

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6006 of 2016

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Bhima Nand Jha

.... Petitioner/s

Versus

Sri Sri Panch Bhagini Sahit Tripur Sundari Daksh Kali & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Avinash

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

3 20-10-2016 Heard the learned counsel for the petitioner.

It appears that notices were issued in admission matter by terms of order dated 26.07.2016. In spite of service of notice, nobody appeared on behalf of the respondent.

The learned counsel, Mr. Shashi Nath Jha, appearing on behalf of the petitioner submitted that the Court below, while rejecting the application filed by the petitioner under Order 1 Rule 10 CPC for being added as party in Title Suit No.76 of 2004 did not even consider as to whether the petitioner is necessary party or not, rejected the application only on the ground of delay. According to the learned counsel, there is no question of delay because the petitioner will not pray for recall of the witness already examined by the plaintiff. He will participate in the suit after filing the written statement because one plot is involved in

the schedule of the plaint and, therefore, he is vitally interested in the matter and on the ground of delay, the application could not have been rejected by the Court below as the Court has the jurisdiction to add a party at any stage of the suit.

From perusal of the impugned order, it appears that the Court below has not at all considered the merit of the case regarding as to whether the petitioner is necessary party in the suit or not. Only on the ground of delay, the application has been rejected. It is submitted by the petitioner that still plaintiff's evidences are going on and if the petitioner is added as party who will cross-examine the witnesses that may be examined and will not pray for recall of the witnesses already examined, therefore, there is no question of belated stage arises.

In such circumstances, this writ application is allowed. The impugned order dated 16.02.2016 passed by Sub Judge II, Madhubani in Title Suit No.76 of 2004 is set aside and the matter is remanded back to the Court below for passing a fresh order according to law on merit after hearing both the parties.

(Mungeshwar Sahoo, J)

Sanjeev/-

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