

**In the Court of Sub-Judge, Teghra**

Title Suit No. 192 of 1985

Ramashish Pd. Singh Vs. Hirdi Rai

Order S. No.	Date of Order of proceeding	Order with signature of the Court	Office action taken with date
1	2	3	4
	03.09.2022 (1)	<p data-bbox="363 460 1333 532"><b><u>Order on petition dated 15.04.2021 <sup>to</sup> for Recall of Witness</u></b></p> <p data-bbox="386 576 1333 908">Both parties are present through their respective Learned Counsel. The record has been produced before the Court for order on the petition of the defendants dated 15.04.2021 with prayer to recall the witness (PW-17 Ramashish Prasad Singh) examined by the plaintiff and rejoinder to this petition dated 10.05.2022 filed by the plaintiff.</p> <p data-bbox="386 934 1333 2101">The learned counsel for the defendants has submitted that plaintiff no. 1 Ranashish Prasad Singh filed his attendance on 30.07.2019 as P.W. No. 17 in support of his case but he could not be cross examined because the lawyer of defendant as he was not present in the court at that time when case was called out as he was busy in the other court and when he appeared in the court till then said witness had been discharged. Prior to 30.07.2019 the suit was fixed for substitution matter. PW-17 is an important witness as he is party, therefore his cross examination on recall is very much essential to bring certain facts on record to arrive at the correct conclusion of the case. Same petition filed by defendant earlier on 10.09.2019 which had been rejected on technical ground on 09.02.2021 observing therein that petition is not verified nor supported with an affidavit. The defendants have been filed this petition with verification and supported with an affidavit to comply the observation of this court. The defendant shall suffer much irreparable loss if an opportunity to cross examine the said witness is not given to these defendants. In the interest of justice and equity, it is essential to recall P.W. No. 17 namely Ramashish Prasad Singh who has been discharged without his cross examination on</p>	

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30.07.2019. Copy of the petition has been served to the plaintiff.

The rejoinder filed by plaintiff on 10.05.2022 and submitted that the petition dated 15.04.2021 filed on behalf of the defendants for recalling PW-17 is maintainable neither in law nor in facts and circumstances of the case and is fit to be disallowed. The P.W. No. 17 Ramashish Singh aged about 74 years old, weak and diseased suffering from diabetes and is under treatment and advised not even to move still was physically present on 30.07.2019 very cautiously in the assistance of two attendants. The same petition on behalf of the defendants was rejected on 09.02.2021 as a whole technically and legally following the direction of Hon'ble apex court. It is not only delaying tendency of the defendants rather the abuse of the process of the court. The ground of the present recall petition are in no grand tenable as the former recall petition had been rejected legally and technically. The legal and sufficient opportunities were provided to the defendants still they did not avail the same. So, petition filed on behalf of the defendants dated 15.04.2021 may kindly be rejected for the ends of justice.

Heard both parties and perused the record. After perusal of the record, it transpires that instant case has been filed by the plaintiffs for declaration of title of plaintiff on suit land. Affidavit for evidence filed by Ramashish Prasad Singh as PW-17 on 30.07.2019 and copy of the said affidavit has been received on behalf of the defendants on same day. Ramashish Prasad Singh as PW-17 has been examined and discharged on 30.07.2019 on the basis of non appearance of opposite parties for cross examination. The defendants filed the petition for recalling the said witness on 19.09.2019 which has been rejected on technical ground and defendants again filed said petition after long time i.e. 15.04.2021. It has been committed gross negligence on behalf of defendants to cross examine the witness and

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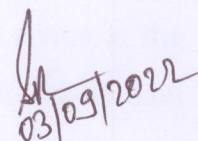
**Contd....**  
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**(3)**

for recalling the witness. But Ramashish Prasad Singh is the plaintiff No. 1 of this case and his evidence is essential for the proper adjudication of this case. It appears that these petitioners that are the contesting defendants of the suit and under the facts and circumstances of this case it is just and proper to provide them an opportunity to test the veracity of the plaintiff's witness by way of cross examination and at the same time, they are required to compensate the witness for his expenditure. It is pertinent to mention here that this case is one of the oldest case of this court and pending from 1985 and this suit has been identified by the Hon'ble High Court of Judicature at Patna for speedy trial.

Under the aforesaid facts and circumstances, *the petition of the defendants dated 15.04.2021 is hereby allowed subject to the cost of Rs. 1500/- which will be paid to the said witness when he will be produced for cross examination.*

Put up on 01.11.2022 for examination of recalled witnesses.

typed & Corrected

  
**(Sushil Prasad)**  
Sub-Judge,  
Teghra (Begusarai)