

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**W.P.(C) No.1568 of 2018**

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|------------------------|-------|-------------|
| 1. Jay Shankar Yadav   |       |             |
| 2. Amar Nath Yadav     |       |             |
| 3. Bijay Shankar Yadav | ..... | Petitioners |

Versus

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|------------------------------|-------|-------------|
| 1. Bhola Yadav               |       |             |
| 2. Sumitra Devi              |       |             |
| 3. Vidya Devi                |       |             |
| 4. Bidoti Devi @ Babita Devi |       |             |
| 5. Kushmi Devi               | ..... | Respondents |

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**CORAM : HON'BLE MR. JUSTICE SUJIT NARAYAN PRASAD**

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For the Petitioner	: Mr. Rajeeva Sharma, Sr. Advocate
For the Respondents	: Mr. M. Jalisur Rahman, Adv.

**22/07.11.2019** This writ petition is under Article 227 of the Constitution of India, whereby and whereunder the order dated 06.03.2018 passed in Title Suit No.10 of 2012 by the Sr. Civil Judge-I, Sahibganj, has been assailed, whereby and whereunder a petition dated 01.02.2018 filed for marking four certified copy of return grant Estate of J.B. No.244 of mouza Sobhapur Ganga Prasad J.B. No.283 of mouza Arazi Mokri, J.B. No.32 of mouza Naya Bazare and J.B. No.255 of mouza Sobhanpur Ganga Prasad, has been allowed.

2. It is the case of the respondents/plaintiff while filing the petition on 01.02.2018 that these documents could not have been filed at the time of presenting the plaint but subsequent to cross-examination of the plaintiffs' witnesses, the relevancy of these documents have been assessed which led the plaintiffs to file such petition for seeking leave of the trial court for marking of the said documents as exhibits.

Objection to that petition has been filed by the petitioner, raising the point that no reason in the petition has been filed as to what prevented the plaintiffs in not presenting the said documents along with the plaint as also the power of the trial Court as conferred under the CPC for granting such relief has not been invoked rather the petition has been filed under the provision of Section 5 of the

Limitation Act and hence, the petition ought not have been allowed but according to the learned senior counsel for the petitioner, the trial court without appreciating all these facts has allowed the petition, against which, the present writ petition has been filed.

3. Learned counsel appearing for the respondent has submitted by defending the order dated 06.03.2018 referred the provision of Order 7 Rule 14(3) of the CPC which confers power upon the trial court to grant leave considering the relevancy of the documents to be marked for proper adjudication of the issue.

He further submits that although the evidence of the plaintiff has already been closed but the trial Court has granted liberty to cross-examine the witnesses so adduced by the plaintiff in support of their case, if required so, as such, the defendants are not going to be prejudiced in any way and hence, the writ petition is having no merit.

4. The writ petition has been heard by this Court on 10.07.2018 and while issuing notice to the respondents, ad-interim stay of the further proceeding in Title Suit No.10 of 2012, has been passed.

The respondents have filed an interlocutory application for vacating the stay granted on 10.07.2018 by this Court.

The said interlocutory application has been listed under the heading 'For Orders' for passing appropriate order.

5. This Court after having heard the learned counsel for the parties, deem it fit and proper to dispose of the writ petition itself instead of vacating the stay, since appearance as also the pleadings are complete.

6. This Court before looking to the legality and propriety of the order, deem it fit and proper to first refer the provision of Order 7 Rule 14(3) of the CPC which reads as hereunder:-

*"(3) A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit."*

7. The said provision provides that the document is to be filed by the plaintiffs at the time of presentation of the plaint. The said provision also contains that in case, certain documents could not have

been filed at the time presentation of the plaint, with such a situation the relevancy of document has been assessed by the plaintiff as the case may, and to such situation, the provision has been made under Order 7 Rule 14(3) of the CPC conferring power upon the trial court to grant relief, taking into consideration the relevancy of the documents.

According to the trial court, the said document is to be appreciated for proper adjudication of the issue involved.

The said order suggests that the trial court having conferred with the provision under the statute to deal with such situation depending upon the facts and circumstances of the case and for proper adjudication of the issue involved.

8. Admittedly, herein the petition has been filed by the plaintiffs on 01.02.2018 not under Order 7 Rule 14 (3) of the CPC rather under Section 5 of the Limitation Act containing therein for seeking leave to mark these documents for proper adjudication of the issue.

The said petition although has been filed after cross-examining of the stage of the plaintiffs' evidence. Objection to that petition has been filed.

9. The trial Court, after appreciating the facts as also the contention advanced on behalf of the parties, has passed an order on 06.03.2018 allowing the relief sought for by the plaintiffs by granting leave to mark the documents as exhibits with a liberty to the defendants to cross-examine the witnesses so adduced by the plaintiffs in support of their case, if required so.

10. The contention as has been raised by the learned senior counsel for the petitioner that the petition since was filed under Section 5 of the Limitation Act for seeking leave of the Court to mark exhibits ought not have been allowed but since appropriate power has not been invoked as provided under Order 7 Rule 14 (3) of the CPC.

11. It is not in dispute rather it is settled position of Law that merely on the ground if the wrong provision has been quoted in the petition, the petition should not be rejected rather the contents of the petition, is to be looked into for the ends of justice, reference in this regard may be made to the judgment rendered by the Hon'ble Apex Court in the case of **P.K. Palanisamy Vrs. N. Arumugham & Anr.**, reported in (2009) 9

SCC 173, wherein at para-27 it has been held that mentioning of wrong provision or non-mentioning of a provision does not invalidate an order, if the court and/or statutory authority had the requisite jurisdiction therefor.

**12.** The further question which is to be taken into consideration by this Court, the part of the prejudice whether by passing an order, any prejudice is being caused to the defendants.

The question of prejudice will be said to be caused if the trial court would have passed an order while not granting liberty to the defendants to cross-examine the witnesses or for any of the documents for which leave has been granted to mark it as exhibits but as would appear from the order dated 06.03.2018, liberty has been granted to the defendants and therefore, the part of the prejudice has already been taken into consideration by the trial Court.

**13.** This Court, therefore, is of the view that the order since has been passed in terms of the provision of Order 7 Rule 14(3) of the CPC with a liberty to the petitioner who are the defendants to the suit to cross-examine the witnesses so adduced by the plaintiff in support of their case, if required so, therefore, under the supervisory jurisdiction conferred under Article 227 of the Constitution of India, this Court is of the view that there is no error apparent on the face of the record warranting any interference by this Court.

**14.** Accordingly, the writ petition fails and it is dismissed.

**15.** Interim order dated 10.07.2018 stands vacated.

**16.** I.A.No.8740 of 2019 stands disposed of.

**(Sujit Narayan Prasad, J.)**

Rohit/-