**IN THE HIGH COURT OF JHARKHAND AT RANCHI**
**C.M.P. No. 675 of 2025**

Laxman Sahu, aged about 82 years, son of late Adhin Mahto @ Adhin Sahu, resident of Village-Argora, P.O. & P.S.-Argora, Dist.-Ranchi

.... Petitioner

Versus

1. Sri Krishna Ram Sahu, aged about 55 years
2. Ashok Kumar Sahu, aged about 50 years

Both sons of Sri Devi Dayal Sahu, resident of Village-Argora, P.O. & P.S.-Argora, Dist.-Ranchi

3. Devi Dayal Sahu, aged about 90 years, son of late Adhin Sahu, resident of Village-Argora, P.O. & P.S.-Argora, Dist.-Ranchi

…. Opp. Parties

**P R E S E N T**

**HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY**

…..

For the Petitioner : Mr. Satish Kumar Keshri, Advocate
: Mr. Sandip Singh Munda, Advocate
For the Opposite Parties : Mr. Dilip Kr. Prasad, Advocate
: Mr. Durga Narayan, Advocate

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***By the Court:-***

1. Heard the parties.

2. This civil miscellaneous petition has been filed invoking the jurisdiction of this Court under Article 227 of the Constitution of India with the prayer to quash/set aside the order dated 13.12.2024 passed by the learned Additional Judicial Commissioner-XV, Ranchi in Original Suit No. 02 of 2024 arising out of Probate Case No. 86 of 2011 whereby and where under, a petition dated 19.04.2024 filed by the defendant no.4 under Order XVIII Rule 3A of Code of Civil Procedure read with Section 151 of

C.P.C. with the prayer to allow the defendant no.4; who is the petitioner herein to be examined as a witness in the said Original Suit No. 02 of 2024 was rejected by the learned Additional Judicial Commissioner-XV, Ranchi.

3. The brief fact of the case is that the defendant no.4 did not seek permission of the court prior to adducing his evidences by the way of examination of the two witnesses, in terms of Order XVIII Rule 3A of Code of Civil Procedure; which mandates that when the party himself wishes to appear as a witness, he shall so appear before any other witness on his behalf has been examined, unless the Court, for reasons to be recorded, permits him to appear as his own witness at a later stage. The defendant no.4 filed an application under Order XVIII Rule 3A of Code of Civil Procedure with the prayer to permit him to be examined as witness. The reason assigned by the defendant no.4 is that the defendant no.4 is an old person of 80 years suffering from several ailments and he was not fit earlier to examine himself as a witness and after becoming fit, he has sought permission of the Court to examine himself as a witness and he has even filed his examination-in-chief in shape of affidavit; that is already on record but examination of examination of the two witnesses by the defendant no.4 as a witness the suit was rejected.

4. It is submitted by the learned counsel for the petitioner by relying upon the judgment of the Hon'ble Patna High Court in the case of **Pravesh Kumari & Ors. vs. Rishi Prasad & Ors.** reported

in **(1986) AIR (Patna) 315** that in paragraph no. 3 thereof the Division Bench approbated the earlier Bench decision of the said High Court in the case of **Rameshwar Sharma vs. Surju Prasad** reported in **1979 BBCJ 637** wherein, it was held that the provision under Rule 3A of Order XVIII of Code of Civil Procedure is directory in nature; so, the view taken by the courts below in that case before the Hon'ble Patna High Court, that the provision of Rule 3A of Order XVIII of Code of Civil Procedure is mandatory in nature is erroneous.

5. Learned counsel for the petitioner next relied upon the judgment of the Hon'ble Orissa High Court in the case of **Paramananda Fateshingh & Ors. vs. Labanya Bewa & Ors.** reported in **(1979) AIR (Orissa) 132** wherein, the Hon'ble Orissa High Court relied upon its own Division Bench judgment in the case of **Maguni Dei vs. Gouranga Sahu & Ors.** reported in **AIR 1978 Ori 228** wherein, it was held that the Court can examine a party at a later stage if it considers the evidence essential, despite some negligence on the part of a party and in that case, allowing opportunity to the defendants to examine the defendant no.2 as a witness in that case on granting proper compensatory costs in favour of the plaintiffs. It is next submitted by the learned counsel for the petitioner that the only objection that can be raised by the plaintiffs for examination of the defendant no.4 in the suit subsequent to examination of two witnesses by him, is that the defendant no.4 will fill up the lacunae or loop hole or gap in the evidence put

forth by the two of his witnesses, examined earlier. It is further submitted by the learned counsel for the petitioner that the undisputed fact remains that the examination-in-chief of the defendant no.4 in shape of affidavit is already on record and neither the plaintiffs has said that the same contains any material which is in the nature of filling up the loop hole or lacunae or gap of the witnesses examined earlier nor the learned Additional Judicial Commissioner has observed any such thing. It is then submitted by the learned counsel for the petitioner that the Court has in no way opined that the evidence sought to be put forth by the defendant no.4 is not essential for the decision of the case. It is further submitted by the learned counsel for the petitioner that at best negligence can be attributed to the defendant no.4 and for that the defendant no.4 is ready to pay appropriate compensatory costs in favour of the plaintiffs but depriving the defendant no.4 to examine himself as a witness has far reaching an adverse consequences; which will certainly prejudice the defendant no.4. Hence, it is submitted that prayer as made in this civil miscellaneous petition be allowed.

