

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.42 of 2023

1. Md. Fazle Ghani Son of Dr. Shaukat Ali Resident of Mohalla- Shirin Market Mahisaudhi, P.S.-Jamui, District- Jamui.
2. Dr. Md. Manuawar Ali Son of Dr. Shaukat Ali Resident of Mohalla- Shirin Market Mahisaudhi, P.S.-Jamui, District- Jamui.

... .. Petitioner/s

Versus

Md. Razaul Hoda @ Razaul Hoda @ Nanhun Razaul Hoda Son of Samasul Hoda, Resident of Village Lohra, P.S.- Jamui, District- Jamui.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ram Naresh Ray, Advocate
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 08-07-2024

Present learned counsel for the petitioners. However,
on repeated calls, none appears for the respondent.

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

03. The present petition has been filed under Article
227 of the Constitution of India for quashing the order dated
29.11.2022 passed in Eviction Suit No. 03 of 2009 by the learned
Additional Munsif-II, Jamui whereby and whereunder the learned
trial court has allowed the petition dated 16.08.2022 filed by the
defendant for recalling the witness plaintiff/petitioner no. 2 for
his cross-examination.



04. Learned counsel for the petitioners submits that petitioners are plaintiffs before the learned trial court and they have filed a suit for eviction against defendant/respondent on the ground of personal necessity. The suit was filed in the year 2009 and while the matter was fixed for argument, the defendant filed a petition dated 16.08.2022 for recall of plaintiffs' witness no.2, Dr. Md. Munuawar Ali on the ground that due to mistake, learned counsel for the defendant did not cross-examine the witness on the point of exhibited document. Learned counsel further submits that the defendant/tenant is in habit of harassing the plaintiffs and has been trying to linger on the matter and delay the disposal of the present case. The application was filed without any valid and reasonable ground but the same was allowed by the learned trial court in completely erroneous manner. The learned trial court has not considered the fact that the application was moved after ten years of closure of evidence of the plaintiffs and no valid reasons have been put forward by the defendant for recalling the witness. The impugned order is completely devoid of merit and the learned trial court ought to have rejected the petition which was filed with an intention to delay in disposal of the eviction suit.

05. Having regard to facts and circumstances and submission made on behalf of the petitioners/plaintiffs, it *prima facie* appears that the application dated 16.08.2022 has been filed



with ulterior motive on flimsy ground. The contention that the learned counsel did not cross-examine the witness due to mistake could not be a ground for recalling the witness after ten years of closure of the evidence. It is surprising that the learned trial court proceeded in this manner in the eviction suit when *malafide* was writ large on the face of the petition.

06. In the light of aforesaid discussion, I do not think the impugned order is sustainable and hence, the order dated 29.11.2022 passed in Eviction Suit No. 03 of 2009 is set aside. As a result, the petition dated 16.08.2022 filed by the defendant for recalling the witness stands rejected.

07. Since the eviction suit is pending since 2009, the learned trial court is directed to proceed in the matter expeditiously and dispose of Eviction Suit No. 03 of 2009 within two months from the date of receipt/production of a copy of this order.

08. With the aforesaid observation, the present petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.07.2024
Transmission Date	NA

