

**IN THE COURT OF DISTRICT & ADDITIONAL SESSIONS JUDGE-III,
VAISHALI AT HAJIPUR**

Probate Case No. 16 of 2008
C.N.R. No. BRVA01-000129-2008

Indu Devi -----Applicant

Vs.

Ram Singhasan Singh & Others -----Opposite Party

13.08.2025

ORDER

1. Heard, the Ld. Counsel appearing on behalf of the applicant as well as opposite parties on the petition dated 13-06-2024 and rejoinder dated 26-07-2024. The Ld. Counsel for the applicant has stated that in 2009 and 2010, five witnesses have been examined and thereafter, the witnesses of opposite party have also been examined and thereafter, the matter was put up for arguments where this fact has come to the knowledge that the deposition of the witnesses are not available. The Ld. A.D.J.-11 on 11-05-2022 directed the office to find out the deposition but till date, it could not be complied with. He has also submitted that the Misc. Case has been filed before the Ld. District Judge but no report in this regard could be submitted. He has also submitted that the applicant is suffering from heart ailments and applicant witness nos. 4 and 5 and, namely, Sita Ram Rai and Rakesh Ojha have also died. He has submitted that the applicant is interested in the disposal of the case and accordingly, prayed that order of retrial may kindly be granted.
2. Ld. Counsel for the opposite party has opposed the application. He has also submitted that no legal provision has been quoted to show that a person where evidence has been taken in the Court, the same could be taken once again. He has also submitted the Misc. Case No. 152/2022 is still pending and therefore, no question of retrial arises. It is, accordingly, prayed that application dated 13-06-2024 is to be rejected.
3. Heard. From the perusal of the record, it appears that vide order dated 29-08-2024 both the parties have been directed to file the deposition missing from the record so that it could be reconstructed in this regard. Both the parties have not taken any step despite clear direction of the Court. This Probate Case is pending since 2008. Accordingly, both the parties are once

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again directed to file the relevant and missing documents before the Court within next two months positively. The concerned parties are further directed to bring the relevant order of Ld. Principal and District Judge, Vaishali if any Misc. Case is filed before the concerned Ld. Authority. If, they would fail to do so even after the period stipulate above then the Court would have no option left but to order for fresh testimony of the witness as in the interest of justice and to prevent failure of justice and the other side will have full right of cross-examination. The other side will also get an equal opportunity to produce the evidence including witnesses. It is relevant to mention that reconstruction of such missing/unavailable testimonies is the best course available in the law but in the extra-ordinary situation this Court when left with any option then fresh evidence has to be taken so as to adjudicate the case in proper perspective. The missing of the testimonies from the record is a serious issue and the erring staff must face the hit but the responsibility has to be fixed by the administration in such cases. It is relevant to mention that vide order dated 11-05-2022 the Ld. A.D.J.-11 it is directed the office to write a letter to Ld. A.D.J.-6 for in connection with this matter. **The office is, accordingly, directed to send the copy of this order to the Office Clerk of the concerned Ld. Court to do the needful and report within one month failing which the the matter will be communicated to Ld. Principal District Judge, Vaishali for taking appropriate administrative action against such staff.**

Let the matter be put up on 03-09-2025 for further proceeding.

Dictated

Gaurav Kamal
District & Sessions Judge-III
Vaishali at Hajipur.
13-08-2025