

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.231 of 2020**

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Budha Patwari (Male), aged about 59 years son of Late Bagad Patwari,  
resident of village- Parsauni, P.O. Bhikhana Thori, Police Station- Sahodara,  
District- West Champaran.

... .. Petitioner/s

Versus

1. Madan Gauro (Male), aged about 46 years, son of Ramdayali Gauro,  
resident of village- Parsauni, Police Station - Sahodara, District- West  
Champaran.
2. Sanichar Gauro (Male), aged about 59 years, son of Late Dasai Gauro,  
resident of village- Dhamaura, Police Station- Sahodara, District- West  
Champaran.

... ..Opposite Party / Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Aditya Nath Jha, Advocate    |
| For the Respondent/s | : | Mr. Shiv Kumar Dwivedy, Advocate |

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

8      05-04-2023                      Heard learned counsel for the parties.

2. This Miscellaneous application has been filed under Article 227 of the Constitution of India against the order dated 29.11.2019 passed by the learned Additional District and Sessions Judge- IXth, Bettiah, West Champaran in Probate Case No. 02 of 2008 by which the learned Court below has rejected the petition dated 13.08.2019 and 22.08.2019 filed on behalf of the petitioner for recalling the two witnesses examined on behalf of the respondents.

3. Learned counsel for the petitioner submits that due to absence of the counsel for the petitioner, cross examination of



the two witnesses examined on behalf of the respondents have not been done, which was not intentional. He has further submitted that it is in the interest of justice that the petitioner may be permitted to cross-examine the two witnesses examined on behalf of the respondents.

4. Learned counsel for the respondents opposes the prayer of the petitioner on the ground that despite opportunity the petitioner with intention to delay the disposal of the case has not cross-examined the said witnesses.

5. Accordingly, he has submitted that heavy cost may be imposed upon the petitioner, if this Court allows the petitioner to cross-examine the witnesses of the respondents.

6. Having heard learned counsel for the parties and on perusal of the impugned order, it appears that two witnesses of respondents were not cross-examined on behalf of the petitioner due to non-appearance of learned counsel for the petitioner and both the respondent's witnesses were discharged. In the impugned order, learned Court below has found that no reason was assigned by the petitioner for recalling the witnesses and it appears that the same has been done to delay the proceeding.

7. It is in the interest of justice that one opportunity be given to the petitioner to cross-examine the said witnesses



examined on behalf of the respondents with cost.

8. In view thereof, this Miscellaneous Application is allowed. The impugned order dated 29.11.2019 is set-aside and the petitioner is permitted to cross-examine the witnesses examined on behalf of the respondents/opposite parties, subject to the payment of cost of Rs. 4,000/- payable by the petitioner to the defendants in the trial Court. Since the case is of the years 2008, both the parties are directed to co-operate in the Court for early disposal of Probate Case No. 2 of 2008.

9. Accordingly, this Civil Miscellaneous Application is disposed of with the aforesaid observation.

**(Sunil Dutta Mishra, J)**

Anand Kr.

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