

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15157 of 2014

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Binay Singh Son of Late Kedar Singh, Resident of Village- Barap, P.O.-
Bagawan, Police Station- Agiaon (Garahani), District- Bhojpur

.... Petitioner/s

Versus

1. Jitendra Singh son of Raj Nath Singh, Resident of Village- Maharor,
P.S.- Dinara, At present Natwar, P.O.- Natwar, District- Rohtas
2. Srimati Urmila Devi wife of Suman Singh
3. Kishori Devi wife of Late Kedar Singh Both resident of Village- Barap,
P.O.- Bagawan, Police Station- Agiaon (Garahani), District- Bhojpur
4. Nagendra Singh son of Late Ram Sakal Singh, resident of Chandi, P.O.-
Narahi, P.S.- Chandi, District- Bhojpur
5. Radha Mohan Singh @ Lal son of Sheo Prasad Singh
6. Jogendra Singh son of Sheo Prasad Singh
7. Rajendra Singh son of Sheo Prasad Singh All resident of village-
Gunjadih, P.S.- Nawanagar, P.O.- Rup Sagar, District- Buxar
8. Ajay Singh son of Late Raja Singh
9. Arbind Kumar Singh son of Late Raja Singh Resident of Karagh, P.O.-
Karagh, P.S.- Tarari, District- Bhojpur
10. Sachchidand Nand Singh Late Kedar Singh
11. Suman Singh Late Kedar Singh
12. Harihar Singh son of Late Rishimuni Singh Residents of Village- Barap,
P.O.- Bagawan, Police Station- Agiaon (Garahani), District- Bhojpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Damodar Prasad Tiwary
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

3 22-09-2015 Heard Mr. Damodar Prasad Tiwary, the learned

counsel appearing on behalf of the petitioner and the

learned counsel for the respondent no. 10.



Calling in question the legal sustainability of the impugned order by which the learned court below has declined the prayer of the petitioner for filing fresh written statement and to ignore the written statement already filed by him in the suit, the present application under Article 227 of the Constitution of India has been filed.

The facts which are admitted and also apparent from the impugned order is that the Title Suit No. 374 of 2009 was filed in which the present petitioner was also impleaded as defendant along with his own brother who is respondent no. 10 in the present application. A written statement was filed on 29.10.2009 jointly by the present petitioner and the respondent no. 10 and in that written statement also on the last page, the signature of the present petitioner appeared. Other defendants also filed their written statement. The proceeding of the suit continued and the plaintiffs as well as the defendant 1st set and defendant 2nd set led their evidence. The fact has not been disputed as found by the learned court below that the present petitioner had cross examined the witnesses produced by the other

parties in the suit.

Later on, the petitioner filed a petition alleging fraud against his own brother (defendant-respondent no. 10) to the extent that the joint written statement was filed by him fraudulently on behalf of the petitioner also after obtaining his signature on a plain paper and prayed before the court to ignore the said written statement to be on his behalf and to accept the written statement which he had filed subsequently on 25.09.2013.

Considering the facts and circumstances as well as submission, the learned court below has rejected the said petition and refused to accept the written statement subsequently filed by the petitioner.

Mr. Tiwary, the learned counsel for the petitioner has submitted that the fraud has been committed upon the petitioner as well as upon the court by the respondent no. 10 by filing the written statement jointly with the present petitioner on 29.04.2009 even when on that date, the petitioner had not engaged any counsel to appear on his behalf. It has been further canvassed that the



petitioner had engaged his counsel to appear in the case only on 26.10.2009 and thereafter when he came to know about the fraud committed by the respondent no. 10 then he filed his own written statement on 25.09.2013 along with the petition to accept the same. It has been argued on behalf of the petitioner that as it is a case of fraud, the petitioner must have been given an opportunity to file his own written statement and contest the suit.

The learned counsel appearing on behalf of the respondent no. 10 has opposed the prayer and contested the allegation of fraud.

After considering the submissions and the materials on record, it is manifest that the written statement has been filed in the suit jointly by the present petitioner and the respondent no.10 on 29.04.2009. The petitioner states that he engaged his counsel to appear in the suit on 26.10.2009. But it is nowhere the case of the petitioner that at any point of time thereafter upto 25.09.2013, he had made any attempt to file his own written statement when according to his case that no written statement was filed in

the suit on his behalf. There is no explanation on behalf of the petitioner for not making any effort to file written statement in the suit right after his appearance on 26.10.2009 upto 25.09.2013 and it is itself a strong circumstance to disbelieve the case of fraud as pleaded by the petitioner. It is also transparent from the impugned order and not denied on behalf of the petitioner that the witnesses produced by the other parties including the plaintiffs in the suit have been cross examined on behalf of the petitioner. This fact militates against the case of the petitioner that he had no knowledge that there was a written statement filed on his behalf also in the suit. It is also apparent that, in the suit, the evidence has been led and the evidence only on behalf of the defendant 3rd set is remaining to be led. In the facts and circumstances of the case, this Court does not find any merit to invoke its jurisdiction under Article 227 of the Constitution of India to interdict the impugned order.

The writ application is, accordingly, dismissed.

Devendra/-

(V. Nath, J)

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