

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1193 of 2018**

Shatrudhan Yadav, S/o Gazar Yadav Resident, of Village- Sakraul, P.S. Shikarpur,
District- West Champaran.

... .. Petitioner/s

Versus

1. Pramod Kumar Singh
2. Pradeep Kumar Singh, Both S/o late Kamaldeo Singh, Resident of Village-
Paharpur, Changur, P.S. Kuchaikot, District. Gopalganj. At Present Resident of
Village- Rampur, P.O. Murli, P.S. Shikarpur, Distt. West Champaran.
3. Ravindra Pratap Singh, S/o late Bhup Narayan Singh, Resident of Village- Bahuari,
P.O. & P.S.- Ramnagar, District- West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjeev Kumar, Advocate
For the Respondent/s	:	Mr. Najeeb Ahmad, Advocate with Mr. Lokesh Kumar Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT**

Date : 04-07-2023

Heard learned counsel for the parties.

2. The present application is filed for setting aside the order dated 28.05.2018 passed by Sub-Judge, Narkatiaganj, District- West Champaran in T.S. No. 63 of 2017 whereby and whereunder the application dated 17.03.2018 filed by the petitioner to recall the plaintiff's witness no. 1 for further cross-examination has been rejected.

3. The brief facts, as per the application, are that the plaintiffs/ respondent nos. 2 and 3 have filed Title Suit No. 63 of 2017 for declaration of their title and confirmation of possession over the suit land and further to declare the four sale deeds executed by the defendant 2nd party/respondent no. 3 in favour of petitioner/ defendant no. 1 in respect of the suit land to be forged, fabricated,



inoperative, *void-ab-initio* and not binding upon the plaintiffs. The defendants filed their written statement and seven witnesses have been examined by plaintiffs and cross-examined by defendants. Plaintiff's witness no. 1 was examined and cross-examined by junior counsel on behalf of petitioner. The petitioner filed an application to recall the said witness for further cross examination which has been dismissed by the trial court vide the impugned order dated 28.05.2018.

4. Learned counsel for the petitioner submits that the impugned order is illegal and has been passed mechanically without appreciating that some important questions in respect of the documents mentioned in written statement were required to be answered in cross-examination of the said witness for just disposal of the case but the trial court in haste for disposal of the case dismissed the said application. It is further submitted that due to denial of further cross-examination of the witness with respect to the documents mentioned in written statement the great prejudice has been caused to the petitioner and it is in the interest of justice, the impugned order may be set aside.

5. On the other hand, learned counsel for the respondent Nos. 1 and 2 submits that the deposition of P.W.1 was filed on oath on 18.01.2018 and the defendant was given one month time and on 17.02.2018 he was cross-examined by the learned counsel for the petitioner and a witness cannot be recalled on the



ground that party to suit wants him to cross examine by another counsel. He further submits that this Court has directed the trial Court vide order dated 03.07.2019 in Miscellaneous Appeal No. 946 of 2017 to expedite the trial and conclude the same within a period of six months accordingly the allegation that trial court in haste is baseless and liable to be rejected. It is further pointed out that the documents on which the petitioner want to cross-examine has already been exhibited on his behalf. The petitioner has already cross-examined the said witness on the point of gift deed. He further submits that petition dated 18.07.2018 of the petitioner with similar prayer has already been dismissed by the trial Court vide detailed order dated 26.02.2020 which has not been disclosed by the petitioner during the proceeding of this case.

6. The law is well settled that the power to recall any witness under Order 18 Rule 17 CPC can be exercised by the Court either on its own motion or on an application filed by any of the parties to the suit but such power is to be invoked not to fill up the lacunae in the evidence of witness which has already been recorded but to clear any ambiguity that may have arisen during the course of his examination.

7. The Hon'ble Supreme Court in case of **K.K. Velusamy vs. N. Palanysamy** reported in (2011) SCC 275 in para 19 observed as under :

“ 19. We may add a word of caution.



The power under Section 151 or Order 18 Rule 17 of the Code is not intended to be used routinely, merely for the asking. If so used, it will defeat the very purpose of various amendments to the Code to expedite trials. But where the application is found to be bona fide and where the additional evidence, oral or documentary, will assist the court to clarify the evidence on the issues and will assist in rendering justice, and the court is satisfied that non-production earlier was for valid and sufficient reasons, the court may exercise its discretion to recall the witnesses or permit the fresh evidence. But if it does so, it should ensure that the process does not become a protracting tactic. The court should firstly award appropriate costs to the other party to compensate for the delay. Secondly, the court should take up and complete the case within a fixed time schedule so that the delay is avoided. Thirdly, if the application is found to be mischievous, or frivolous, or to cover up negligence or lacunae, it should be rejected with heavy costs.”

8. After going through the impugned order passed by the learned Trial Court as well as considering the materials available on record and after hearing the petitioner, this Court does not find any jurisdictional error or infirmity in the impugned order passed by the learned Trial Court to interfere in Supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

9. This Civil Miscellaneous Application is accordingly,



dismissed.

10. The stay to pronounce the judgment in T.S. No. 63
of 2017 vide order dated 24.01.2023 of this Court stands vacated.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.07.2023
Transmission Date	

