

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1745 of 2018

1. Ravi Kumar
2. Rajesh Kumar,
3. Rakesh Kumar, all Sons of Late Uma Devi @ Late Chandu Lal Swarnkar, Residents of Naya Tola, Madhopur, P.O./P.S.- Bakhtiyarpur, District- Patna, Presently at Mohalla- Hakikatpur, P.S./P.O.- Bakhtiyarpur Pin Code- 803212, District- Patna.

... .. Petitioner/s

Versus

1. Ranbir Kumar, Son of Nand Kumar Lal, Resident of Town/P.O./P.S.- Bakhtiyarpur Pin Code- 803212, District- Patna.
2. Sri Chandu Lal Swarnkar, Son of Lakhan Sao, Residents of Naya Tola, Madhopur, P.O./P.S.- Bakhtiyarpur, District- Patna, Presently at Mohalla- Hakikatpur, P.S./P.O.- Bakhtiyarpur Pin Code- 803212, District- Patna.
3. Bihari Singh,
4. Satya Narayan Singh,
5. Surya Narain Singh,
6. Shiv Shankar Singh, All (R-3 to 6) are Sons of Late Aash Nandan Singh (Deft. No.2), Residents of Vill- Alipur Burhara, P.S.- Athmalgola, District- Patna.
7. Arun Singh, Son of Late Baleshwar Singh (Deft. No.3),
8. Bimla Devi,
9. Kamli Devi,
10. Chutki Devi, All (R 8 to 10) are daughters of Late Baleshwar Singh, All R-7 to 10 residents of Vill- Ram Nagar, P.S./P.O.- Athmalgola, District- Patna.
11. Bhola Nath Patwa, Son of Late Brij Kumar Lal, Resident of Town/P.O./P.S.- Bakhtiyarpur, District- Patna, at present at Vill- Raipura, P.S./P.O.- Fatuha, District- Patna.
12. Mostt. Nago Devi, Widow of Late Ram Udgar Singh (Deft. no.5),
13. Jai Ram Singh,
14. Sanjay Kumar Singh @ Surjit Singh,
15. Dharmendra Kumar Singh,
16. Sudhir Kumar Singh,
17. Arbind Kumar Singh,
18. Smt. Sudha Devi,
19. Smt. Niraj Devi, all (13 to 17) are Sons of (R-18 to 19) are daughters of Late Ram Udgar Singh, all R-12 to 19 residents of Vill- Rupas Mariahi, P.S.- Bakhtiyarpur, Distt- Patna, Presently at Mohalla- Hakikatpur, P.O./P.S.- Bakhtiyarpur, District- Patna.
20. Gopal Prasad, Son of Late Ram Swaroop Prasad Mittal, Resident of



Tow/P.O./P.S.- Bakhtiyarpur, District- Patna.

21. Renu Devi,
22. Rekhi Devi,
23. Neha Devi, all (R-21 to 23) are daughters of Late Uma Devi, Residents of Naya Tola, Madhopur, P.S.- Bakhtiyarpur, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sidhendra Narayan Singh
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

4 10-02-2023 Heard learned counsel for the petitioner.

The present application is directed against the part of the order dated 27.08.2018 passed by learned Munsif, Barh in T.S. No.114 of 1989 whereby the petitioner's application dated 17.05.2018 with a prayer to recall the plaintiff's witnesses (PW-1 to PW-14) for further cross-examination has been rejected.

Learned counsel for the petitioners submits that the petitioners are defendant No.7 to 7B in the Title Suit No.114 of 1989, the name of petitioners were substituted in the suit in place of their deceased mother – Uma Devi (defendant No.7) on 25.01.2017 and they made an application to recall the witness for cross-examination on their part but the learned Munsif, Barh, after hearing parties, rejected the application of the petitioners vide the impugned order without considering the fact that neither original defendant No.7 nor the petitioners have got



opportunity to cross-examine the plaintiff witnesses on their part. Further, it is submitted that since the evidence of plaintiff is still going on and no prejudice would be caused to the plaintiff. It is further submitted that a witness can be recalled at any time of the proceeding and the trial Court could not have rejected the application of petitioners to recall the plaintiff's witnesses.

From perusal of order dated 23.10.2015 of this Court in C.R. No.734 of 2002 (Smt. Uma Devi vs. Ranvir Kumar & Ors), it appears that Smt. Uma Devi (being purchaser pendente lite) was directed to be added as party in the suit and petitioners are son of defendant No.1 and defendant No.7 and on death of defendant No.7 they have been substituted as defendant No.7 to 7B in the suit. The suit is of year 1989 and is still pending for completion of trial.

It appears from the impugned order that father of petitioners (defendant No.7 to 7B) is also a party in the suit since beginning and the learned Advocate of the petitioners and his father was same. It is stated that some of the witnesses have died and some witnesses are of formal nature. Considering the aforesaid facts and circumstances, the application dated 17.05.2018 filed on behalf of petitioner have been dismissed.



The fact situation of the present case does not make out a case for recall of the plaintiff's witnesses (PW-1 to PW-14) for further cross-examination after their cross-examination had been completed much earlier. The discretion exercised by the trial Court is based on the facts and circumstances of the case.

This Court is of the considered opinion that the part of impugned order by which the prayer of petitioners to recall PW-1 to PW-14 for further cross-examination has been rejected do not require any interference. Accordingly, the present Misc. application is dismissed.

(Sunil Dutta Mishra, J)

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