

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Miscellaneous Jurisdiction No.1224 of 2018

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Vishwanath Prasad, S/o Late Yugal Prasad, R/o village-Mela Road, W. No. Old-12, New 14 (present 22) under Sitamarhi Nagar palika, P.S. + District-Sitamarhi

----- Petitioner

Versus

1. Punam Kumari, W/o Anil Chowdhary, R/o village-Bhagat Lane Mela Road Moh-Bhavadepur, District-Sitamarhi, at present W. No. 20, Nagar Parishad, Sitamarhi, P.S.+ District-Sitamarhi

----- Plaintiff/Respondent 1st set

2. Sanjay Chowdhary

3. Shubham Kumar Saurabh

4. Sunil Chowdhary

All are sons of Ram Nandan Chowdhary

All are residents of W. No. 20 Bhagat Lane, Mela Road, Bhavdepur under Sitamarhi Nagar palika, P.S.+District-Sitamarhi

5. Manju Devi, W/o Govind Mandal

6. Ravindra Mandal

7. Birendra Mandal



Both are sons of Ram Bilas Mandal

8. Draupadi Devi W/o Ram Bilas Mandal

All are R/o village + Post + P.S. Kanhauli, District-Sitamarhi. At present R/o Moh:-Mela Road, W. No. 20, P.S. + District-Sitamarhi.

----- Respondents

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Appearance:-

For the Petitioner :- Mr.Alok Kumar Jha, Advocate
For the State :- Mr. M.N. Parbat, Sr. Advocate
Mr. Pravin Kr. Prabhakar, Advocate

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CORAM:HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

3. **29.06.2021** This case has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

The present petition has been filed challenging the order dated 14.06.2018 passed in Misc. Case No. 14 of 2013 by the learned Sub Judge-I, Sitamarhi, whereby and whereunder the learned court below has discharged the witness no. 1 in the said case without being cross-examined by the petitioner herein, who is the opposite party no. 1 before the learned court below.



The learned counsel for the petitioner has submitted that the petitioner herein had filed a Title Suit No. 79 of 2011 with regard to declaration of title and recovery of possession with respect to the suit property and the said suit was decreed ex-parte by a judgment dated 19.03.2012, whereafter a decree was prepared on 31.03.2012. The petitioner is stated to have filed an execution case bearing Execution Case No. 3 of 2012 before the learned court of Sub Judge-1, Sitamarhi wherein the opposite party herein were dispossessed and the petitioner was granted possession of the suit property in question.

Thereafter, the respondent no. 1 herein namely Punam Kumari had filed a Miscellaneous Petition bearing Miscellaneous Case No. 14 of 2013 before the learned court of Sub Judge-1, Sitamarhi under Order 21 Rule 99 of the Code of Civil Procedure for regaining possession of that part of the suit property in question, from which she had been dispossessed. It appears that the petitioner herein had appeared before the learned court below in the aforesaid Misc. Case No. 14 of 2013 and had submitted time petition on 07.06.2018 as also on 14.6.2018, however, the witness no.1, adduced on behalf of the



respondent no. 1 herein, was examined and since nobody had appeared on behalf of the petitioner herein to cross-examine the said witness no.1, he was discharged without being cross examined.

It is the contention of the learned counsel for the petitioner that the said witness no. 1 is an important witness and it is essential to cross-examine the said witness and since a time petition had already been filed on behalf of the petitioner, the Ld. Court below ought to have not discharged the said witness no.1 without being cross-examined. It is further submitted that since the said Miscellaneous Case No. 14 of 2013 is yet to be decided finally, no prejudice would be caused to the respondents herein, in case the petitioner is permitted to cross-examine the said witness No. 1.

Per contra, Shri. M. N. Parbat, Ld. Senior counsel for the respondents has submitted that the present petition is not maintainable and the petitioner would be well advised to approach the learned court below for recall of the witness no.1 for cross-examination.



The learned counsel for the petitioner submits that the petitioner would definitely approach the learned court below and make a prayer to recall the aforesaid witness no. 1 for the purpose of cross-examination on behalf of the petitioner, but appropriate direction be issued in this regard.

Having regard to the facts and circumstances of the case, the present petition stands disposed off with liberty to the petitioner to file appropriate petition before the learned court of Sub Judge-I, Sitamarhi, in the pending Miscellaneous Case No. 14 of 2013 for recall of the said witness no. 1 for the purpose of cross-examination, which is directed to be considered and disposed off by the learned Sub Judge-1, Sitamarhi, in accordance with law, within a period of four weeks of filing of such a petition.

(Mohit Kumar Shah, J)

S.Sb/-

