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**(2015) 03 RAJ CK 0188**  
**In the Rajasthan High Court**  
**Case No : Civil Writ Petition No. 14193 of 2014**

Rameshwar and Others

APPELLANT

Vs

Ratiram and Others

RESPONDENT

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**Date of Decision :** 26-03-2015

**Acts Referred:**

**Citation :** (2015) 2 WLN 493

**Hon'ble Judges :** J.K. Ranka, J

**Bench :** Single Bench

**Advocate :** Umakant Bhardwaj, for the Appellant

**Final Decision :** Disposed off

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## Judgement

J.K. Ranka, J.

1. Instant writ petition has been directed against the order dt. 21.11.2014 passed by Civil Judge (JD) cum Judicial Magistrate Kotputli, Jaipur in Civil Suit No. 134/2006 whereby application for opening cross-examination of the plaintiffs, has been rejected. It is contended by counsel for the petitioners that plaintiffs-petitioners have attended almost all the proceedings before the trial Court but evidence was not taken and on the contrary evidence of PW-2 and 3 and other witnesses have been recorded but in so far as plaintiff-petitioner is concerned, evidence was not recorded. He contended drawing attention of the Court to the proceeding sheets that there was some confusion about the evidence of the plaintiff-petitioners and having noticed that the evidence of plaintiff-petitioner Pw-1 was not recorded, an application has been moved on 19.11.2014 on which date also plaintiff-petitioner PW-1 was present however, the Court did not permit the cross-examination and closed the evidence. Counsel for the petitioner contended that there was genuine inadvertent mistake either by the Court or by counsel for the petitioners and therefore, one last opportunity be permitted in this regard. He further contended that for genuine inadvertent mistake, the petitioners should not suffer.

2. I have considered the arguments advanced by the counsel for the petitioners and in my view, there appears to be genuine inadvertent mistake caused by the counsel for the petitioners and it is an admitted fact that the petitioner attended proceedings which have been noticed on perusal of proceedings sheets and it appears that other evidence were recorded but the evidence of the plaintiff-petitioner as PW-1 could not be recorded.

3. In my view, it would be appropriate to allow cross-examination of plaintiff-petitioner PW-1. In the interest of justice and on account of the inadvertent mistake of counsel for the petitioner, the petitioner need not to suffer. However, it is also observed that the mistake has been caused, therefore, respondents are required to be compensated with cost of Rs. 2,500/- which is directed to be paid by the petitioners to the respondents on or before the next date. Trial Court may cross-examine PW-1 plaintiff-petitioner on the next date fixed. In case plaintiff-petitioner PW-1 avoids on said date, the trial Court may proceed in accordance with law. Let the parties may appear before the Trial Court on or before 17.04.2015 on which date cross-examination of plaintiff-petitioner PW-1 would be completed. With the aforesaid directions/observations, the writ petition is disposed of.