

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8233 of 2013

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Bajranj Jha S/O Late Baldeo Jha R/O Goraul, P.O.- Goraul, P.S.- Goraul,
District- Vaishali

.... Petitioner/s

Versus

1. Suresh Kumar Jha.
2. Naresh Kumar Jha.
3. Bhavesh Kumar Jha.
4. Rajesh Kumar Jha all are S/O Late Shiv Shankar Jha R/O Village-
Beruka, P.O. + P.S.- Bariyarpur, District- Muzaffarpur.
5. Kamini Devi W/O Arun Jha R/O Village- Rampur, P.S. Kurhni,
District- Muzaffarpur.
6. Jivani Devi W/O Tej Narayan Thakur all Resident + P.O.-Padmaul,
P.S.-Kurhni, District- Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 07-12-2015

Heard the learned counsel for the petitioner.

Questioning the legal acceptability of the impugned order dated 29.01.2013 whereby the learned court below has rejected the prayer of the petitioner for recall of the earlier order dated 21.09.2012, the present application under Article 227 of the Constitution of India has been filed.

The plaintiff-petitioner field the suit for eviction of the defendant-respondents on ground of default in payment of rent. It was the case of the plaintiff-petitioner in the plaint that the



suit property was obtained by him on the basis of Ayatnama. However, the copy of the said Ayatnama was not produced and therefore the learned court below directed the plaintiff petitioner to file the copy of the said Ayatnama by order dated 05.08.2011. Subsequently, by order dated 21.09.2012, the learned court below again issued the similar direction to the plaintiff-petitioner. Later on, the plaintiff-petitioner filed the petition for recall of the order dated 21.09.2012 on the plea that the copy of the said Ayatnama was not with the plaintiff-petitioner and, therefore, the direction to produce the same before the court could not be complied. The learned court below by the impugned order has rejected the prayer for recall of the order dated 21.09.2012 and directed the suit to proceed for evidence of the plaintiff.

During the course of submission, the learned counsel for the petitioner has pointed out that the evidence on behalf of the plaintiff-petitioner is complete. The learned counsel for the petitioner, however, has also made a prayer for a direction to the court below to permit the plaintiff to make submissions relating to non-availability of the said Ayatnama with the plaintiff-petitioner and consequent non-production of the same.

After perusal of the records and consideration of the submission, it is manifest that in spite of available opportunity the

fact regarding non-availability of the copy of the Ayatnama was not disclosed before the court either on 05.08.2011 or even on 21.09.2012. The recall petition though contained the statement of the plaintiff-petitioner that the original copy was not with him but there was no explanation for non-disclosure of this fact at the earliest. This Court, therefore, does not find any illegality or error of jurisdiction in the impugned order. Accordingly, this writ application is dismissed. It is, however, observed that the learned court below shall expeditiously proceed with the hearing and disposal of the suit in accordance with law.

(V. Nath, J)

Devendra/-

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