither P.W. 4 was produced nor any submission was made stating the reason for his non-examination. Under the circumstances, the court below vide order dated 28.09.2018 closed the plaintiff's case.

7. The order impugned dated 19.12.2018 has been passed by the trial court as it came to the conclusion that the plaintiff was deliberately trying to linger the disposal of the suit.

8. The order impugned is neither without jurisdiction nor perverse.

9. Hence, I see no reason to interfere with the order impugned in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

10. The application is dismissed.

(Ashwani Kumar Singh, J)

pradeep/-

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

