

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.700 of 2014

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Ramprit Baitha

.... Petitioner/s

Versus

Nageshwar Baitha & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan No.Ii

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 08-12-2015 Heard Mr. Rajiv Ranjan No. II, learned counsel
appearing on behalf of the plaintiff- petitioner and Mr. Sakil
Ahmad Khan, learned counsel appearing on behalf of respondents.

By the impugned order dated 13.11.2013 passed by
Munsif 1st, Vaishali at Hajipur in Title Suit No. 11 of 2008, the
court below has refused to recall the order dated 13.09.2013.

Learned counsel for the petitioner has submitted that
because the petitioner was ill during that period, no witnesses
could be examined and if opportunity is not granted to the
petitioner, the Suit, which has been filed by him for declaration of
title and confirmation of possession, shall be dismissed. It is
further submitted that the case of the petitioner was closed on
13.9.2013 and immediately the application was filed by the
petitioner for recall of the order and prayed for granting
opportunity to the petitioner but the court below has refused to

recall the same.

On the other hand, learned counsel for the defendant-respondents has vehemently opposed the prayer and has submitted that in spite of direction given to produce the witnesses, the plaintiff did not produce and further that no medical certificate has been produced by the petitioner to show that, in fact, he was ill.

Perused the impugned order.

It is not denied that that petitioner was not ill. It is also admitted fact that within two months the application has been filed by the petitioner for recall of the order whereby his case was closed. It is also admitted that not a single witness has been examined by the plaintiff in support of his case. The court below considered the conduct of the petitioner while passing the impugned order whereby the learned counsel for the petitioner refused to cross examine the witnesses produced by the defendant.

In view of the above fact, if the impugned order is allowed to stand it will occasion failure of justice and the petitioner shall be greatly prejudiced. Therefore, this application is allowed and the impugned order is set aside, subject to payment of cost of Rs. 5,000/- (five thousand) within two months in the court below. If this cost is paid by the petitioner within the

aforesaid period in the court below to the respondents herein, the court below shall allow the petitioner to examine the witnesses and if this order is not complied with, the court below shall proceed to examine the witnesses of the defendants.

With the aforesaid observation and direction, this writ application is disposed of.

(Mungeshwar Sahoo, J)

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