

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.21917 of 2012**

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1. SATYADEV YADAV @ SITA RAM YADAV SON OF LATE SIPAHI YADAV  
RESIDENT OF VILLAGE - PAHARPUR, P.S. BIHTA, DISTRICT - PATNA

.... .... PETITIONER/S

VERSUS

1. SARYUG YADAV, SON OF LATE DEONANDAN YADAV AND LATE  
PHULMANTI DEVI RESIDENT OF VILLAGE - DALALGANJ, POST TARANAGAR,  
P.S. BIHTA, DISTRICT - PATNA  
2. MAHESHI DEVI, WIFE OF UMINDER YADAV, DAUGHTER OF LATE  
DEONANDAN YADAV AND LATE PHULMANTI DEVI RESIDENT OF VILLAGE -  
LODIPUR, P.S. NAUBATPUR, DISTRICT - PATNA  
3. DHANTI DEVI, WIFE OF DINDAYAL YADAV AND LATE PHULMANTI DEVI  
RESIDENT OF VILLAGE - SHAHJAHAPUR, P.S. BIKRAM, DISTRICT - PATNA  
4. DHANWANTI DEVI, WIFE OF AWADHESH YADAV, DAUGHTER OF LATE  
DEONANDAN YADAV AND LATE PHULMANTI DEVI RESIDENT OF VILLAGE -  
HAIWASHPUR ANDHARI MATHIYA, SAIDABAD, P.S. KANPA, DISTRICT -  
PATNA, BIHAR  
5. SHARVAN KUMAR, SON OF LATE DEONANDAN YADAV AND LATE  
PHULMANTI DEVI RESIDENT OF VILLAGE - DALELGANJ, POST - TARANAGAR,  
P.S. BIHTA, DISTRICT - PATNA, BIHAR

.... .... RESPONDENT/S

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**Appearance :**

For the Petitioner/s : Mr. Ajay Kumar--Advocate

For the Respondent/s : Mr. Randhir Kumar--Advocate

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**  
**ORAL ORDER**

03    25-01-2016                      Heard learned counsel for the petitioner as well as  
  
learned counsel for the respondents.

Petitioner is one of the defendants. He is aggrieved  
by an order dated 17.07.2012 passed by the Munsif, Danapur,  
Patna in Title Suit No.40 of 2010 whereby and whereunder prayer  
of petitioner has been rejected relating to reconsideration in terms  
of Order-XXXII, Rule-15 of the C.P.C.

Before coming to the issue in hand, a glance should  
be made over nature of the suit. Respondent-plaintiffs filed a suit



for cancellation of a sale deed executed by defendant no.2/ respondent no.5 in favour of petitioner/ defendant no.1. As the petitioner/ defendant no.1 failed to appear before the learned lower court at an appropriate time, therefore, Suit was directed to proceed against him in ex parte manner. However, the aforesaid order was recalled after appearance of petitioner/ defendant no.1. During midst thereof, respondent no.5/ defendant no.2 filed a petition on 16.03.2011 that he happens to be insane, therefore, he be defended by having a guardian, so appointed by the Court, whereupon the Court appointed the guardian ad litem. Subsequently thereof, after more than a year, a prayer has been made on behalf of petitioner/ defendant no.1 to reconsider the issue in terms of Order-XXXII, Rule-15 of the C.P.C. The prayer has been rejected by the order impugned which happens to be subject matter of instant petition.

It has been submitted on behalf of petitioner that the earlier order passed by the learned lower court happens to be wrong and in likewise manner, the rejection of the prayer made on behalf of petitioner. In support of the same, it has been submitted that after going through the Order-XXXII, Rule-15 of the C.P.C., it is apparent that Court has to adjudge the mental condition of the defendant and for that, an inquiry has to be conducted which, the



learned lower court failed to conduct and on account thereof, identifying the respondent no.5/ defendant no.2 as insane and further, appointing guardian ad litem to defend him happens to be bad. With regard to his status, it has been submitted that being a defendant and further, having the sale deed executed by the defendant no.2 in his favour, he is the person, who has, in case the aforesaid order subsists, to face its consequence. Therefore, the prayer of the petitioner is fit to be allowed.

After going through the relevant provisions of Order-XXXII of the C.P.C., it is evident that some material has to be brought up before the Court with regard to mental incapability of a party and after being perceived, the Court is to appoint guardian ad litem or order the next friend to be his guardian in order to defend his interest. The prayer of the party on that very score is not to be accepted blindly rather some sort of prima facie material has to be brought and considered by the learned Court. In the present case, there happens to be own assertion of a party with regard to his infirmity in having his case properly defended by the guardian ad litem on the score of insanity, which the Court found prima facie sufficient to infer. However, status of petitioner has also to be taken into consideration who himself is a defendant and is raising the grievance against the plea of other defendant, who

has been prosecuted like he himself. Furthermore, having such kind of order will not blur the interest of the petitioner, because of the fact that he, while proceeding with his case, will have an opportunity to defend.

As such, I do not see any cogent reason to interfere with the order impugned. Accordingly, instant petition is rejected.

**(Aditya Kumar Trivedi, J)**

Vikash/-

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