

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6265 of 2011

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Parmendra Mohan son of Dhirendra Mohan Sinha Tisiauta, P.S. Tisiauta,
Distt. Vaishali

....Petitioner

Defendant No. 3 in the court below

Versus

1. Kamendra Mohan son of Late Choudhary Madan Mohan Pd. Singh Under Kila Town, P.S. Hajipur, Distt. Vaishali
2. Most. Indu Devi wife of Late Ramanand Pd. Singh Under Kila Town, P.S. Hajipur, Distt. Vaishali
3. Smt. Aruna Devi W/O Ramesh Pd. Singh Under Kila Town, P.S. Hajipur, Distt. Vaishali
4. Dhirendra Mohan Singh son of Late Choudhary Madan Mohan Pd. Singh Under Kila Town, P.S. Hajipur, Distt. Vaishali
5. Satendra Mohan Singh son of Late Choudhary Madan Mohan Pd. Singh Tisiauta, P.S. Tisiauta, P.O. Tisiauta, Distt. Vaishali
6. Jitendra Mohan Singh son of Late Choudhary Madan Mohan Pd. Singh Tisiauta, P.S. Tisiauta, P.O. Tisiauta, Distt. Vaishali
7. Kaushalendra Mohan son of Late Choudhary Madan Mohan Pd. Singh Tisiauta, P.S. Tisiauta, P.O. Tisiauta, Distt. Vaishali
8. Hitendra Mohan son of Late Choudhary Madan Mohan Pd. Singh Tisiauta, P.S. Tisiauta, P.O. Tisiauta, Distt. Vaishali
9. Brajendra Kumar son of Late Choudhary Shiv Kumar Pd. Singh Tisiauta, P.S. Tisiauta, P.O. Tisiauta, Distt. Vaishali
10. Rabindra Kumar son of Late Choudhary Shiv Kumar Pd. Singh Tisiauta, P.S. Tisiauta, P.O. Tisiauta, Distt. Vaishali
11. Ram Bilash Rai @ Ram Bilas Singh son of Surya Dev Singh Rampur Ratnakar @ Sarsai, P.S. Mahua, P.O. Ratnakar, Distt. Vaishali
12. Pramod Kumar Singh son of Bharat Kumar Singh Jahangirpur Prithi, P.S. Raghapur, P.O. Jafarabad, Distt. Vaishali
13. Binod Kumar Singh son of Bharat Kumar Singh Jahangirpur Prithi, P.S. Raghapur, P.O. Jafarabad, Distt. Vaishali
14. Amod Kumar Singh son of Bharat Kumar Singh Jahangirpur Prithi, P.S. Raghapur, P.O. Jafarabad, Distt. Vaishali
15. Manju Devi @ Patahu Devi D/O Late Bharat Kumar Singh Jahangirpur Prithi, P.S. Raghapur, P.O. Jafarabad, Distt. Vaishali
16. Poonam Devi wife of Binod Kumar Singh D/O Late Bharat Kumar Singh Jahangirpur Prithi, P.S. Raghapur, P.O. Jafarabad, Distt. Vaishali
17. Smt. Taramuni Devi wife of Bharat Kumar Singh Jahangirpur Prithi, P.S. Raghapur, P.O. Jafarabad, Distt. Vaishali

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dharmesh Kumar

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR
MANDAL

ORAL ORDER

3 03-09-2015 Heard Mr. Dharmesh Kumar for the petitioner who is defendant no.3 of the T.S. No. 80 of 1992.

The suit was filed by the plaintiff-respondent for a declaration that the sale deed executed by the defendant 1st set in favour of defendant 4th set is fabricated and forged one. The father of the petitioner was made defendant in the suit. Nearly 18 years after the institution of the suit when the trial had progressed, the petitioner filed an application (Annexure-1) seeking permission to file written statement. The trial court finding the stage at which the trial had reached as also noticing certain pleadings made in the plaint, did not find the application fit to be allowed. Accordingly, the same was rejected. While doing so, the court also imposed fine in the sum of Rs. 5000/- payable by both the plaintiff and the defendant no.3-petitioner. Aggrieved thereby, the present writ application has been filed.

It is submitted that sufficient reason(s) were disclosed in the application to show that the defendant-petitioner was not aware of the filing of the suit. When he happened to visit the civil court recently it was revealed that the suit was pending and thereafter he filed the application seeking



permission of the court to file written statement. His father was a party to the suit but he was living a vagabond life and lost interest in the suit. Referring to an order dated 05.08.2011 passed by this Court in CWJC No. 1460 of 2011, it has been stated that the cost imposed on both the plaintiff and the writ petitioner to be borne equally was challenged by the plaintiff which was allowed directing further the trial court to expedite disposal of the suit. In his submission, if no relief was granted by the court then there was no occasion to impose the cost on the petitioner/defendant.

I have perused the impugned order.

The trial court did not find the explanation submitted by the petitioner satisfactory to grant permission to file written statement 18 years after the filing of the suit when the suit reached the advanced stage of trial inasmuch as evidence was also led/adduced. However, referring to some paragraphs of the plaint, it was held that the writ petitioner was acting as a proxy of the plaintiff and the cost was imposed.

Having heard the petitioner, in my view, the finding of the court for imposing the cost does not appear to be very convincing which is deduced on the basis of some statements

made in the plaint which the court was required to appreciate in the context they were made. The part of the order by which the petitioner was declined to file written statement at a much belated stage does not call for interference. However, the part of the order by which the cost was imposed on the defendant no.3-petitioner to be borne equally by the plaintiff and the defendant-petitioner, insofar as it concerns the petitioner, is quashed.

The application is disposed of.

(Kishore Kumar Mandal, J)

HR/-

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