

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.410 of 2019

Kamla Singh S/o Late Dwarika Singh R/o Village-Sonpur Aadam, Circle-Kasmar, P.O. and P.S.-Sonepur, District-Saran

... .. Petitioner/Plaintiff

Versus

Gajendra Narayan Singh S/o Late Sitaram Singh R/o Village-Sonepur Aadam, P.O. and P.S.-Sonepur, District-Saran

... .. Respondent/Defendant

Appearance :

For the Appellant/s : Mr.Rakesh Kumar Soni
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 16-05-2019

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 02.01.2019 passed by the learned Munsif, Sonepur in Title Suit No. 57 of 2005 whereby he has rejected the prayer of the petitioner to recall the order dated 12.09.2018. By the said order dated 12.09.2018, the learned Munsif has closed the evidence of the plaintiff.

3. Learned counsel appearing for the petitioner submitted that since the petitioner was suffering from serious ailments and had undergone by-pass surgery and was advised bed rest for three months by the doctor treating him, the court below ought to have allowed the application of the petitioner dated 26.09.2018 filed for recall of the order dated 12.09.2018 whereby the evidence of the plaintiff was closed.



4. Having considered the submission made by the learned counsel for the petitioner and perused the order impugned, I find that the plaintiff had filed the title suit in the year 2005. The issues were framed on 05.05.2009. After framing of the issues, the plaintiff did not examine any witness in spite of the direction given by the court between 05.05.2009 and 17.07.2013. On 18.07.2013 the plaintiff got himself examined as the sole witness. He was cross-examined on 16.12.2013 and since then no witness was examined for several years despite repeated adjournments granted by the court. Ultimately, on 12.09.2018, the court closed the evidence of the plaintiff.

5. After the plaintiff's evidence was closed, an application was filed on 26.09.2018 for recall of the order dated 12.09.2018, which has been rejected vide impugned order dated 02.01.2019. While passing the order impugned, the learned Munsif has observed that there is no justifiable ground to recall the order dated 12.09.2018 and the conduct of the plaintiff shows that somehow or the other he wants to keep the suit pending for an indefinite period.

6. Having regard to the manner in which the plaintiff has conducted the suit in the court below, I am also of the opinion that the court has rightly rejected the petition filed by the petitioner



for recall of the order dated 12.09.2018. No party has got a right to drag a case in the court of law for an indefinite period. The petitioner has taken a plea that he had undergone by-pass surgery and was advised bed rest by the doctor for three months. The said plea cannot justify non-examination of any witness between 05.05.2009 and 17.07.2013. The same can also not justify the non-examination of any witness after the plaintiff himself was examined on 18.07.2013 for the next more than five years till 12.09.2018, the date on which the learned Munsif had closed the evidence of the plaintiff. Apparently, sufficient opportunities were granted to the plaintiff to adduce evidence. He had pursued the proceedings of the suit in the most casual manner. His conduct in pursuing the matter before the court of Munsif disentitled him from any more laxity by the court.

7. The application is devoid of any merit. It is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	18.05.2019
Transmission Date	

