
(2006) 07 PAT CK 0056
In the Patna High Court
Case No : C.R. No. 2016 of 2005

Basudhanand Panday

APPELLANT

Vs

Vidyanand Pandey and Others

RESPONDENT

Date of Decision : 19-07-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (2006) 4 PLJR 74

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard. This case is a peculiar case. A Partition Suit was filed. Petitioner, before this Court, was arrayed as a defendant along with his brother Vidyanand Pandey. It appears sometime thereafter an application under Order 1 Rule 10 was filed on behalf of the petitioner and the said Vidyanand Pandey for being transposed as plaintiff. This was allowed. It appears that the suit proceeded. Witnesses were examined and at the stage of hearing, an application is now filed by the petitioner, who is shown as plaintiff No. 4 on being transposed from defendant, that in fact he had never appeared as a defendant in the suit. He had never authorised any lawyer to appear on his behalf. In fact, he was not aware of the suit till recently and all his signatures, verifications, vakalatnama are forged. He, accordingly, prayed that he should be relegated to the position of a defendant and be permitted to file his written-statement and examine, re-examine, cross examine witnesses. This application was rejected by the trial Court. Merely on the ground that it has been eighteen years since institution of the suit. This petitioner had made an application for being transposed as a plaintiff. Witnesses having been examined by all parties, it would not be proper to allow the petitioner to be relegated as a defendant.

2. The opposite parties have appeared. I have heard the parties and considered the situation. I am afraid that the learned trial Court has totally misdirected

himself on the issue in question. Here the petitioner specifically asserted that he had no knowledge of the proceedings. All his signatures, authorisations, verifications were forged and if the same is permitted to continue, it will cause him serious prejudice. The learned trial Court, instead of ordering an enquiry into these serious allegations for finding out the truth of the matter, has chosen to proceed with the case as if the petitioner had in fact appeared and participated, a fact vehemently denied by the petitioner. Such a thing, in my view, cannot be brushed aside except upon a thorough enquiry. Mere passage of time and progress of suit cannot undo the fraud being practised, if it is true. In such a situation, it was incumbent upon the Court to hold a detailed enquiry, examine the parties and their witnesses in this matter including the concerned lawyers who were appearing for the parties and to get the truth of the matter. If it is found that the objection being raised by the petitioner was false and frivolous, the Court is not powerless to take suitable action in the matter. On the other hand if the allegations are found correct then the Court would be obliged to take action against persons who perpetuated the fraud. Needless to mention that suit being a Partition Suit of the year 1988, the Court would proceed expeditiously in this matter. In that view of the matter, the impugned order is set aside and the Court is directed to proceed in accordance with the directions and observations made above.