

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19411 of 2010

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1. Narendrar Kumar Singh S/O Late Krishna Singh R/O Vill.- Darauli, P.S.-
Bhabhua, Distt.- Kaimur

.... Petitioner/s

Versus

1. Ram Bhog Singh S/O Late Megh Narayan Singh R/O Vill.- Darauli, P.S.-
Bhabhua, Distt.- Kaimur, At Present Vill.- Murhi, P.S.- Chainpur, Distt.- Kaimur
2. Madhusudan Singh S/O Ram Bhog Singh R/O Vill.- Darauli, P.S.- Bhabhua,
Distt.- Kaimur, At Present Vill.- Murhi, P.S.- Chainpur, Distt.- Kaimur
3. Sachidanand Singh S/O Ram Bhog Singh R/O Vill.- Darauli, P.S.- Bhabhua,
Distt.- Kaimur, At Present Vill.- Murhi, P.S.- Chainpur, Distt.- Kaimur
4. Purushottam Singh S/O Ram Bhog Singh R/O Vill.- Darauli, P.S.- Bhabhua,
Distt.- Kaimur, At Present Vill.- Murhi, P.S.- Chainpur, Distt.- Kaimur
5. Ravi Shankar Singh S/O Late Krishna Singh R/O Vill.- Darauli, P.S.- Bhabua,
Distt.- Kaimur (Bhabua)
6. Pradhuman Singh S/O Late Krishna Singh R/O Vill.- Darauli, P.S.- Bhabua,
Distt.- Kaimur (Bhabua)
7. Nanda Shanti Kuer W/O Late Bijay Shankar Singh R/O Vill.- Darauli, P.S.-
Bhabua, Distt.- Kaimur (Bhabua)
8. Rinku Singh (Minor) S/O Late Bijay Shankar Singh R/O Vill.- Darauli, P.S.-
Bhabua, Distt.- Kaimur (Bhabua)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. RAVI SHANKAR SAHAY

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 05-08-2015

Heard Mr. Ravi Shankar Sahay for the petitioner.

In spite of notice, no one has appeared to contest the writ
application.

The principal defendant of the Partition Suit being T.S. No. 96
of 2001 has filed the present application to assail the order dated
22.09.2008 passed by the Sub-Judge-II, Kaimur, Bhabhua rejecting

the petition dated 20.8.2008 filed by the defendant-petitioner for recall of the order dated 28.07.2003 whereby the case was posted for ex-parte hearing as also for accepting the written statement which was filed by the petitioner on 24.11.2004.

The brief background of the case may be noticed. The plaintiff (respondent herein) filed the suit for partition. The writ petitioner was impleaded as defendant. Some co-sharers were also impleaded as defendant(s). Steps were taken to serve the notice of the suit. Ultimately, the Court resorted to the procedure prescribed for substituted service of notice. Since the petitioner did not appear even thereafter, the Trial Court by order dated 28.07.2003 posted the suit for ex-parte hearing and also debarred defendant nos. 10 to 16 from filing the written statement. On an application subsequently filed on 11.8.2003, the defendant nos. 10 to 16 were permitted to file written statement. It has been stated that on 24.11.2004, when the petitioner became cognizant of the case, appeared in the suit and filed written statement. No order was passed thereon. In these background, another application dated 20.8.2008 was filed for recall of the order dated 28.7.2003 in so far as petitioner is concerned and to accept the written statement already filed. The Trial Court rejected the said application. This Court further finds from the impugned order that 11.8.2003 was the date fixed for settlement of the issues which could not be settled.



Counsel for the petitioner submits that interest of justice demands permitting the petitioner to contest the suit who has substantial interest in the property. The Court, at best, ought to have imposed cost for appearing belatedly in the suit and for seeking recall of the order dated 28.7.2003. In fact, the order dated 28.7.2003 was recalled by the Court on an application dated 11.8.2003 filed by the other respondents.

The cause of substantial justice demands a suit to be decided on merit on contest. In the case at hand, the order dated 28.7.2003 posting the suit for ex-parte hearing, in fact, has been diluted by the Trial Court when the application dated 11.8.2003 filed by the defendant nos. 10 to 16 of the suit were allowed to file written statement. The suit is at its nascent stage. Further, the plaintiffs have not chosen to appear and contest the relief sought in this application. The reason is obvious.

Having regard to aforesaid, I am persuaded to exercise supervisory jurisdiction of this Court under Article 227 of the Constitution of India as doing so, in the opinion of this Court, shall serve the cause of justice. Accordingly, the order dated 22.9.2008 passed by the learned Trial Court in Title Suit No. 96 of 2001 is quashed in so far as it rejects the application dated 20.8.2008 of the petitioner subject to payment of cost in the sum of Rs. 750/- in favour

of the plaintiffs. He will be allowed to contest the case on the basis of written statement already filed. Counsel for the petitioner states that he would appear in the proceeding within four weeks along with a copy of the present order and the receipt showing deposit of the cost enabling the Court to proceed further and dispose of the pending suit expeditiously.

(Kishore Kumar Mandal, J)

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