

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5304 of 2019

Shama Praween (Female), aged about 29 years, wife of Md. Taj Resident of Village- Pithariya Khurd, Reorha, P.O. and Police Station- Jalley, District Darbhanga.

... .. Petitioner

Versus

1. Hasiba Khatoon (Female), wife of Mumtaj Ahmad resident of Village, P.O., P.S. and Anchal- Jalley, District- Darbhanga.
2. Anita Devi (Female), wife of Suresh Sah resident of Village, P.O. and P.S.- Jalley, District- Darbhanga.
3. Lalita Devi (Female), wife of Devendra Ram resident of Village- Khesar, P.O.- Jogiara, P.S.- Jalley, District- Darbhanga.
4. Shiv Kumari Devi (Female), wife of Maheshwar Prasad resident of Village- Khesar, P.O.- Jogiara, P.S.- Jalley, District- Darbhanga.
5. Saraswati Devi (Female), wife of Govind Sah resident of Village, P.O. and P.S.- Jalley, District- Darbhanga.
6. Amrit Devi (Female), wife of Ramjach Mahto resident of Village Manamdeo, P.O.- Reodha, P.S.- Jalley, District- Darbhanga.
7. Kanta Singh (Female), wife of Sanjay Singh resident of Village- Pithariya Kala, P.O. Jogiara, P.S.- Jalley, District- Darbhanga.
8. Kanti Devi (Female), wife of Rambali Roy resident of Village Harauli, P.O.- Reodha, P.S.- Jalley, District- Darbhanga.
9. Kiran Devi (Female), wife of Shankar Sah resident of Village- Khesar, P.O.- Jogiara, P.S.- Jalley, District- Darbhanga.
10. Kiran Devi (Female), wife of Nageshwar Sah resident of Village- Khesar, P.O.- Jogiara, P.S.- Jalley, District- Darbhanga.
11. Nirmala Devi (Female), wife of Ajay Kumar Mahto resident of Village- Manamdeo, P.O.- Reodha, P.S.- Jalley, District- Darbhanga.
12. Mamta Kumari (Female), wife of Manoj Kumar Rout resident of Village- Manamkhedu, P.O.- Chandauna, P.S.- Jalley, District- Darbhanga.
13. Rajbati Devi (Female), wife of Pyare Bhagat resident of Village- Manamkhedu, P.O.- Chandauna, P.S.- Jalley, District- Darbhanga.

... .. **Opp. 2nd Party/Respondent 2nd Party**

14. The State of Bihar through the District Election Officer-cum- District Magistrate Darbhanga.
15. The State Election Commissioner, State Election Commission, Bihar, Patna.
16. Block Election Officer-cum- Returning Officer Jalley, District- Darbhanga.

... .. **Opp. 3rd Party/Respondent 3rd Party.**

Appearance :

For the Petitioner/s	:	Mr.Manish Kumar No2
For the State	:	Mr.Rajesh Kumar A.C. to G.P.3
For the S.E.C.	:	Mr. Amit Shrivastava, Advocate



CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2. 23-04-2019 Petitioner in this case is seeking to challenge the order dated 23.01.2019 passed by the learned Additional Munsif – IV, Darbhanga in Election Case No. 03/2016 by which the petition filed by the petitioner on 26.03.2018 has not been accepted and the petitioner has been directed to adduce her witnesses which should not be more than six in number restricting the total number of her witnesses at 12. Petitioner has also prayed for staying the further proceeding in the Election Case.

It appears that the Election Petition challenges the Election of the present petitioner who was declared elected by a margin of 16 votes by the Returning Officer. The allegation is that it was done by manipulating in the counting chart.

It appears that the petitioner while contesting the Election Petition has submitted a list of 162 witnesses, who, according to the petitioner, are necessarily required to be examined. They are the polling agents at the polling booths, polling agents at the counting tables, 17 ward candidates, 3 Zila Parishad candidates and rest are the official witnesses. The list of 162 witnesses filed by the petitioner on 26.03.2019 was opposed by and on behalf of the election petitioner who filed an objection submitting therein that the huge list of witnesses has



been deliberately and intentionally filed with an intention to frustrate the spirit of law and to delay the procedure. It was submitted that if all the 162 witnesses are allowed to be examined then the tenure of Mukhiya will be lapsed and the present suit will become meaningless.

