

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.325 of 2019**

Nunu Pathak @ Manikant Kumar aged about 31 years (Male) Son of Kshmi Pathak @ Lakshmikant, resident of Village- Bathna Mahodaf, P.O.-Sondho, Police Station-Goloul, District-Vaishali

... .. Petitioner

Versus

1. Kamini Devi wife of Late Arun Kumar Jha, Daughter of Brydeo Tiwary, Resident of Village-Maniknat Pakari, Police Station-Lalganj, District-Vaishai
2. Meera Devi @ Chuni Devi, wife of Suresh Pathak, Daughter of Brij Dev Tiwary, resident of Village- Shirkohia, P.O.-P.S.-Jaitpur, District-Muzaffarpur
3. Punam Dubey wife of Ranjeet Dubey, Daughter of Shree LakshmiKant Pathak, Resident of Village-Saidpur Ganesh, Police Station-Bidupur, District-Vaishali
4. Anita Tiwary, Wife of Ranjeet Tiwary, Daughter of Shree Lakshmi Kant Pathak, Resident of Village-Post Office-Sadha, Police Station-Motipur, District-Muzaffarpur

... .. Respondents

Appearance :

For the Petitioner : Mr.Dhananjay Kumar Tiwary, Advocate
For the Respondent/s : Mr.

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

Date : 10-05-2019

Heard learned counsel for the petitioner and perused the materials available on record.



2. By the present application preferred under Article 227 of the Constitution of India, the petitioner, who was plaintiff in the suit, has challenged the order dated 19.01.2019 passed by learned Sub-Judge-XI, Hajipur in Title Suit No. 383 of 2010 whereby he has rejected the petition dated 10.12.2018 filed by the plaintiff for recall of the order dated 18.04.2017.

3. Learned counsel appearing for the petitioner submitted that the order impugned has been passed by the trial court without considering the fact that the evidence of the plaintiff was closed on 18.04.2017 without his examination. He pleaded that if the plaintiff would not be allowed to adduce evidence, a just and proper decision cannot be expected and he shall have to suffer irreparable loss and injury. He argued that the court has failed to consider necessity of the evidence of the sole plaintiff particularly when the case relates to partition suit.

4. The short facts of the case are that the petitioner filed Title Suit No. 383 of 2010 for one-third share in Schedule-1 property against respondents. The respondents appeared in the suit and filed their written statement and on the basis of pleading of the parties, issues were framed on 06.08.2014. Thereafter, the case proceeded for the plaintiff's evidence but the plaintiff could examine only two witnesses till 18.04.2017 in spite



of several adjournments. Under the circumstances, the trial court closed the evidence of the plaintiff vide order dated 18.04.2017 and the respondents, who are defendants in the suit, were asked to adduce evidence. After the defendants adduced their evidence, the defence evidence was also closed on 09.10.2018. Thereafter, the case proceeded for final argument. On 29.11.2018, the plaintiff sought for an opportunity to argue the case but immediately thereafter on 10.12.2018 he filed an application seeking recall of the order dated 18.04.2017. Having considered the entire facts and circumstances of the case, the trial court rejected the application filed by the petitioner vide impugned order dated 19.01.2019.

5. Regard being had to the manner in which the petitioner conducted his case before the trial court, it would be evident that he is trying to unnecessarily delay the disposal of the suit. He was afforded sufficient opportunity by the trial court for leading evidence. In almost three years, he could produce only two witnesses. Moreover, he raised no objection when the evidence of the plaintiff was closed. He also raised no objection till the defence evidence was closed and the case was fixed for argument. At such a belated stage, he filed an application for recalling an order, which was passed way back on 18.04.2017. He filed another



application on 10.12.2018. He was fully conversant with the ongoing proceeding of the case.

6. Considering the aforesaid facts, if the court below rejected the application of the petitioner, no illegality can be found with the order impugned. The court cannot be a mute spectator. It has to remain always vigilant. It has a duty not to allow the parties to prolong a litigation at its own whims and fancies. Almost three years time granted to the plaintiff for adducing evidence was more than enough. Hence, the trial court rightly closed the plaintiff's case vide order dated 09.10.2018. The subsequent application dated 10.12.2018 after the defence witnesses were examined was not bona fide.

7. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.05.2019
Transmission Date	NA