6. Learned counsel for the opposite parties submits that the defendant no.4 was all along present in the Court as is evident from the *Hazri* filed on behalf of the defendant no.4 in the said suit, the copies of which have been kept at Annexure A/1 to A/9, which relates to the period 16.02.2024 to 11.07.2025. So, the contention of the defendant no.4 that he was ailing is a bundle of

lies. Relying upon the judgment of a Single Judge of Patna High Court, Ranchi Bench in the case of **Shri Ram Maharaj vs. Raj Kishore Bhagat** reported in **1978 SCC OnLine Pat 111**, it is submitted by the learned counsel for the opposite parties that therein, the learned Single Judge has held that the provision of Rule 3A of Order XVIII of Code of Civil Procedure is mandatory in nature and it was introduced to serve administration of justice and not to stifle the cause of justice. It is next submitted by the learned counsel for the opposite parties by relying upon the judgment of Hon'ble Madras High Court in the case of **Ayyasami Gounder & Ors. vs. T.S. Palanisami Gounder** reported in **1989 SCC OnLine Mad 157**, that therein, the learned Single Judge of Hon'ble Madras High Court has observed that though the provision of Order XVIII Rule 3A of Code of Civil Procedure does not, indicate the stage at which the application should be made for the permission to examine the party as a witness that is whether before examination of the witnesses or after examination of his witnesses but in that case, the said application having not been made and permission obtained prior to the examination of the witnesses on behalf of the respondent before the Hon'ble Madras High Court, therefore, the respondent could not have been permitted to come in at a later stage as a party witness; more so because in the counter affidavit, it has categorically been stated that the respondent before the Hon'ble Madras High Court has been present in Court throughout the trial of the suit when the

other witnesses on his side has been examined and had also instructed the counsel to examine other witnesses on his side.

7. Learned counsel for the opposite parties next relied upon a judgment, the name of the Court which passed the judgment has not been mentioned anywhere and submits that therein it has been held in the facts of that case that it is difficult to believe that the plaintiff is suffering from various ailments to such an extent that he is not in a position to step into the witness box as the first witness and the discretion under Order XVIII Rule 3A of Code of Civil Procedure ought not to be examined in favour of the litigant who opts to mark time to assess, how the power of attorney son, fares in the evidence and then depending on the evidence of the power of attorney son takes a call on stepping into the witness box, which clearly appears to be the case in that case and set aside the order by which the party was allowed to examine himself as a witness after examination of other witnesses. It is lastly submitted that the learned Additional Judicial Commissioner-XV, Ranchi has not committed any illegality by rejecting the prayer of the defendant no.4 to examine himself as a witness in this case after examination of two of his witnesses. Hence, it is submitted that this civil miscellaneous petition being without any merit be dismissed.

8. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that in view of the binding precedent for this Court

in shape of the judgment of the Division Bench in the case of **Pravesh Kumari & Ors. vs. Rishi Prasad & Ors.** (supra), this Court has no hesitation in holding that the provision of Rule 3A of Order XVIII of Code of Civil Procedure is directory in nature and not mandatory. This Court is in agreement with the interpretation of law made by the Hon'ble Division Bench of Orissa High Court in the case of **Paramananda Fateshingh & Ors. vs. Labanya Bewa & Ors.** (supra) wherein, it has been held that the Court can examine a party at a later stage; if it considers the evidence essential despite some negligence on the part of a party.

9. It is pertinent to mention here that the object on behalf of introduction of Rule 3A of Order XVIII of Code of Civil Procedure was intended to prevent the persistent and notorious practices, indulged in by litigants in examining other witnesses first and for covering of the gaps and lacunae in such evidence, by the examination of the parties themselves later on. It is needless to mention that after amendment of Code of Civil Procedure and introduction of the provision for filing the examination-in-chief in shape of affidavit, the scope of leaving gap and lacunae is reduced substantially because though theoretically the affidavit is prepared as per the dictation of the witnesses but practically for all purposes, in most of the cases, it is the legally trained mind of the Advocate who prepares the affidavit.

10. In this case, even though the examination-in-chief in shape of affidavit is already in record and it is not the case of either the

plaintiffs or the observation of the Court that the defendant no.4 has filed the examination-in-chief by covering any gap or lacunae in the evidence of the other two witnesses who have been examined by filing their examination-in-chief in shape of affidavit also. So since, the affidavit in shape of examination-in-chief is already there in the record and after the defendant no.4 is examined as a witness, he will only face the cross-examination and in the cross-examination, he can only depose by answering the questions to be put by the other party. He cannot *suo moto* say anything beyond what he has stated in the examination-in-chief and certainly a skilled lawyer will never put the question in the cross-examination of a witness to fill up the loop hole or lacunae or gap left by the other witnesses.

11. So, under such facts of the case, this Court is of the considered view that the learned Additional Judicial Commissioner-XV, Ranchi has committed a grave illegality by rejecting the prayer of the petitioner-defendant no.4 to examine himself as a witness after examination of two witnesses by not permitting him to do the same.

12. Accordingly, the order dated 13.12.2024 passed by the learned Additional Judicial Commissioner-XV, Ranchi in Original Suit No. 02 of 2024 arising out of Probate Case No. 86 of 2011 is quashed and set aside.

13. The prayer of the defendant no.4- the petitioner herein to examine himself as a witness is allowed subject to payment of

costs of Rs.5,000/- to be paid by the defendant no.4 to the plaintiffs through their counsel appearing in the record within 15 days and in case, the learned counsel for the plaintiffs refuses to accept the same, the said amount is to be deposited in the *Nazarat* of the Civil Court, Ranchi.

14. This civil miscellaneous petition is allowed to the aforesaid extent only.

15. In view of the disposal of this civil miscellaneous petition, interlocutory applications, if any, is disposed of being infructuous.

**(Anil Kumar Choudhary, J.)**

High Court of Jharkhand, Ranchi
Dated the 6th August, 2026
AFR/Gunjan/-

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