

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.509 of 2019

Dinesh Sharma, aged about 52 years Son of Niranjan Lal Sharma Resident of Mohalla Laheri Tola, Kobi Khet, P.S. Tatarpur, Dist. Bhagalpur at present residing at 108/B, 5th Main Road, 1st Cross, India Oil Petrol Bunk, KEB Layout, Sanjay Nagar, Bangalore North R.M.V. Extension-II Stage Bangalore, Karnataka-560094

... .. Defendant no.1-Petitioner

Versus

1. Rajesh Sharma Son of Niranjan Sharma Resident of Mohalla Laheri Tola, Kobi Khet, P.S. Tatarpur, Dist. Bhagalpur.
... .. Plaintiff-Respondent
2. Most. Pushpa Devi Sharma Widow of Niranjan Sharma Resident of Mohalla Laheri Tola, Kobi Khet, P.S. Tatarpur, Dist. Bhagalpur.

... .. Defendant no.2-Respondent

Appearance :

For the Appellant/s	:	Mr. Ray Saurabh Nath, Adv.
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 08-08-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 27.10.2018 passed by the learned Sub-Judge-XIV, Bhagalpur in Title Suit No. 395 of 2011 whereby he has allowed the petition dated 29.06.2018 filed on behalf of the defendant no.2 under Order XVIII, Rule 16 of the Code of Civil Procedure (for short 'CPC').
3. The petitioner is the defendant no.1 in the court below.



4. Learned counsel for the petitioner submitted that the trial court failed to appreciate that there was no sufficient cause for examination of respondent no.2 as a witness in the petition dated 29.06.2018 as per Order XVIII, Rule 16 of the CPC. The petition filed by the respondent no.2 for her examination as a witness was not maintainable. No sufficient cause for taking her examination as a witness has been shown in the pleading of the petitioner. There is also no reason assigned by the court while allowing the application. There is nothing to show that he is about to leave the country. He has contended that the order impugned passed by the trial court is perverse and without jurisdiction.

5. On perusal of the materials available on record, I find that the respondent no.1 had filed Title Suit No. 395 of 2011 for partition of the suit property against his brother Dinesh Sharma. Respondent no.2 Most. Pushpa Devi Sharma is the mother of both the respondent no.1 and the petitioner.

5. In the suit, both the respondents appeared and filed their respective written statements. After four witnesses on behalf of the plaintiff-respondent no.1 were examined, the respondent no.2 filed a petition on 29.06.2018 under Order XVIII, Rule 16 of the CPC for her examination as a special witness considering that her life is very short since she has undergone operation at All India



Institute of Medical Sciences, New Delhi on 25.05.2016 after angiography at Kolkata hospital.

6. The petitioner filed reply to the aforesaid petition and submitted that the respondent no.2 is physically and mentally fit and the respondent no.1 is delaying the disposal of the suit in collusion with the respondent no.2.

7. After hearing the parties, the trial court vide impugned order dated 27.10.2018 allowed the petition dated 29.06.2018 filed on behalf of the respondent no.2 and she was directed to remain present before the court on 22.11.2018 for her evidence in the suit.

8. Order XVIII, Rule 16(1) of the CPC provides that where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner provided under Order XVIII, Rule 16(1) of the CPC.

9. Thus, it would be evident that the power conferred under Order XVIII, Rule 16(1) of the CPC giving jurisdiction to the court to take evidence of the witness at any time after the institution of the suit is discretionary in nature. However, the



discretion has to be exercised by the court judiciously. The provisions prescribed under Order XVIII, Rule 16(1) of the CPC stipulates two circumstances under which the court may take the evidence at any time after institution of the suit. The first being a situation where the witness is allowed to leave the jurisdiction of the Court and the second being any other sufficient cause shown to the satisfaction of the Court.

10. It is true that in the instant case there is no pleading on behalf of the respondent no.2 that she is about to leave the jurisdiction of the court, but specific plea has been taken by the respondent no.2 in her application filed under Order XVIII, Rule 16(1) of the CPC that she is an old lady and is suffering from heart ailment. She has also pleaded that she was operated at All India Institute of Medical Sciences, New Delhi on 25.05.2016 after angiography at Kolkata hospital. She has stated in her application that her life is very short and, thus, she may be examined in the suit as a special witness. The petitioner had filed his rejoinder before the court below to the aforesaid petition. In the rejoinder, though it is stated that the respondent no.2 is physically and mentally fit, the facts that she had undergone angiography at Kolkata hospital and was operated upon in All India Institute of Medical Sciences, New Delhi were not disputed. The petitioner



himself has disclosed his age to be 52 years. The respondent no.2 is his mother and she must be sufficiently old.

11. Having regard to the facts and circumstances of the case, if the trial court was satisfied about the ailment of the respondent no.2 and her old age and allowed the application filed under Order XVIII, Rule 16 of the CPC, I am of the opinion that the same is neither without jurisdiction nor perverse.

12. In that view of the matter, I am not inclined to interfere with the order impugned in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	13.08.2019
Transmission Date	

