

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19618 of 2010

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1. Sobhi Das , son of Late Prasad Ravidas
2. Hajari Prasad, son of Late Sri Kisun Yadav
3. Bachhu Yadav @ Bachhu Prasad, son of Late Sri Kisun Yadav
4. Ganesh Prasad, son of Late Loki Prasad
5. Chandra Bhushan Prasad, son of Late Dasrath Yadav
All R/O village-Harla, P.S. Dhanarua, District- Patna
.....Defendants..... Petitioners

Versus

1. Hira Lal Mistry S/O Late Sohan Mistry, R/o village- Harla, P.S. Dhanarua, Distt-Patna
2. Kalyan Sharma @ Pappu
3. Jitan Sharma
4. Lutan Sharma, sons of Sideshwar Sharma
All R/o village- Masopur, P.S. Punpun, District- Patna at present village Gamharia, P.S. Dhanarua, District- Patna
..... Plaintiffs Respondents 1st Set

5. Ashok Sao S/O Late Haricharan Sao, R/o Village- Harla, P.S. Dhanarua, District- Patna
.....Defendants..... Respondent 2nd Set

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Appearance :

For the Petitioner/s : Mr. Rewti Kant Raman
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

6 31-07-2015 Heard Sri Mahesh Prasad, learned counsel for the defendants-petitioners.

The petitioners, invoking writ jurisdiction of this Court under Article 227 of the Constitution of India, have prayed for quashing part of the order dated 22.10.2009 passed by the learned Munsif, Masaurhi in T.S. No.44 of 1996. By the said order, the learned Munsif has rejected the petition filed by the petitioners for recall of order dated 28.08.2008(wrongly typed as 20.08.08).

On perusal of the order, it is evident that by the same

order, one another petition i.e. petition dated 23.10.2008 filed by the defendants-petitioners, was also rejected. By filing said petition, the defendants-petitioners had made a prayer for allowing them to make amendment in the written statement.

Sri Mahesh Prasad, learned counsel for the petitioners candidly submits that against part of the order, whereby the prayer for amendment in the written statement was rejected, the petitioners had filed C. Rev. no.85 of 2010 which was converted into writ petition and, subsequently, the said writ petition was permitted to be withdrawn. Learned counsel for the petitioners submits that for the ends of justice, it is necessary to allow the defendants-petitioners to produce evidences.

I have perused the materials available on record. From the materials available on record, it is evident that the suit was filed by the plaintiffs-Respondents in the year 1996 for declaration of title over the suit property and also for removal of encroachment from the said land. In the case, evidence of the plaintiffs was closed on 04.06.2007 and thereafter on number of dates, opportunity was given to the defendants-petitioner to produce witnesses. However, from the order impugned, it is evident that on 08.06.2007, 25.06.2007, 07.07.2007, 12.07.2007, 21.07.2007, 24.07.2007 and 25.07.2007, the defendants-petitioners

did not produce any witness. Subsequently on 26.07.2007 one witness was produced and, thereafter about five witnesses were produced on behalf of the defendants-petitioners. It is evident that since repeatedly on 05.07.2008, 10.07.2008, 25.07.2008 and 24.08.2008 the defendants-petitioners did not produce any witness and finally by order dated 28.08.2008 the evidence of the defendants was closed by the court below. Despite the fact that evidence was closed on 28.08.2008, again belatedly a petition was filed on behalf of the defendants for recall of the said order.

I have perused the impugned order. Considering the fact that the suit was filed long back in the year 1996 and on number of dates, opportunity was given, the learned court below has rightly refused to recall its order.

The writ petition stands dismissed. Keeping in view the fact that the suit was of the year 1996, while dismissing the writ petition, it is desirable to direct the court below to take appropriate steps, so that the case may come to its logical end without unnecessary delay.

(Rakesh Kumar, J)

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