

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.364 of 2014

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Uma Shankar Chaudhary

.... Petitioner/s

Versus

Jaga Mahto & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 16-12-2015 Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. By the impugned order dated 17.07.2013 the
learned Subordinate Judge-VII, Rohtas in Title Suit No.11 of 2009
rejected the application filed by the plaintiff-petitioner for recall of
the order whereby his evidence was closed.

3. The learned counsel for the petitioner submitted
that the plaintiff's evidence was going on and already he has
examined eight witnesses. The plaintiff was to adduce some
documentary evidences and for that some formal witnesses were
to be examined but the court below rejected the application for
recall on the ground of delay. The learned counsel further
submitted that within three months he will prove all the documents
and for proving the documents he will also examine formal
witnesses within the aforesaid period and, therefore, the

petitioner's case may be re-opened.

4. On the other hand, learned counsel appearing on behalf of the respondents vehemently opposed on the ground that the petitioner is lingering the matter because he is in possession of the major portion of the property and has filed this partition suit against his own father and the step-mother and their children.

5. In view of the submission of the learned counsel that within three months he will produce all the documentary evidences and for proving the documents he will examine formal witnesses, it is desirable that the petitioner be granted one chance as in the present case on the date of passing the impugned order the defendants' evidence had not been started. In my opinion, if no chance is given to the petitioner, it will cause failure of justice.

6. Accordingly, this writ application is allowed, the impugned order is set aside and the plaintiff-petitioner's case is re-opened. The petitioner is allowed to adduce documentary evidences and to prove the documents he is allowed to examine formal witnesses within three months after X-mas holidays.

7. It is expected that the respondents shall assist the Court and shall not pray for any unnecessary adjournments as assured by the learned counsel for the respondents.

Harish/-

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(Mungeshwar Sahoo, J)