

IN THE COURT OF SUB JUDGE I NARKATIAGANJ

TS No. 267/2023

CIS No. 267/23

Rajneesh Rai v/s Pooja Mishra

14/08/2024 1. Attendance filed on behalf of both the parties. Record put up for order on the petition dated 24/07/2024 filed on behalf of the plaintiff under Order 18 Rule 16 CPC.

ORDER

2. It has been submitted on behalf of the plaintiff that the present suit has been brought by the plaintiff for the declaration of the title and confirmation of possession of the plaintiff over Schedule-2 lands and for declaration with respect to sale deed dated 19/08/1970 absolutely wrong, illegal, false, fake.

3. Plaintiff's contention is that defendant no. 14 Bageshwari Prasad Shahi is an important witness in this case who has all the information related to this case. And is quite old and his age is about 91 years. Further contention is that he is suffering a lot due to old age and illness and is being continuously treated by doctors and if his condition worsens, he has to be taken out for treatment and has no security of his life and in the absence of defendant No. 14 as witness , the court will be deprived of the evidence that would provide information about important facts related to this case and there will be difficulty in the judicial execution of the case. Therefore, it is necessary in the interest of justice to get the evidence of defendant No. 14 done immediately and be taken as a special witness. And lastly prayed for to examine the defendant no. 1 as a special witness so that the interest of justice can be protected.

4. Whereas on behalf of the defendants no. 1 to 8 it has been submitted that the plaintiffs application dated 24/07/2024 filed by the plaintiffs is not maintainable in the eyes of law and hence deserves to be rejected. And the further say of the defendants is that application has been filed by the plaintiff for the evidence of defendant no. 14 as a special witness whereas defendant no. 14 has appointed his advocate, that defendant no. 14 is appearing in this suit through his advocate and if ever the defendant No 14 was required to give evidence as a special witness in this case, then the court would allow defendant number 14 to present his

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evidence as a special witness himself or through his advocate. But no application has been made on behalf of defendant number 14 seeking permission from the court to present evidence as a special witness. It is further submitted that it is clearly stated in the plaintiffs application that the condition of defendant no. 14 when worsens is taken out for medical treatment, hence it is clear that he is not incapable of walking nor the position of defendant no. 14 is pathetic due to which it is necessary for defendant no. 14 to give evidence as special evidence. Learned counsel for the defendant no. 01 to 08 further submits that only on the basis of the old age of the witness request made under Order 18 Rule 16 CPC cannot be accepted and old age is not a ground for circumventing regular procedure of the Court. And if under Order 18 Rule 16 CPC evidence is allowed then it will cause prejudice and also cause grave injustice to the defendant no. 1 to 8. Therefore the instant petition is fit to be rejected.

5. Consideration of the submissions of the Id Counsels for the parties and the pleadings on record it transpires that the defendants no. 14 ,the case in question , the Id advocate of defendant no. 14 have endorsed “no objection” on the petition dated 24/04/2024 of the plaintiff. Further defendant no. 10 to 13 have also endorsed “no objection” on the petition dated 24/04/2024 of the plaintiff.And defendant no. 9 has not appeared in the suit . It also appears from perusal that written statement have been submitted by defendant no. 1 to 8 and 14 only.

6. Order 18 Rule 16 CPC reads as follows:

"16. Power to examine witness immediately.-

(1) Where a witness is about to leave the jurisdiction of the Court, or other sufficient cause is shown to the satisfaction of the Court why his evidence should be taken immediately, the Court may, upon the application of any party or of the witness, at any time after the institution of the suit, take the evidence of such witness in manner hereinbefore provided.

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(2) Where such evidence is not taken forthwith and in the presence of the parties, such notice as the Court thinks sufficient, of the day fixed for the examination, shall be given to the parties.

(3) The evidence so taken shall be read over to the witness, and, if he admits it to be correct, shall be signed by him, and the Judge shall, if necessary, correct the same, and shall sign it, and it may then be read at any hearing of the suit."

7. On a bare reading of the said provision, it is manifest that the party making an application must satisfy the court that the witness is about to leave the jurisdiction of the court or assign other sufficient cause for taking his evidence immediately. As per Order 18 Rule 16 where a witness is about to leave the jurisdiction of the court or other sufficient cause is shown to the satisfaction of the court, why his evidence should be taken immediately, the court may on the request of any party, at any time after the institution of the suit, take the evidence of such witness in manner prescribed.

8. Plaintiff in the case have filed an application under Order 18 Rule 16 CPC seeking leave of the court to adduce evidence of defendant no. 14 an old men of 91 years and a patient of heart and diabetics with further old age problems . Further, the plaintiff has produced detail particulars of illness treatment showing the ill state of the defendant no.14. In the instant case, there is no denial to the fact that the defendant no. 14 is an old man of 91 years and is ill which is accepted by the defendant no. 1 to 8 thus it transpires that there is no denial to this fact. Order 18, Rule 16 provides for the de bene esse examination of a witness about to leave the jurisdiction of the Court, or for other sufficient cause shown to the satisfaction of the Court upon the application of any party or of the witness, at any time after the institution of the suit. Thus ,therefore this court is of opinion that if his evidence is recorded first under Order 18 Rule 16 CPC on the ground of his age and ill health as special witness then it willnot cause any prejudice or cause grave injustice to the defendant no. 1 to 8.

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9. Accordingly the instant petition is allowed. Put up on 05/09/2024 for defendant no. 14 evidence.

Sub Judge I
Narkatiaganj