

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8329 of 2014

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Balajee Mishra son of Ramchandra Mishra @ Sarvanand Mishra resident of
village- Indrath Kala, P.S.- Bikramganj, District- Rohtas

.... Petitioner.

Versus

1. Kamta Prasad Mishra @ Ramneh Mishra son of Late Hridyanand Mishra
resident of village- Indrath Kala, P.S.- Bikramganj, District- Rohtas
2. Vishwajeet Mishra son of Ramchandra Mishra @ Sarvanand Mishra
resident of village- Kndrath Kala, P.S.- Bikramganj, District- Rohtas
3. Dudul Mishra @ Nathuni Mishra son of Indradatta Mishra resident of
village- Indrath Kala, P.S.- Bikramganj, District- Rohtas

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. Siddharth Harsh, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

2 29-02-2016

Heard the learned counsel for the petitioner.

By the impugned order the learned court
below after considering the petition filed by the defendant Dudul
Mishra (respondent no.3), has held that both the written statements
filed by the said defendant Dudul Mishra in the suit are not
acceptable being doubtful and far from convincing and has turned
down his prayer for rejecting his earlier written statement dated
16.03.2009.

The facts are not in dispute that the defendant
no.3 Dudul Mishra had filed two Vakalatnamas in the suit and also
two written statements. The petition has been filed thereafter by
the said defendant to ignore and reject the previous written



statement dated 16.03.2009 alleging that the same had been fraudulently and collusively filed. The learned court below by the impugned order after considering the submissions as well as materials on record has come to the conclusion that both the written statements filed by the defendant no.3 are not acceptable and accordingly dismissed the petition dated 08.07.2009 filed by the defendant no.3.

It is manifest that the defendant no.3 Dudul Mishra has not chosen to question the above order. The present application has been filed by the defendant-petitioner who claims to be purchaser from the defendant no.3 with the prayer that the earlier written statement filed by the defendant no.3 supporting the case of the defendant purchaser-petitioner be accepted.

The learned counsel for the petitioner has submitted that though the learned court below has not accepted both the written statements filed by the defendant no.3 Dudul Mishra but the fact is apparent that the said defendant no.3 filed another written statement against the interest of the present petitioner. It is in fact on this premise that the present writ application is claimed to be maintainable.

After considering the submissions and the materials on record, it is transparent that the defendant no.3 whose

petition filed before the learned court below has been disposed of by the impugned order ignoring the two written statements filed by him in the suit has not challenged the impugned order. The petitioner who is also a defendant in the suit cannot assail the impugned order which is in no way prejudicial to his interest as he has all the rights to defend his interest in the suit property in accordance with law. This Court, therefore, is not inclined to interfere with the impugned order at the instance of the petitioner.

The writ application is, accordingly, dismissed.

(V. Nath, J)

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