

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1796 of 2019

Vishwanath Sarawagi S/o Late Ram Prasad Sarawagi @ Murlidhar Sarawagi
R/o Mohalla- Sarawagi Chowk, Ward No. 10, Nagar Parishad and P.S.-
Sitamarhi, Anchal- Dumra, Distt.- Sitamarhi at present R/o D- 607, Ashirwad
Palace, Opp. Uma Bhavan, Bhatar Road, Surat City, Surat.

... .. Petitioner/s

Versus

1. Ratan Kumar Sarawagi S/o Late Ram Prasad Sarawagi @ Murlidhar Sarawagi
R/o Mohalla- Sarawagi Chowk, Ward No. 10, Nagar Parishad and P.S.-
Sitamarhi, Anchal- Dumra, Distt.- Sitamarhi
2. Adarsh Sarawagi S/o Vishwanath Sarawagi R/o Mohalla- Sarawagi Chowk,
Ward No. 10, Nagar Parishad and P.S.- Sitamarhi, Anchal- Dumra, Distt.-
Sitamarhi
3. Smt. Pooja Sarawagi W/o Adarsh Sarawagi R/o Mohalla- Sarawagi Chowk,
Ward No. 10, Nagar Parishad and P.S.- Sitamarhi, Anchal- Dumra, Distt.-
Sitamarhi

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shashi Shekhar Dwivedi, Sr. Adv. Mr. Parth Gaurav, Adv.
For the Respondent/s	:	Mr. Niranjana Kumar, Adv. Mr. Kumar Kishan, Adv.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 19-07-2022 Heard Mr. Shashi Shekhar Dwivedi, learned senior
counsel assisted by Mr. Parth Gaurav, learned counsel for the
petitioner and Mr. Niranjana Kumar, learned counsel, assisted by
Mr. Kumar Kishan, learned counsel for the respondent.

The present application has been filed by the
defendant no. 1 – petitioner being aggrieved by the order dated
29-08-2019 passed by learned Sub Judge V, Sitamarhi in
Eviction Suit No. 02 / 2011 Registration No. 33 / 2014 by which
the application for recall of the plaintiff's witnesses for cross



examination and for examination of the defendant's witnesses in the suit has been dismissed on the ground that defendant wants to linger the suit. The plaintiff as well as defendant no. 1- petitioner are own brother and it is the case of the petitioner-defendant no.1 that a partition had taken place earlier in which the suit premises was allotted to the defendant no. 1 and in that capacity he has been residing in the suit premises and there is no relationship of tenant and landlord between the parties.

On the other hand, learned counsel for the plaintiff -respondent submits that after partition of the property the suit property fell in the share of the plaintiff -respondent and pursuant thereto necessary corrections were made in the revenue records and the defendant no. 1 was inducted as tenant by the plaintiff on the basis of tenancy agreement.

The suit proceeded and plaintiff's evidence was closed on 18-06-2018 and according to the defendant no. 1 / petitioner due to non-availability of the lawyer inasmuch as he had taken assignment as Government counsel, the suit was not attended properly and the plaintiff's witnesses were not cross examined. Since no *pairvi* was being made in the suit, the defendant's evidence was closed on 18-07-2018. The claim of the petitioner that he is eighty years old person and has been



residing in Surat in connection with his business and therefore he has entrusted his case to the lawyer and due to lack of interest of the lawyer the case was not conducted properly. Accordingly, he filed a petition for recall of the order dated 18.06.2018 & 18.07.2018 with permission to cross examine the plaintiff's witnesses and examine defendant's witnesses.

I have heard learned counsel for the parties. After some argument both learned counsel have agreed that a time frame may be fixed for early disposal of the suit. Learned senior counsel for the defendant no.1-petitioner submits that plaintiff's witness shall be crossed examined within a period of two months. On the other hand, learned counsel for the plaintiff-respondent undertakes to produce plaintiff's witnesses for cross examination by the petitioner within the aforesaid period of two months on day to day basis. Learned counsel for the petitioner has further undertaken that the defendant's witnesses shall be examined after closure of the cross examination of the plaintiff's witnesses within a further period of two months and within that period the plaintiff-respondent agrees to cross-examine the defendant's witnesses. The parties have also agreed that they will conclude their argument after closure of evidence within a further period of one month and the learned trial court be directed to dispose of the suit on merit



within a maximum period of six months.

In view of the aforesaid undertaking given by both the parties and with consent of the parties, the impugned order dated 29 / 08 / 2019 passed in Eviction Suit No. 02 / 2011 is set aside.

Both the parties are directed to adhere to the time line as stated hereinabove and the learned trial court is further directed to dispose the suit on merit expeditiously and within a maximum period of six months from the date of receipt / production of a copy of this order.

Accordingly, with the aforesaid observation and direction, this application stands disposed of.

(Anil Kumar Sinha, J)

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