

The Court of Civil Judge Junior Division, Shahpur Patory (Samastipur)

Eviction Suit No.- 02 of 2015

Md. Sayeed.....Plaintiff

Versus

Kameshwar Prasad JaisawalDefendant

03-10-2023

Parties present, record has been produced for order on the petition of the defendant dated 26/07/2023 with prayer to recall defendant witnesses namely Kameshwar Prasad Jaisawal for further examination with regard to custody of document. Rejoinder to this petition is filed on 12/09/2023.

It has been submitted by the ld counsel for the petitioner that the present case record is running for defendants' evidence. That the defendant witness has been examined earlier. The petitioner has filed certain document in support of his claim, the custody of which is required to be proved by the defendant. It is therefore, prayed to allow this petition and these defendant witnesses may be recalled for the same.

The plaintiff has ardently opposed the prayer of the petitioner and submitted that the petition under reply is not maintainable. The petition of defendant is ab initio bad in law as well as wrong on fact. The defendant Kameshwar Prasad Jaisawal had been examined and discharged on 16-06-2023. the defendant has filed forged document on dt. 24-09-18 and 16-02-2023 which is not maintainable in eye of law. The defendant has not raise any question during course of examination of the said witness and present application can not be allowed merely for filling of lacuna in cross examination. It is therefore prayed to dismiss the petition under reply. However plaintiff counsel also file ruling of Hon'ble Andhra Pradesh High Court without list of document where it was held that application under Order 18 Rule 17 of CPC to recall the evidence of witnesses cannot be allowed at a belated stage such as after closure of their evidence; while fact of that case is different from present case because present case is fixed on defendant evidence. So the ruling stated by the plaintiff counsel is not applicable in present scenario.

Upon hearing both side perused the record, it appears that the present case record is pending for defendant's evidence. On 16-06-2022, DW-1 Kameshwar Prasad Jaisawal was examined, cross-examined and discharged. Now, the defendant seeks permission for recall this witness for proving of custody of certain document which is being filed on behalf of defendant in support of his claim. It is settled principle of law that a petition is not to be dismissed on the ground of mere technicalities and all evidences should come on the record.

In the light of aforesaid discussion as well as having regard to the facts and circumstances of this case and in the interest of justice, the petition of the defendant dated 26/07/2023 is allowed subject to cost of Rs.500/- (five hundred rupees) to be paid to the plaintiff. DW-1 Kameshwar Prasad Jaisawal is recalled for further examination with respect to prove of custody of document.

Put up record on 12-10-2023 for evidence of the defendant.

Munsif,
Shahpur Patory