After considering the submissions of the parties learned Additional Munsif – IV, Darbhanga took a view that it is the duty of the court to control the proceeding and the opposite party who was the winning candidate and in capacity to adduce number of witnesses, if interested in causing the delay in a suit, the court cannot act like a mute spectator. Learned Additional Munsif has also referred Section 134 of the Evidence Act and in my opinion rightly so that it does not require any particular number of witnesses to prove a certain fact, so by limiting the number of witnesses, no prejudice will be caused to the opposite party. The opposite party no. 1 – petitioner has already adduced six witnesses in the court below, taking note of the evidences as also the judgment of the Hon'ble High Court of Jammu & Kashmir in the case of **Yashpal Sawhney vs. M/s Gandotra Traders and Others** reported in **AIR 1995 J & K page 32**, the learned Munsif has directed the opposite party no.1 (the petitioner) to adduce her witnesses but that should not be six in



number. It means the opposite party no. 1 has been permitted to restrict her number of witnesses at twelve (12).

In course of hearing learned counsel for the petitioner had only submission that it is the right of the petitioner to adduce as many number of witnesses as may be advised to the petitioner to prove a fact and no restriction may be imposed upon the petitioner. Learned counsel has also relied upon a judgment in the case of **Jeswunt Sing-Jee Ubbay Sing-Jee and Chatur Sing-Jee Deep Sing-Jee vs. Jet Sing-Jee Ubbay Singh-Jee** reported in **Moore's Indian Appeals Vol.II (1937-1841)** by **P. Hari Rao** to submit that in the said case the court had taken a view that it was unnecessary to examine more than 14 of the 42 remaining witnesses, 28 being to prove what had been already gone through by the 16 first witnesses. The Sadar Court had also affirmed the decree passed by the Zila Judge but when the matter went in appeal to her Majesty in Council, Lord Brougham held as under: -

“On the part of their Lordships, expressed great doubt whether, after the refusal by the Zillah Court of Broach to permit the examination of twenty-eight witnesses tendered by the present appellants and the refusal of the Sudder Court, who possessed the authority to remedy the error of the Zillah Court by calling them, the judicial Committee could come to any decision on the merits: and after hearing the



Respondent's counsel on that point, their Lordships determined to advise Her Majesty to remit the cause to the Sudder Dewanny Adawlut; being of opinion that the rejection of the evidence upon the supposition that it would go only to prove the same facts deposed to by the sixteen witnesses previously examined, viz., the spurious birth and supposititious character of the Plaintiff, the present Respondent, which facts, if proved, would have put an end to the case, was wholly irregular and detrimental to justice, and that the decision of the Judge upon the personal resemblance of the Plaintiff to his deceased father could not be received or acted on by a court of Appeal : they therefore resolved to remit the cause back to India, and advised the following order : -

“That the said cause be, and the same is hereby remitted back to the said Court of Sudder Dewanny Adawlut, as is therein set forth and recommended, whereof the Judges of the said Court of Sudder Dewanny Adawlut at Surat, for the time being, and all other persons whom it may concern, are to take notice and govern themselves accordingly.”

After hearing learned counsel for the petitioner and upon perusal of the records as also the judgment cited at the bar this court finds that the appellants in the said case had filed separate answers to the plaint and had set up a case among other things that the plaintiff Jet Sing-Jee was not the son of the deceased Rana Obby Sing-Jee but a spurious and supposititious child, the offspring of a slave, and setting up a deed of adoption, alleged to have been made by the late Rana in favour of the



defendant. The other defendant had filed a separate answer to the plaint disclaiming any interest in the subject of the suit, other than the maintenance due to her as widow of the deceased. Further in the said case the defendants when summoned 58 witnesses in support of their case, the same was not opposed and no plea was taken as has been taken in the present case. In the facts of the present case, if such large number of witnesses are allowed to be examined, the very tenure of the Mukhiya will come to an end which will be frustrating the cause of action.

In the opinion of this court the case cited at the bar is totally different on facts and circumstances. In the present case the court is satisfied that the order dated 23.01.2019 passed by learned Additional Munsif-IV in Election Case No. 03/2016 contains good reasons which require no interference.

The application is, thus, dismissed.

(Rajeev Ranjan Prasad, J)

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