

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13711 of 2011

=====

Shree Narayan Yadav

.... Petitioner/s

Versus

Smt.Fulia Devi & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Dronacharya

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

13 02-11-2015 **1.** Heard the learned counsel, Mr. Dronacharya for the petitioner. After service of notice, the respondents have already appeared and the name of the learned counsel for the respondents is also printed in the daily cause list and counter affidavit has also been filed by him. However, on 29.10.2015 after hearing the learned counsel for the petitioner, it was found that nobody was appearing on behalf of the respondent, the case was adjourned for today but today also nobody appeared on behalf of the respondent. In such circumstances, this writ application is being disposed of in absence of the respondent.

2. This application under Article 227 of the Constitution of India has been filed by the plaintiff petitioner against a part of the order dated 06.07.2011 and 12.07.2011 passed by Sub Judge I, Lakhisarai in Title Suit No.34 of 2001 whereby the learned Court

below firstly closed the evidence of the plaintiff petitioner and on the same day when recall application was filed, the Court below after hearing the parties on 12.07.2011 refused to recall.

3. The learned counsel for the petitioner submitted that earlier the plaintiff suit was decreed ex.parte and at the instance of the defendant, it was recalled and thereafter the issues were framed on 05.06.2010. After framing of issue, the plaintiff continuously examined witnesses on each date without taking adjournment. Thereafter, on 06.07.2011, the case of the plaintiff was closed. Immediately, the petitioner then filed recall application for recall of the order closing the plaintiff evidence. Rejoinder was filed by the defendant stating that the witnesses who are sought to be examined are not material witness. The learned trial Court wrongly by the impugned order dated 12.07.2011 rejected the application and refused to recall the order closing the plaintiff evidence. According to the learned counsel, if the plaintiff petitioner is not allowed to examine the witnesses in support of his case, it will occasion failure of justice and the petitioner shall be greatly prejudiced. The learned Court below should have exercised the jurisdiction vested in it by law but wrongly refused to exercise the same.

4. As stated nobody appeared on behalf of the other side.

5. Admittedly, the plaintiff's case was earlier decreed ex.parte and thereafter in the year 2010, the issues were framed. There is no dispute that the plaintiff petitioner has examined all the five witnesses and on the date of the order, i.e., 06.07.2011 itself, the application for recall was filed because the learned counsel for the petitioner reached the Court after some time and by that time order for closing the case of the petitioner had already been passed.

6. From perusal of the impugned order, it appears that no cogent reason has been given as to why the prayer of the petitioner to recall has been rejected. It may be mentioned here that the plaintiff has brought the suit for declaration of title and only within one year, the case has been closed without any fault on the part of the plaintiff. If at this very initial stage after the ex.parte Judgment has been set aside, the plaintiff case is closed, it will greatly prejudice the plaintiff petitioner. In my opinion, therefore, the learned Court below should have allowed the application for recall and should have recalled the order whereby the plaintiff's case was closed.

7. Accordingly, this writ application is allowed. The

impugned order are hereby set aside. The order closing the case of the plaintiff is hereby recalled and the liberty is granted to the plaintiff to examine the witnesses detailed in the list of witnesses without taking unnecessary adjournments according to the convenience of the parties and Court as early as possible taking into consideration the age of the suit.

(Mungeshwar Sahoo, J)

Sanjeev/-

U			
---	--	--	--