

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.703 of 2017**

1. Paras Prasad and Anr Son of Laldhari Mahto @ Jangi Mahto
2. Gita Devi wife of Paras Prasad Both residents of village - Teghra, Police Station - Maharajganj, District - Siwan.

... .. Petitioner/s

Versus

Satyendra Prasad Son of Late Laldhari Mahto @ Jangi Mahto Resident of Village - Barka Tehra, Post Office - Chhotka Teghra, Police Station - Maharajganj, District - Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Raghav Prasad, Advocate
For the Respondent/s	:	Mr. Chandra Kant, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

6 22-03-2024 Heard learned counsel for the petitioners and learned counsel for the respondent and this Court intends to dispose of the present civil miscellaneous petition at the admission itself.

2. The present petition has been filed under Article 227 of the Constitution of India for quashing the order dated 13.02.2017 passed by the learned Sub Judge III, Siwan in Title Suit No. 559 of 2008 by which the learned Sub Judge has refused to recall the plaintiff Satyendra Prasad, for his cross-examination.

3. respondent is the plaintiff before the learned Trial Court and the petitioners are defendants.

4. Learned counsel for the petitioners submits that an application has been filed for recall of the plaintiff as witness for



his cross-examination since his cross-examination could not be done by the defendant petitioners. Learned counsel further submits that the Advocate Clerk noted wrong date and for this reason the learned counsel for the defendants could not appear for cross-examination of the witness, the plaintiff, before the learned trial Court and there was no fault on part of the defendants. Even in the interest of justice, one opportunity may be given to the defendants for cross-examination of plaintiff.

5. The submission made on behalf of the petitioners has been vehemently opposed by the learned counsel appearing on behalf of the plaintiff respondent who submits that from the order sheet it is apparent that the defendants have been given a number of opportunities for cross-examination of the witness, still they chose not to do so. Even this witness was recalled for cross-examination on payment of cost and still the defendants failed to cross-examine the said witness. There is clear laches on part of the defendants.

6. Having regard to the rival submissions and in the interest of justice, I think the defendants need to be given an opportunity to cross-examine the plaintiff as witness subject to payment of cost.

7. In these circumstances, the impugned order dated



13.02.2017 is set aside so far as refusal to recall the plaintiff Satyendra Prasad as witness is concerned.

8. The learned Trial Court is directed to fix a date for cross-examination of the plaintiff respondent Satyendra Prasad for his cross-examination on recall, subject to payment of cost of Rs. 10,000/- to be paid to the plaintiff on the date fixed for cross-examination.

9. Accordingly, the instant petition stands allowed.

(Arun Kumar Jha, J)

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