

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1440 of 2018

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Ratan Kumar Yadav @ Ratan Kumar, Son of Sri Muni Lal Yadav, Resident of
Village- Paratiya, P.O.- Gadhaila, P.S. and District- Madhepura.

... .. Petitioner/s

Versus

1. Raghunandan Prasad Yadav, Son of Late Kunji Lal Yadav, Resident of
Village- Parariya, P.O.- Gadhaila, P.S. and District- Madhepura.
2. Sri Ran Vijay Kumar, Son of Sri Birendra Kumar, Resident of Village- Sattar
Kataiya, P.O.- Sattar Kataiya, P.S.- Bihra, District- Saharsa. at present
resident of Village- Manikpur, P.O.- Manikpur, P.S and District- Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Lala Sachindra Kumar, Advocate Mr. Ashok Kumar Sinha No.-2, Advocate
For the Respondent/s	:	Mr. Durgesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

8 24-04-2023 Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed
under Article 227 of the Constitution of India against the order
dated 14.08.2018 passed by learned Sub-Judge-I, Madhepura in
Title Suit No. 23 of 2012.

3. The brief facts of the case are that plaintiff-
respondent No. 1 has filed the Title Suit No. 23 of 2012 for
declaration of Title and recovery of possession of the suit land
from defendant No. 2 / petitioner. It is also prayed for
declaration that sale deed dated 06.01.2010 executed by
defendant 1st party in favour of Defendant 2nd party in respect of
suit land is wrong, illegal, fictitious and without consideration.



Defendant 2nd party / petitioner appeared and contested the suit by filing written statement. During the trial, on 10.04.2018 the plaintiff who was being examined as PW-10 was cross-examined by the defendant No. 2 / petitioner in part and the case was adjourned to 17.04.2018 for further cross-examination by defendant No. 2 / petitioner.

4. The petitioner claimed that on 17.04.2018 defendant No. 2 suddenly fell ill and could not attend the Court and the file was with him, the learned counsel for the petitioner was unable to cross-examine the said witness and prayed for adjournment but the trial Court closed the evidence of PW-10 and discharged him. The petition for recall of PW-10 for further cross-examination filed on behalf of the petitioner was rejected by the learned trial Court.

5. Learned counsel for the petitioner submits that due to non-availability of the record, the counsel was unable to cross-examine the plaintiff as the file was with the petitioner due to which he was unable to cross-examine on 17.04.2018. However, the learned trial Court disallowed the time petition of the petitioner and closed the evidence of PW-10 / plaintiff. On the next date i.e. 26.04.2018, a petition was filed by the petitioner for recalling the said witness for cross-examination



but the same was also rejected by the trial Court.

6. Learned counsel for the petitioner submits that the petitioner has not cross-examined on 17.04.2018 due to the reason already stated in the application and it was not deliberate and it is in the interest of justice that one opportunity may be granted to the petitioner to further cross-examine PW-10. Otherwise, it will cause irreparable injury to the petitioner.

7. Learned counsel for the respondent opposed the petition of the petitioner and submits that to delay the proceeding, the plaintiff (PW-10) was not cross-examined on 17.04.2018. He further submits that the petitioner has been harassed by the plaintiff by not cross-examining him on the date fixed and praying to recall him for his further cross-examination. Lastly, he has submitted that an appropriate cost may be imposed on the petitioner if the opportunity is granted to the petitioner for further cross-examination of the PW-10.

8. Having heard the learned counsel for the parties and perused the record as stated above, it appears that the learned counsel for the defendant No.2 / petitioner failed to cross-examine the plaintiff on 17.04.2018 on the ground that petitioner was ill on that date and the case record was with him due to which he was unable to further cross-examine PW-10.



The learned trial Court closed the evidence of PW-10 vide the order dated 17.04.2018 and the recall order has also been dismissed.

9. The object of cross-examination is to check the credibility of the witness. It is one of the principle tests which the law has devised for ascertainment of the truth. The purpose of cross-examination is not simply to attack an adversary, but also to strengthen his own case. Cross-examination is a keystone to a successful trial. The opportunity to cross-examination, unless there existed an absolute laxity on the part of the petitioner, should not have been denied.

10. It is in the interest of justice that one opportunity may be given to the defendant / petitioner to cross-examine PW-10, who is the plaintiff of the suit.

11. Accordingly, the impugned order dated 14.08.2018 is set aside and the petitioner is granted one opportunity to cross-examine the PW-10 subject to a cost of Rs. 1000/- to be paid by the petitioner to the plaintiff.

12. The trial Court is directed to recall PW-10 for his further cross-examination by the defendant No.2 / petitioner and one opportunity be given to the petitioner for the further cross-examination of plaintiff (PW-10).



13. Accordingly, this Civil Miscellaneous application
is disposed of with the aforesaid direction.

(Sunil Dutta Mishra, J)

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