

13.05.2022
Item No.12
Court No.18
AJ.

C.O. 512 of 2019

Naru Mal & Ors.
-Vs-
Shibani Mal & Ors.

Mr. Lutful Haque,
Mr. Moniruzzaman.
....for the petitioners.

Affidavit-of-service filed on behalf of the
petitioners be kept with the record.

None appears on behalf of the opposite
parties to oppose the application.

The revisional application under Article
227 of the Constitution of India is at the instance
of the defendants in a suit for partition and is
directed against Order No. 42 dated January 21,
2019 passed by the 2nd Court of the learned Civil
Judge (Senior Division), Rampurhat, District
Birbhum in the said suit being Title Suit No. 65 of
2015.

The opposite party no.1 was deposing as
D.W.1 in the said suit but due to illness could not
offer himself for cross-examination.

The petitioners intended to cite defendant
no. 9 as their next witness and accordingly filed
evidence-in-chief of the said witness along with an
application for acceptance of the said evidence.

The learned Trial Judge by the order
impugned has dismissed the said application.

Failure of the D.W.1 to offer himself for cross-examination would result expunge of the evidence of the said witness from the record but for the said failure of the D.W. 1 the right of the defendants to cite other witnesses in the suit cannot be curtailed.

The order impugned therefore is not sustainable and is accordingly is set aside.

The petitioners are permitted to cite defendant no.9 as their next witness.

The learned Trial Judge is requested to proceed with the disposal of the suit in accordance with law.

C.O. 512 of 2019 is, thus, allowed without any order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Biswajit Basu, J.)