

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1521 of 2017**

1. Uma Shankar Rai,
 2. Gauri Shankar Rai,
- Both sons of Late Dukhit Rai, Resident of Village- Nawanagar, Police Station- Sahebganj, District- Muzaffarpur.

... .. Appellant/s

Versus

Rajdeo Rai son of Late Mahendra Rai, Resident of Village- Nawanagar, Police Station- Sahebganj, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Najeeb Ahmad, Advocate Mr. Ram Pravesh Nath Tiwari, Advocate
For the Respondent/s	:	Mr. Kumar Kaushik, Advocate

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

Date : 03-01-2019

By way of the present application under Article 227 of the Constitution of India, the petitioners have prayed to quash the order dated 26.05.2017 passed by the learned Sub-Judge-XI, Muzaffarpur in Partition Suit Case No. 202 of 2013 whereby he has directed the defendants petitioners to adduce evidence first.

2. Learned counsel for the petitioners submitted that on service of summons, the defendants-petitioners appeared and contested the suit by filing written statements. The court below after completion of pleadings framed issues and, thereafter, the hearing commenced. In the meantime, the plaintiff filed a petition dated 03.12.2016 before the court below praying therein that defendants be directed to lead their evidence first. In response to



the petition filed by the plaintiff, defendants filed their rejoinder on 10.03.2017 opposing the prayer on various grounds including the ground that suit filed by the plaintiff and the case as made out in the plaint is not of partition rather partition is claimed in the garb of claiming title and recovery of possession and as such it is for the plaintiff to adduce his evidence first. However, the court below after hearing the parties directed the defendants to lead evidence first by the impugned order, as contained in Annexure-1 without assigning any reason. He contended that the order impugned is bad simply for the reason that neither the pleadings of the parties have been discussed by the court below nor any reason has been assigned for directing the defendants to lead evidence first.

3. On the other hand, though learned counsel for plaintiff-respondent tried to justify the order passed by the court below, on query as to whether any reason has been assigned for directing defendants to lead evidence first, he conceded that no reason has been assigned by the court below for directing the defendants to lead evidence first.

4. In my considered opinion, if a prayer is made by a party, which is contested by the other party, the court while passing an order is required to assign reason for allowing or rejecting the claim. In absence of any reason, it cannot be said



what weighed in the mind of the court for directing the defendants respondents to lead evidence first.

5. In that view of the matter, the impugned order passed by the court below cannot be sustained. Accordingly, the impugned order dated 26.05.2017 passed by the learned Sub-Judge-XI, Muzaffarpur in Partition Suit Case No. 202 of 2013 is set aside. The court below is directed to hear the parties afresh and pass appropriate orders in accordance with law.

6. The application stands allowed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.01.2019
Transmission Date	

