

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Civil Writ Jurisdiction Case No.12584 of 2014

Indubala Devi W/o Sri Sachida Nand Prasad resident of Village- Makwa, P.S.- Asarganj, District- Munger, at present residing Mohalla- Bhikharilal Lane, Bhikanpur, Gumti No.2, nearby Durgasthan, P.S.- Ishakchak, Town and District- Bhagalpur.

.... .... Petitioner/s

Versus

1. Binod Sah Son of Late Bhothari Sah Village- Makba, P.S.- Asarganj, District- Munger.
2. Ranjan Sah Son of Late Lakhan Sah Resident of Village- Makba, P.S.- Asarganj, District- Munger.
3. Shanker Dass Son of Late Parmeshwar Das Resident of Village- Makwa, P.S.- Asarganj, District- Munger.
4. Mostt. Baba Dai Wife of Late Chander Yadav Resident of Village- Makba, P.S.- Aarganj, District- Munger.
5. Ram Prasad Sah Son of Late Pandey Sah Resident of Village- Makwa, P.S.- Asarganj, District- Munger.
6. Abdhut @ Awdhut Narayan Prasad Son of Late Mahabir Prasad Sah
7. Manoj Kumar
8. Anu Kumar @ Arun Kumar Both Sons of Sri Abdhut Narayan Prasad All residents of Village- Makba, P.S.- Asarganj, District- Munger at present Amgola, Parso Pokhar lane No.2, Muzaffarpur, P.S. Muzaffarpur Town and District- Muzaffarpur.
9. Sachida Nand Prasad Son of Late Mahabir Prasad Sah Resident of Village- Makba, P.S.- Asarganj, District- Mungera at present, Bhikhari Lal Lane, Bhikhanpur, Gumti No. 2, nearby Durgasthan, P.S.- Ishakchak, District- Bhagalpur
10. Uday Kumar
11. Uttam Kumar Both Sons of Sri Sachida Nand Prasad residents of Village- Makba, P.S.- Asarganj, District- Munger, at present residing at Mohalla- Bikharilal Lane, Bhikhanpur, Gumti No.2, nearby Durgasthan, P.S. Ishakchak, town and District Bhagalpur.
12. Prem Kumar son of Sri Nawal Kishore Mandal and Late Yogmaya Devi

resident of village- Kaithi, P.S.- Chhatapur, District- Supaul.

13. Smt. Bina Devi Wife of Ashok Kumar Sah and Late Yogmaya Devi resident of  
201, Prernakunj, R.P.S. More, Nayatola, near Arya Samaj Mandir, Baily Road,  
P.S., Danapur, District- Patna

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Braj Nandan Singh, Adv.

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 01-09-2016**

Heard Mr. Mishra, learned counsel for the petitioner.

Learned counsel for the petitioner has submitted that though the impugned order was passed on 28.01.2014 dismissing the suit as no issues were filed on behalf of the plaintiff and none appeared on behalf of the plaintiff when the suit was called out but the plaintiff, on the same day, later on, filed the issues which fact is apparent from the order sheet itself. Learned counsel, therefore, has contended that in view of the provision of Order 14 Rule 5 C.P.C. as well as the fact that the plaintiff filed the issues on the same day, the learned court below ought to have recalled the order dismissing the suit.

After considering the submissions and the materials on record, it is manifest that even after appearing later on in the suit on 28.01.2014, no prayer has been made by the plaintiff for recall of the order dismissing the suit nor any such petition was filed explaining

the reasons for earlier non-appearance. This Court is, therefore, not inclined to interfere in the impugned order. This application, however, is disposed of with liberty to the petitioner to file appropriate petition in accordance with law before the learned court below for recall of the order dated 28.01.2014 without further delay. If such petition is filed, the learned court below shall dispose it of in accordance with law on its merits without being prejudiced by this order.

**(V. Nath, J)**

Devendra/-

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