

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1575 of 2016**

Dharam Singh @ Gautam Singh son of Shri Hira Singh, resident of Mohalla-Khuskibagh, Police Station-Sadar, District- Purnia.

... .. Defendant/petitioner.

Versus

1. Shri Rabindra Prasad Sah son of Shri Bilat Prasad Sah.

2. Smt. Asha Devi wife of Shri Rabindra Prasad Sah.

Both resident of Gulabbagh, Police Station- Sadar, District- Purnia.

... .. Respondents

Appearance :

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

For the Respondent/s : Mr.Gyanand Roy, Advocate

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

Date : 08-01-2019

Heard learned counsel for the petitioner and learned counsel for the State.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 21.10.2016 passed by the learned Sub-Judge-VI, Purnia in Title Suit No. 190 of 2005 whereby the petition filed by the defendant-petitioner on 27.06.2016 under Order 8 Rule 1A(3) of the Code of Civil Procedure (for short 'CPC') has been rejected.

3. Learned counsel appearing for the petitioner submitted that in Title Suit No. 190 of 2005, record of the case had been misplaced in the office of Sub-judge-V, Purnia. Thereafter, the record was reconstructed by the order dated 29.04.2008 passed the learned District Judge, Purnia. After the record was



reconstructed, the defendant-petitioner filed a petition on 27.06.2016 stating therein that all the records misplaced in the office of Sub-Judge-V, Purnia were not in his possession earlier. However, he had collected the papers subsequently and the same should be taken on record. The said petition of the defendant-petitioner was erroneously rejected by the court below. He contended that in the interest of justice, the court below ought to have granted leave to take those documents filed by the petitioner in evidence.

4. *Per contra*, learned counsel appearing for the respondents submitted that the petition of the defendant-petitioner was nothing but an effort to delay the disposal of the suit. He contended that the court below has rightly refused to grant leave on the petition of the petitioner filed under Order 8 Rule 1A(3) of the CPC.

5. I have heard learned counsel for the parties and perused the record.

6. It would appear from the record that the record was reconstructed as back as on 29.04.2008 pursuant to the order passed by the learned District Judge, Purnia. The court below vide order dated 30.04.2008 had directed the parties to furnish the documents of Title Suit No. 190 of 2005, but the defendant did not



file any documents nor raised any objection to the genuineness of the documents filed on behalf of the plaintiff-respondents. Not only this, while passing the order impugned the court below also took into account that though the case is pending since 13.04.2011 for evidence of defendant, he has filed the application after lapse of five years without explaining as to how the documents, which he intends to file before the court, are relevant for the just decision of the case.

7. Under such circumstances, if the court below has rejected the prayer of the petitioner to receive the documents in evidence, no illegality or perversity can be found with the order impugned.

8. 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	10.01.2019
Transmission Date	

