

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8488 of 2011

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1. Sri Bhagwan Prasad Late Ramjee Prasad Resident Of Village- Bewalia,
P.S- Bihiya, District- Bhojpur.

.... Petitioner/s

Versus

1. Ram Shankar Prasad Late Dhurva Prasad Resident Of Village- Benwalia,
P.S- Bihiya, District- Bhojpur
2. Uma Shankar Prasad Late Dhurva Prasad Resident Of Village- Benwalia,
P.S- Bihiya, District- Bhojpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Ojha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

3 22-02-2016

Heard learned counsel for the petitioner as well as

gone through the order impugned.

2. The instant suit has been filed on the basis of deed of *Mahadanama* which has never seen the light during conduction of trial. Even then, petitioner/plaintiff dragged the proceeding up to its finality and when the final argument concluded, then a petition has been filed purported to be under Order XXIII of CPC to permit withdrawal of the suit whereupon the order impugned dated 24.05.2010 has been passed relating to Title Suit No. 453/2007 by Sub-Judge, 2nd Bhojpur at Ara allowing the prayer subject to cost of Rs.5000/- as well as putting hedge by way of debarring the plaintiff from drawing a fresh suit on that very score.

3. Petitioner/plaintiff is aggrieved by imposition of cost of Rs. 5000/-. Learned counsel for the petitioner submits that cost would not have been inflicted as, the suit, in terms of Order XXIII of the CPC has been withdrawn which never imposes any sort of embargo, on account thereof, infliction of cost does not justify the order impugned.

4. True it is that, the Order XIII of the CPC is not at all influenced by the stage of trial but petitioner/plaintiff was well aware that he is not in a possession of the original *Mahadanama*, even then, allowed the suit to continue compelling defendant to have his presence till the day of final argument. On account thereof, defendant is found harassed at the end of petitioner/plaintiff whereupon, the learned lower court had rightly inflicted the cost.

5. Petition is rejected.

(Aditya Kumar Trivedi, J)

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