

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3778 of 2015

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Ramu Yadav & Ors

.... Petitioner/s

Versus

Bandelal Yadav & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pravin Chandra Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 24-11-2015

Although this writ application has been listed under the heading for orders on petitions and the I.A. No.3954 of 2015 has been placed for hearing, the learned counsel, Mr. Pravin Chandra Prasad appearing on behalf of the petitioners submitted that considering the urgency of the case, the writ application itself may be heard on merit in admission matter. Accordingly, in view of the submission of the learned counsel, I heard the learned counsel on merit of the writ application itself.

This application under Article 227 of the Constitution of India has been filed by the defendants 2nd party-petitioners against the order dated 06.02.2015 passed by the learned Munsif, Khagaria in Title Suit No.7 of 2012 whereby the learned court below rejected the application filed by the petitioners to recall the order dated 11.01.2013.

It appears that plaintiffs-respondents filed the aforesaid



Title Suit No.7 of 2012 for declaration of title and confirmation/recovery of possession of the suit property measuring 10 ½ dhurs. The defendants 1st party appeared and filed written statement on 21.09.2012 and 22.08.2012 respectively. The present petitioners who were defendants 2nd party appeared in the case on 05.03.2013. The defendants have already been debarred from filing written statement by order dated 11.01.2013. Thereafter these petitioners who were defendants 2nd party filed recall application on 15.12.2014 for recall of the order dated 11.01.2013. By the impugned order, the court below has rejected this application and refused to recall the order.

The learned counsel for the petitioners submitted that the petitioners had no knowledge about the order dated 11.01.2013. Subsequently when they came to know about the said order, they have filed the application for recall. So far the defendants 1st party are concerned, they were also debarred from filing the written statement. They filed written statement and recall order which was also rejected by the court below. Thereafter they filed CWJC No.22204 of 2013 and this Court by terms of order dated 27.03.2014 set aside the order whereby the court below has refused to recall the order dated 11.01.2013. Therefore, the learned counsel submitted that the petitioners may also be granted one

chance for filing written statement.

Perused the impugned order. At the time of hearing of this writ application in admission matter, the learned counsel also placed the order dated 27.03.2014 passed by this Court in CWJC No.22204 of 2013. That CWJC was filed by the defendants 1st party. Admittedly, in that application under Article 227 of the Constitution filed by the defendants 1st party, the defendants 2nd party were also added as respondents. The learned counsel, Mr. Pravin Chandra Prasad who is appearing in this writ application was appearing on behalf of the respondent in that writ application also. When that order was passed by this Court on 27.03.2014, he never prayed for permission to file written statement in the case. Further, from perusal of the impugned order, it appears that these petitioners had appeared as far back as on 05.03.2013. However, they filed the application for recall on 15.12.2014 i.e. after the order passed by this Court in the aforesaid CWJC No.22204 of 2014 that too after eight months. From perusal of the impugned order, it further appears that the learned court below considering the facts of the case and the submission of the learned counsel found that in fact, the plaintiff is the purchaser of the land from these defendants 2nd party. The court below also observed that because of this fact the plaintiff is not objecting the prayer made

by the defendants 2nd party-petitioners. Although the learned counsel submitted that it is not the fact that the plaintiff is the purchaser from the defendants but from perusal of the writ application, I do not find any such statement made in any of the paragraphs. Further, it appears that these defendants-petitioners immediately either before or after the application for recall did not file the written statement. In the case in CWJC No.22204 of 2013, the defendants 1st party had filed recall application and written statement together and had prayed for recall of the order and this Court in view of that fact position directed the court below to accept the recall application on payment of cost.

Considering the above facts and circumstances of the case, it appears that the court below has rightly observed that the petitioners are in collusion with the plaintiff and therefore, has rightly refused to recall the application that too after two years from their appearance.

Accordingly, this writ application has got no merit as such, it is dismissed. The I.A. is thus also rejected.

(Mungeshwar Sahoo, J)

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