

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.140 of 2022

Raju Ranjan Kumar natural son of Late Rama Shankar Prasad and adopted son of Late Nag Narayan Prasad, resident of Bagaha Bazar, P.O. and P.S. Bagaha, District- West Champaran.

... .. Petitioner/s

Versus

1. Shanti Devi wife of Late Nag Narayan Prasad resident of Bagaha, P.O. and P.S. Bagaha, District- West Champaran.
2. Rajesh Kumar son of Late Rama Shankar Prasad resident of Bagaha Bazar, P.O. and P.S. Bagaha, District- West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Abhitabh Kumar
For the Respondent/s : Mr.Chandra Kant

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 20-07-2022 Heard Mr. Amitabh Kumar, learned counsel for the petitioner and Mr. Chandrakant, learned counsel for the respondent-plaintiff.

The petitioner is defendant no. 1 in the suit filed by the respondent-plaintiff for declaration that the defendant no. 1 the son of the defendant no. 2 was never adopted by the plaintiff and also for declaration that suit properties are the exclusive properties of the plaintiff. The suit is of 1996 bearing Title Suit No. 61 / 1996. On 21.07.2004 issues were framed in the suit and after closure of the plaintiff's evidence, the suit was fixed on 03-01-2006 for recording defendant's evidence. On 01-08-2007 evidence of defendants was closed. On 22.08.2007 a recall petition was filed on behalf of the defendants for examination of the remaining seven witnesses including the defendant no. 1. This petition was dismissed by the trial court vide order dated 27-09-2007 on the ground that the past record of the defendant



shows that he has been conducting the case in a very leisurely manner and despite having availed about 60 opportunities during the past 1½ year, he could not complete his evidence although plaintiff completed his evidence only within ten months. The order dated 27/09/2007 was challenged by the petitioner before this court in Civil Revision No. 2194 of 2007 which was dismissed and aggrieved by the same the petitioner moved an SLP bearing SLP (C) No. 17449 / 2008 before the Apex Court which also got dismissed vide order dated 07/07/2014 (Annexure- 4 to the present petition). It further appears that after dismissal of the SLP on 07/07/2014 and after about eight years another petition dated 01.02.2022 was filed on behalf of the defendant for recall of the earlier order dated 01/08/2007 by which the evidence of the defendant was closed with further prayer that at least defendant no. 1 should be allowed to be examined and cross examined in the suit. This application has been dismissed by the learned trial court with a reasoned order after coming to the conclusion that allowing the application for recall will amount to reopen the order passed by the High Court as well as Hon'ble Supreme Court. The trial court further came to the conclusion that defendant is a lawyer and did not obey the earlier court's order to examine and to



conclude the case and the prayer made in the petition by the defendants has already been decided by the Apex Court, therefore, the petition for examination of defendant no. 1 in the suit cannot be allowed.

Learned counsel for the petitioner submits that in the interest of justice one opportunity should be given to the defendant for his examination and cross- examination in the suit inasmuch as the Full Bench of this court in a case reported in AIR 1978 Pat 339 (FB) Bajrang Rai & Others *versus* Ismail Mian & Others has held that where there is no specific provision in law, the court can exercise its power under Section 151 of the C.P.C.

On the other hand, learned counsel for the plaintiff -respondent submits that suit is of 1996 i.e. about twenty six years old and the petitioner being a practising Advocate is taking advantage of his position and has stalled the progress of the suit inasmuch as the suit was fixed for argument after dismissal of the SLP by the Hon'ble Supreme Court in 2014 and the defendant was to start his argument but for about eight years the defendant did not start his argument and in 2022 he filed an application for recall of the order of closure of the evidence of the defendants which attained finality up to the Supreme Court,



in order to delay disposal of the suit.

Having heard learned counsel for the parties and after going through the material on record it is evident that earlier petition filed by the defendants for recall of the order dated 01-08-2007 by which the evidence of the defendants was closed was dismissed by the trial court and the same attained finality up to Hon'ble Apex Court. Accordingly, in my opinion the same issue cannot be reopened by the defendants and as such I do not find any material irregularity and / or illegality in the exercise of jurisdiction by the court below.

This application is accordingly rejected.

Before parting with the order it is observed that since the suit is about 26 years old, as such, it is expected that the court below will dispose the suit expeditiously without giving any unnecessary adjournments to either of the parties.

(Anil Kumar Sinha, J)

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