

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.474 of 2022

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Satyendra Kumar @ Rajiv Ranjan son of Late Chandeshwar Prasad, resident of Mohalla - Gabh-Tal Danapur, P.S. Danapur, District - Patna.

... .. Petitioner/s

Versus

1. Ashok Kumar Son of Late Chandeshwar Prasad, resident of Mohalla - Gabh-Tal Danapur, P.S. Danapur, District - Patna.
2. Ashwani Kumar Son of Late Chandeshwar Prasad, resident of Mohalla - Gabh-Tal Danapur, P.S. Danapur, District - Patna.
3. Sumit Kumar Verma, Son of Surendra Kumar @ Satyapal Verma, resident of Mohalla - Gabh-Tal Danapur, P.S. Danapur, District - Patna. At present Mohalla - Nakkas pind Patna City, P.S. Malsalami, District - Patna.
4. Amit Kumar Verma Son of Surendra Kumar @ Satyapal Verma, resident of Mohalla - Gabh-Tal Danapur, P.S. Danapur, District - Patna. At present Mohalla - Nakkas pind Patna City, P.S. Malsalami, District - Patna.
5. Annu Verma, daughter of Surendra Kumar @ Satyapal Verma, resident of Mohalla - Gabh-Tal Danapur, P.S. Danapur, District - Patna. At present Mohalla - Nakkas pind Patna City, P.S. Malsalami, District - Patna.
6. Smt. Shakuntala Kumari Verma, Wife of Late Surendra Kumar @ Satyapal Verma, resident of Mohalla - Gabh-Tal Danapur, P.S. Danapur, District - Patna. At present Mohalla - Nakkas pind Patna City, P.S. Malsalami, District - Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bikas Kumar Sharma, Mr. Shambhu Sharan Sharma, Advocates.
For the Respondent/s	:	Mr. J.S. Arora, Sr. Advocate Mr. Ravi Bhatia, Advocate
For the Respondent No.1:	:	Mr. Sanjay Kumar Giriyaage, Advocate,

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 22-12-2022 Heard Mr. Bikas Kumar Sharma, learned counsel for the petitioner and Mr. J.S. Arora, learned senior counsel along with Mr. Sanjay Kumar Giriyaage for the respondents.

2. Petitioner is aggrieved by an order dated 17.05.2022 passed in Partition Suit No. 112/1986 whereby



prayer of the petitioner to recall the order dated 29.04.2022 by which the evidence of the plaintiff was closed and the case was fixed for argument, has been rejected.

3. The suit for partition was filed in the year 1986 by the petitioner in which Surendra Kumar @ Satyapal Verma was not made a party. However, heirs of Surendra Kumar @ Satyapal Verma has been made Respondents No. 3 to 6/intervenor-defendant in this case. The suit was decreed on compromise in absence of late Surendra Kumar @ Satyapal Verma and the compromise decree was challenged by successors of Surendra Kumar @ Satyapal Verma i.e., Respondents No. 3 to 6 in Miscellaneous Case No. 04/2006 which was allowed and the compromise decree obtained by the petitioner/plaintiff was set aside. The matter travelled up to High Court and Hon'ble Supreme Court and the order passed in Miscellaneous Case No. 04/2006 has been upheld up to the Hon'ble Supreme Court.

4. The original suit bearing Partition Suit No. 112/1986 was restored in which the plaintiff's evidence was closed on 23.05.2018. After closure of the evidence of the plaintiff, the defendants' evidence was started and also got closed in the year 2018. The evidence of the plaintiff was firstly



closed on 17.10.2016 which was recalled by order dated 16.03.2018 and the plaintiff's evidence was recorded and finally it was closed on 23.05.2018. After closure of the evidence of both the parties, arguments started on 03.10.2019 on behalf of the plaintiff. On 18.12.2020/10.02.2021, a petition was filed by the plaintiff/petitioner for further re-examination of the plaintiff which was allowed by the court on 26.02.2021.

5. Learned counsel for the petitioner submits that due to CORONA and death of conducting lawyer, re-examination of plaintiff/PW-2 could not take place, inasmuch as, petitioner failed to produce plaintiff/PW-2 on 29.04.2022 and on the same date the evidence of the plaintiff was closed and the case was again fixed for final argument of the defendant.

6. Now, at this stage, the lawyer has been changed and a fresh *Vakalatnama* has been filed on 10.05.2022 on behalf of plaintiff/petitioner for recall of the order dated 29.04.2022 which has been rejected by this Court on the ground that the petitioner is trying to delay the disposal of the suit and on several occasions, the evidence of the plaintiff was closed and order of closure of evidence was recalled, the plaintiff was examined, the defendant's evidence was also closed and at this stage, the argument of the defendant is going on and the case is



posted for judgment.

7. Learned counsel for the petitioner submits that in the ends of justice, the petitioner may be allowed to re-examine the witness, PW-2 on the point that in his cross-examination, certain statement adverse to the interest of the plaintiff has been made with regard to filing of attendance in revocation case filed by the petitioner/plaintiff.

8. Learned senior counsel for the respondents relying upon the counter affidavit submits that he has given sequence of date showing that the petitioner is trying to linger the matter from the very beginning and is interfering at every stage in order to delay the disposal of the suit. He further submits that the suit is pending for final argument. According to Respondents, any statement made by the witness during cross-examination cannot be modified/changed after recalling the witness. It is out and out a delaying and unfair tactics on part of the petitioner.

9. I have heard learned counsel for the parties and perused the record. It appears that the learned trial court twice/thrice had given opportunity to the petitioner to adduce his evidence, his evidence was also recorded. Now, on the plea that some adverse statement has been made by the plaintiff



during course of his cross-examination, the petitioner is seeking recall of the witness/PW-2 again, that too, after closure of the argument of the plaintiff and commencement of the argument on behalf of the defendant. In my opinion, the learned trial court has rightly rejected the prayer of the petitioner. Accordingly, no interference is required in the impugned order by this Court.

10. The petition stands dismissed.

(Anil Kumar Sinha, J)

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