

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17860 of 2012

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1. Bhavesh Kumar Jha Son Of Late Vishember Jha Resident Of Village : -
Bhavni, P.S. : - Singeshwar, District : - Madhepura, At Present Residing At
Nagarpalika Ward No. 6 (Old), Saharsa, P.S. And District : - Saharsa
..... Petitioner/s

Versus

1. Radhe Yadav Son Of Kishun Yadav Resident Of Nagarpalika Ward No.
6 (Old), Saharsa, P.S. And District : - Saharsa
2. Prakash Yadav Son Of Kishun Yadav Resident Of Nagarpalika Ward No.
6 (Old), Saharsa, P.S. And District : - Saharsa
3. Smt. Kendula Devi Wife Of Late Vishember Jha At Present Residing At
Nagarpalika Ward No. 6(Old), Saharsa, P.S. And District : - Saharsa
..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subhash Kumar Jha -Advocate
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

4 17-12-2015 Heard learned counsel for the petitioner as well as
learned counsel for the respondents.

2. Virtually, plaintiff/petitioner intends to frustrate the idiom, '*justice delayed, justice denied*'. Only seven DWs have been examined and now a petition dated 28.09.2010 filed on behalf of plaintiff/petitioner discloses the intention of the plaintiff/petitioner wherein he had made a prayer before the court below to recall all the seven DWs for cross-examination and for that, learned counsel for the petitioner submitted that though there happens to be some sort of slackness on the part of the plaintiff but the same should not be taken as a hurdle in dispensing with the justice.

3. It is not known whether all the seven DWs are alive or not and, in case, recall is allowed, then in that event, non presence of witness on account of his infirmity as well as death will make the evidence so deposed by him worthless. It will also be a golden chance for the plaintiff to destroy the evidence of the defendant.

4. However, taking in account the submission made on behalf of petitioner, the prayer is allowed at the cost of Rs.25,000/- (Twenty five thousand) subject to further condition that petitioner will file an affidavit before the learned lower court regarding physical condition of each of the DWs and the learned lower court will recall only those DWs who, in his opinion would be able to present himself before the court, otherwise, this order will cease to effect.

5. The instant petition is disposed of in the light of aforesaid observation.

(Aditya Kumar Trivedi, J)

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