

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.96 of 2020**

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Bhirgu Sav @ Bhirgu Lal Son of late Saryu Sav, Resident of Village Saidpur
Purani Bazar, Near Emambara, Post Office and Police Station- Khizarsarai,
District- Gaya, Bihar.

... .. Petitioner

Versus

Madho Prasad Son of late Saryu Savo resident of Village- Sadipur, Purani
Bazar, Near Emambara, Post Office and Police Station- Khizarsarai,
District- Gaya, Bihar.

... .. Respondent

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Appearance :

For the Petitioner/s : Mr. Nagendra Pd. Yadav, Advocate.

For the Respondent/s:

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 27-02-2020

The present petition has been filed *"for setting aside the order dated 09.09.2019 (Annexure-2) passed by the learned Munsif-II, Gaya in Partition Suit No. 25 of 2011 whereby and whereunder petition dated 31.10.2018 filed by the defendant/petitioner under Order 18 Rule 17 of the Code of Civil Procedure for re-examine of P.W.7/plaintiff (Madho Prasad) P.W. 4 (Raja Ram Das) P.W. 5 (Yogendra Chaudhary) P.W. 6 (Rafique Khan) and P.W. 8 (Amkresh singh) has been rejected"*.

2. Learned counsel for the defendant/petitioner submits that the learned Court below ought to have allowed his petition under Order 18 Rule 17 of the Code of Civil Procedure for recalling the witnesses of the plaintiff for re-examination. It is submitted that the defendant/petitioner has amended his written statement and produced one witness Kumal Kumar and after such amendment



it was necessary to recall and cross-examine the witnesses aforesaid.

3. Having heard learned counsel for the defendant/petitioner and on consideration of the materials on record, this Court is not inclined to interfere in the matter. The learned Court below has duly taken note of the attending circumstances as well as the averment in the written statement of the defendant/petitioner. It has been observed that all the relevant facts were well within the knowledge of the defendant/petitioner at the time of filing the written statement and there was no subsequent discovery of fresh material which was not within the knowledge of the defendant/petitioner at the time of cross-examination of the plaintiff's witnesses. Elaborate cross-examination had been made in regard to partition as well as mutation. No new fact was brought on record to necessitate recalling of the plaintiff's witnesses for cross-examination.

4. This Court therefore finds no illegality, infirmity or error of jurisdiction in the order of the learned Court below. The petition stands dismissed.

(Vikash Jain, J)

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