

In the Court of the Sub Judge-II, Benipur

Present:- Pranav Kumar Bharti

Title Suit No.-43 of 2012, Registration No.-1787/14

Bajinath Mallah & Others vs. Gangai Mukhiya & Others

15-12-2021

Case is called out and record is produced before me. Plaintiff is in attendance while defendants are absent, do proper pairavi. 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-18.03.2021 on behalf of the plaintiff. In this petition, it has been submitted that this suit has been pending for plaintiff's evidence and plaintiffs have to produce formal witnesses in this suit. But plaintiff evidence is closed on today. If those witnesses are not produced, plaintiff will have to face irreparable loss. Therefore, he prayed allow the plaintiff to produce documentary evidence.

A rejoinder petition has also been filed on 06.12.2021. In this petition, it has been submitted that petition filed on behalf of the plaintiff is not maintainable. It is further submitted that time petition of plaintiff was allowed with cost of Rs.-500/- on 03.03.2020, then plaintiff evidence is closed on 18.03.2021. The plaintiffs have spoiled precious time of the Court and no time petition was filed on behalf of the plaintiff. Further submission of the defendant is that defendant couldn't file the rejoinder on time due to pandemic Covid-19, so this learned Court be pleased to recall the order dated-15.09.2021. Therefore, it is prayed that Court be pleased to reject the petition dated-18.03.2021 filed on behalf of the plaintiff with cost.

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 three defendants on 03.03.2012. After admission, defendants were summoned and they appeared in the suit on 18.12.2012. It further appears that defendant no.-1 filed the Written Statement(W.S.) on 16.03.2019 and rest defendants adopted the W.S. filed on behalf of the defendant no.-1. It further appears that issues have been settled/framed on 09.08.2016 and since 24.08.2016, this instant suit has been pending for plaintiff's evidence.

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Continue..... Altogether five witnesses along with documentary evidence have been adduced on behalf of the plaintiff till 07.02.2021. It further appears that time petition of the plaintiff was allowed with cost of Rs.-500/- on 03.03.2020. but no evidence has been adduced thereafter,plaintiff evidence was closed on 18.03.2021. On perusal of the case record, it further appears that on 18.03.2021 neither plaintiff nor defendant was in attendance. But when plaintiff evidence was closed,then this petition was filed on same day. It further appears that despite several directions and last chance, no rejoinder was filed on behalf of the defendant,then defendant was debarred from filling the its rejoinder on 15.09.2021. Almost half an year, this record has been pending for rejoinder due to latches on the part of the defendant. On perusal of the petition dated-18.03.2021, it transpires that he has to produced only formal witnesses in this suit and it may be allowed in the interest of justice by seeing the present scenario.

Considering the fact and circumstances as discussed above,the Court is inclined with the submission of the learned counsel of the plaintiff and thus petition dated-18.03.2021 filed on behalf of the plaintiff is allowed with cost of Rs.-200 with further direction to conclude evidence within three dates. On perusal of the case record, it further appears that plaintiff of the suit Baijnath Mallah died issueless, but his name has not been deleted till dated, so O/C is directed to comply the order dated-03.04.2018 and delete the name of deceased plaintiff no.-1 namely Baijnath Mallah from title page of the plaint. Fixing on ~~02.02.22~~ for plaintiff evidence.

Dictated


Sub Judge-II

15.12.21