

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1396 of 2017**

Shukul Singh S/o late Ramswaroop singh Resident of Village- Majirabad,
P.O. Malikpura Via Goraul, P.S. Goraul, District- Vaishali at Hajipur.

... .. Petitioner/s

Versus

1. Birendra Singh S/o late Ramswaroop Singh
2. Lal Babu Singh Minor Son of Birendra Singh under of Gn. Natural Gn.
Father O.P. No. 1 both resident of Village- Majirabad, P.O. Malikpura, Via
Goraul, P.S. Goraul, District- Vaishali at Hajipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Surya Nararyan Poddar, Advocate
For the Respondent/s	:	Md. Waliur Rahman, Advocate Ms. Anuradha Singh, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 13-02-2024

Heard learned counsel for the parties and I intend to
dispose of the present petition at the stage of admission itself.

2. The present petition has been filed under Article
227 of the Constitution of India against the order dated
03.03.2017, passed by learned Munsif-II, Hajipur (Vaishali) in
Misc. Case No. 21 of 2000, whereby and whereunder the
petition of the petitioner to examine respondent nos. 1 and 2 as
witnesses has been allowed on payment of cost of ₹100/-.

3. Learned counsel for the petitioner submits that
Misc. Case No. 21 of 2000 was filed by the respondents along
with the father of respondent no.1, Ramswaroop Singh against
the petitioner for setting aside the decree passed in Title Suit No.
24 of 1998 on the ground of fraud. While miscellaneous case



was pending, an application was moved on 18.02.2017, with prayer to examine the respondents who were the original petitioner nos. 2 and 3 in miscellaneous case since their evidence could not be recorded. Learned Trial Court allowed the application vide impugned order dated 03.03.2017.

4. Learned counsel further submits that the order of the learned Trial Court has been passed without assigning any reason. From bare perusal of the impugned order, it is evident that learned Trial Court has not discussed the facts of the matter and simply allowed the application with cost of ₹100/-. Learned counsel further submits that the evidence in this case was closed and the matter was at the stage of argument of the parties and after 16/17 years, all of a sudden, the respondents were allowed to get themselves examined as witness. It is further submitted that though allegations have been levelled against the petitioner that being an advocate, he prevailed upon counsel of the respondents not to allow them get themselves examined, but the father and grandfather of the respondent no.1 were examined in this case apart from other witness. It also appears that the respondent no.2 was minor at the time of examination of the witnesses in the miscellaneous case on behalf of the petitioners. So allegation that respondents did not get chance for their



examination is completely false. From the application filed on behalf of the respondents, it is evident that at the advice of the learned lawyer of the respondents, it was felt that the evidence of the respondents are also required in the matter and on legal advice, the application was moved. It is also clear that the application was filed on behalf of the respondents in order to fill up the lacunae in the case. Learned counsel reiterated that any order without assigning any reason is not an order or a judgment at all and he relied upon the decision in the case of **State of Rajsthan Vs. Sohan Lal & Ors.** as reported in **(2004) 3 PLJR SC 263**. Thus, the learned counsel submits that the impugned order is not sustainable and the same may be set aside.

5. Per contra, learned counsel appearing on behalf of the respondents vehemently contended that the impugned order is sustainable and has been passed keeping the interest of justice in mind. Learned counsel further submits that the present miscellaneous case before the learned Trial has been filed against a fraudulent compromise decree seeking relief of setting aside the decree and restoring the title suit on its original record and disposing of the same on merits. Learned counsel further submits that learned Trial Court has noted the fact that the petitioner was an advocate in the Civil Court, Hajipur, hence



there is probability that earlier the evidence of the respondents could not be recorded due to connivance of the petitioner and learned counsel appearing on behalf of the respondents. Learned counsel further submits that learned Trial Court passed the order in the interest of justice and to decide the real dispute between the parties and if the respondents are not allowed to get themselves examined, they would be seriously prejudiced. Learned counsel further submits that the respondents are even ready to get themselves examined on two consecutive dates, if this Court so directs.

6. Perused the records.

7. From perusal of the record as well as considering the rival submissions of the parties, the fact is evident that the order of the learned Trial Court allowing the application of the respondents is a cryptic order and have been passed without assigning any reason. If so much time has elapsed, it was incumbent upon the learned Trial Court to mention the fact in its order and why it was allowing the application so late in time. Apparently, the impugned order, on this ground, is not sustainable. However, after passage of such long time, it would not serve any useful purpose if the matter is remanded for passing fresh order which this Court would otherwise have



done. The impugned order was passed on 03.03.2017 in Misc. Case No. 21 of 2000. We are in the year 2024 and the matter remained pending before this Court for about seven year. Evidently, the miscellaneous case was filed in the year 2000 for setting aside the decree passed in Title Suit No. 24 of 1998 and it is quite unfortunate that the said miscellaneous case is still pending before the learned Court below. It has also come in the submission of learned counsel for the petitioner that one of the petitioners was minor during time when the evidence in this case was being recorded. There are allegations of fraud in passing decree in title suit against which the miscellaneous case has been filed. So giving an opportunity to the respondents would further the cause of justice. Keeping this fact in the back of mind, I think the respondents could be given one opportunity to get themselves examine as witness in their case. However, in the process, the other side needs to be suitably compensated in terms of cost.

8. Accordingly, the impugned order dated 03.03.2017, passed by learned Munsif-II, Hajipur (Vaishali) in Misc. Case No. 21 of 2000 stands modified and the instant petition is disposed of with direction to the learned Trial Court to examine the witnesses on two consecutive dates within a month from



today and such examination of witnesses would be subject to payment of ₹10,000/- to be paid on the first date of hearing. The learned Trial Court is directed to take up the Misc. Case No. 21 of 2000 on day to day basis and dispose of the same within three months from the date of receipt/production of a copy of this order.

9. However, it is made clear that this Court has not made any observation on the merits of the case.

(Arun Kumar Jha, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.02.2024
Transmission Date	N/A

