

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.704 of 2016**

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Donald Patrick Galstaun

.... Appellant/s

Versus

Basant Kumar Rai & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manoj Kumar

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

2 26-09-2016

Heard learned counsel, Mr. J.S. Arora, appearing for
the petitioner.

2. Perused the impugned order dated 11.05.2016 passed
by the Sub-Judge-I, Danapur, in T.S. No. 234 of 2014, whereby
the learned court below permitted the plaintiffs-respondents to
withdraw the suit with liberty to file a fresh suit under Order 23
Rule 1 Sub-Rule-3 C.P.C.

3. The plaintiffs-respondents filed the aforesaid suit for
declaration of title and possession over the schedule-5 land and for
declaration that the order passed by the Additional Collector,
Patna in Revision Case No. 55 of 2010-11 is illegal and wrong.
Defendant No.7-petitioner filed written statement in the case.
Thereafter, the plaintiffs-respondents filed application alleging
that due to inadvertence and the facts stated in the application
under Order 23 Rule 1 Sub-Rule-3 C.P.C, plaintiffs may be

permitted to withdraw the suit with liberty to file a fresh suit.

4. The learned court below, by the impugned order, held that the application for withdrawal has been filed after four months from filing of the suit and, therefore, allowed the application to withdraw the suit on payment of cost of Rs. 1000/- as according to defendant No.7-petitioner, he has been harassed.

5. In view of the facts and circumstances of the case, when the court below has exercise the jurisdiction vested in it by law under the code of civil procedure by considering the facts that only because amendment could have been prayed for, the application cannot be rejected. The court below also considered the harassment caused to the petitioner and, therefore, has awarded the cost. In such circumstances, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this civil miscellaneous application is dismissed.

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(Mungeshwar Sahoo, J)