IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.219 of 2019

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1. Sri Sanjeevan Prasad S/o- Late Laldhari Prasad
2. Vikash Kumar
3. Satish Kumar

Both minors under the guardianship of their father & well wisher Sanjeevan Prasad

All residents of Village- Ahiyapur, P.S.- Bikram, Dist- Patna

... ... Plaintiffs-petitioners

Versus

1. Smt. Rukmani Devi W/o- Late Ramanuj Prasad @ Ramanuj Singh
2. Sri Bijendra Kumar
3. Shailendra Kumar (Minor)
4. Reena Devi W/o- Satish Kumar
5. Anita Kumari (Minor)
6. Sunita Kumari (Minor)

All 2 to 6 sons and daughters of Late Ramanuj Prasad and minor under the guardianship of their mother & well wisher Smt. Rukmani Devi

All residents of village- Ahiyapur, P.S.- Bikram, Dist- Patna, Present R/O- Mohalla- Lekha Nagar, P.O-Khagaul, P.S. Danapur, Patna

7. Surya Mani Devi W/o- Bhola Verma R/o- Village- Govindpur, P.O- Datiyava, P.S.- Bikram, Dist- Patna
8. Uma Devi wife of Dinesh Kumar Sinha R/o- Village- Chotki Tangraila, P.o- Amarpura, P.S.- Naubatpur, Dist- Patna
9. Kalawati Devi W/o- Om Prakash Verma, R/O- Village- Sakri, P.O.-Sakri Chanki, P.S.- and District- Arwal

... ...Defendants- Respondent/s

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Appearance :

For the Appellant/s : Mr.Neeraj Kumar, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date : 12-04-2019

This application under Article 227 of the Constitution of India has been filed by the plaintiffs-petitioners challenging the order dated 04.09.2018 passed by the learned Sub Judge, Paliganj, Patna in Title Suit No. 173 of 2007

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whereby he has rejected the petition dated 31.08.2018 filed for recall of the defence witness no.2, Rukmani Devi for her further cross-examination.

2. Leaned counsel for the petitioners submitted that the trial court has passed the impugned order on the basis of conjecture and surmises. The same is against the weight of evidence on record. It has failed to appreciate that further cross-examination of defendant no.2 is a must because certain questions could not be asked by the plaintiff at time of cross-examination due to non-availability of document deposited in the bank.

3. Having heard learned counsel for the petitioners and perused the record, I find that the plaintiffs-petitioners filed Title Partition Suit No. 173 of 2007 for partition of joint family properties. The defendants appeared and filed their written statement denying the claim of the plaintiffs. They pleaded that the suit as framed is not maintainable and no cause of action has arisen for filing the suit. They further pleaded that the plaintiffs-petitioners in the garb of simple suit for partition want declaration of title and recovery of possession over the gifted property of one Ramanuj Prasad and also want declaration of title and recovery of possession over the self

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acquired property of defendant no.2, Smt. Rukmani Devi. They denied unity of title and possession between the parties to the suit as partition had already taken place between the plaintiffs and the defendants in the year 2003. In course of trial, the defendant no.2, Rukmani Devi was cross-examined on 11.07.2017 and her further cross-examination was completed on 17.08.2017. After completion of cross-examination, she was discharged. Subsequently, an application under Section 151 of the Code of Civil Procedure (for short 'C.P.C.') was filed by the plaintiffs-petitioners for recalling defendant no.2, Rukmani Devi for further cross-examination on 31.08.2018. The said application has been brought on record as Annexure-2 to the present application. On perusal of the same, I find that save and except a vague statement that on certain points the defendant no.2 could not be cross-examined earlier, there is nothing stated about the questions to be asked from Rukmani Devi in the application filed before the trial court. Having heard the parties, the trial court, vide impugned order dated 04.09.2018, rejected the prayer of the plaintiffs-petitioners to recall D.W.2, Rukmani Devi for further cross-examination, vide impugned order dated 04.09.2018.

4. Being aggrieved by the aforesaid impugned

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order dated 04.09.2018, the instant application has been filed before this Court.

5. The power to recall any witness by the court is provided under Order 18 Rule 17 of the C.P.C. which reads as under:-

> "**17. Court may recall and examine witness.-** The Court may at any stage of a suit recall any witness who has been examined and may (subject to the law of evidence for the time being in force) put such questions to him as the Court thinks fit.

6. From a reading of aforesaid provision, it would be evident that the power of recalling the witness by the court is discretionary. Such an application for recall of the witness under this rule cannot be allowed on the vague statement of omission to put some important questions. The court can either suo motu or at the instance of a party recall a witness in appropriate case. However, the power is intended to be used sparingly and only for the purposes of clarifying ambiguities and not for filling up lacunae in the case of a party.

7. In the instant case, the trial court has clearly held that Rukmani Devi has been fully cross-examined on all points. It has recorded that the plaintiff has not mentioned the questions to be put to the said witness nor the points on which

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re-cross-examination has been sought for and only a bald statement has been made that certain points have been left to be asked to the witness. Under the circumstances, if the court below has rejected the application vide impugned order dated 04.09.2018, no error can be found with the same.

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

(Ashwani Kumar Singh, J)

Md. S/SKSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2019
Transmission Date	

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