

In the Court of the Sub Judge-II, Benipur

Present:- Sri Pranav Kumar Bharti

Title Suit No.-34 of 2015, Registration No.-40/15

Birendra Kumar Jha vs. Phool Kha & others

26-05-2022

Case is called out and record is produced before me. Both plaintiff and defendants are in attendance through their learned counsels. Perused the case record. On perusal of the case record, it appears to the Court that this instant suit has been pending for order on petition dated-06.05.2022 on behalf of the plaintiff. In this petition, it has been submitted that your honour has been pleased to close the case on 25.02.2022 when the evidence of the plaintiff was going on and only only plaintiff could be examined. It is further submitted that due to Covid-19, the Court was not functioning in physical mode and as such plaintiff couldn't adduce evidence. After reopening of the Court, petitioner couldn't learn about the transfer of the case to your honour's court and as such no proper pairvi could be made on behalf of the plaintiff. As a result, case of the plaintiff was closed. Further submission of the plaintiff is that the petitioner will be highly prejudiced, if the plaintiff is not allowed to adduce the remaining witnesses as well as not exhibiting their documents. Therefore, he prayed to recall the order dated-25.02.2022 and permit the plaintiff to adduce his remaining witnesses in the Court.

No rejoinder has been filed on behalf of the defendants on petition dated-06.05.2022. But learned counsel of the defendants verbally opposed the prayer of the plaintiff and submitted that sufficient opportunities have been provided to the plaintiff to adduced evidence. Plaintiff has filed this petition only to linger this case on and this petition is devoid of merit and deserves to be rejected.

Heard the learned counsel of the plaintiff and defendants and perused the case record. On hearing and perusal of the case record, it appears that this instant suit has been brought by the plaintiffs against eight defendants on 09.02.2015. After admission, summon was issued against the defendants and they appeared in the suit. It further appears that issues have been settled/framed on 04.05.2017 and since 06.06.2017, this instant suit has been pending for plaintiff's evidence.

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It further appears that only one P.W. namely Birendra Kumar Jha was produced in the Court on 21.08.2019 for examination. He was partly crossed by the defendant on 14.01.2020 and thereafter almost two years and thirteen dates have been passed, but he has not been produced on behalf of the plaintiff. Despite the fact that he is the plaintiff of the suit, he didn't turn up for further cross-examination. Then plaintiff evidence was closed on 25.02.2022. So far as the plea of the plaintiff regarding knowledge of transfer is concerned, on perusal of the case record, it transpires that after transfer of the case record, he made pairvi in this Court on 04.02.2020. So this plea of the plaintiff is not sustainable. So plaintiff is warned for future not to raise frivolous plea. Almost five years have been passed since settlement of issues and only one P.W. adduced.

Considering the fact and circumstances as discussed above, petition dated-06.05.2022 filed on behalf of the plaintiff is allowed with cost of Rs.-500 with further direction to conclude evidence as earliest.

Fixing on ~~10-6-22~~ for plaintiff evidence.

Dictated

Sub Judge-II
26.5.22