

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.11817 of 2014**

=====

1. Jagdish Choudhary son of late Elayachi Choudhary resident of Mohalla -  
Hajipur, Ward No.3, Khagaria, P.S. and District - Khagaria

.... .... Petitioner/s

Versus

1. The State of Bihar, through District Magistrate, Khagaria
- 2.. The District Magistrate, Khagaria
3. The Sub Divisional Officer, Khagaria
4. Sri Sardendu Verma, Magistrate, Khagaria
5. Sri R.K. Sinha, Magistrate, Khagaria
6. Executive Officer, Municipality, Khagaria
7. Bhagwati Devi wife of late Parmeshwari Gope
8. Nirdhan Yadav son of Late Parmeshwari Yadav
9. Mukti Devi wife of late Videshi Gope
10. Pandey Yadav son of late Videshi Yadav
11. Lila Devi daughter of late Videshi Yadav and wife of Late Rangje Yadav
12. Dami Yadav son of late Jageshwar Yadav
13. Suresh Yadav son of late Jageshwar Yadav
14. Ram Pukar Yadav son of Jageshwar Yadav ( minor under the guardianship of  
his mother and well wisher Maya Devi wife of Late Jageshwar Yadav )
15. Sunil Yadav son of late Jageshwar Yadav
16. Maya Devi wife of late Jageshwar Yadav
17. Sakhi Devi wife of Lakhan Yadav
18. Lakshman Yadav son of late Krishgopal Yadav
19. Rajo Devi daughter of late Krishnagopal Yadav
20. Lakshmi Devi daughter of late Krishnagopal Yadav All resident of village -  
Hajipur, P.S. Khagaria, District - Khagaria
21. Rajendra Choudhary son of late Sukhdeo Choudhary resident of Mohalla -  
Hajipur, Ward No.3, Khagaria, P.S. and District - Khagaria.

.... .... Respondent/s

=====

**Appearance :**

For the Petitioner/s : MR. DRONACHARYA, ADV

For the Respondent/s : Mr. SC9- RAJ NANDAN PD.

=====

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

ORAL JUDGMENT

**Date: 11-08-2016**

Heard Mr. Dronacharya, learned counsel appearing on behalf of the petitioner as well as learned counsel appearing on behalf of the respondents.

2. The petitioner in this application has questioned the legal sustainability of the impugned order by which the learned court below has turned down the prayer of the petitioner for recall of the earlier order closing the evidence of the intervenor-defendants.

3. From the materials on record as well as submissions on behalf of the parties, it transpires that the suit has been filed in the year 1987 by the plaintiff for declaration of title and possession over the suit land. The petitioner Jagdish Choudhary along with his brother Rajendra Choudhary got themselves added as intervenor-defendants on 27.09.1996 in the suit. It further appears from the averments made in the application that on 20.03.2010 intervenor-defendant Rajendra Choudhary was examined and cross examined in part and thereafter he fell ill and the deposition could not be completed. However, it further appears from the order dated 13.03.2012 that a petition was filed on behalf of the intervenor-



defendants praying for grant of opportunity for deposition and the said prayer was allowed by the court granting one week time to the intervenor-defendants for the purpose of examining Rajendra Choudhary as witness in the suit but again he did not turn up and a prayer instead was made for adjournment. It further appears from the order dated 13.03.2012(Annexure-1) the evidence of intervenor-defendants was closed and thereafter another petition was filed on behalf of the intervenor-defendants for grant of opportunity for completing the cross-examination of the intervenor-defendants and Rajendra Choudhary. By order dated 21.02.2013 the said prayer was rejected with the finding that the intention of the intervenor-defendants is only to linger the disposal of the suit. The matter did not rest there when another petition was filed on 02.09.2013 on behalf of the intervenor-defendants praying for recall of the earlier order dated 21.02.2013 and grant opportunity to the intervenor-defendants to lead evidence. By the impugned order the learned court below has rejected the petition.

4. Mr. Dronachrya, learned counsel appearing for the petitioner has submitted that though there is apparent laches by the petitioner, this Court may in the interest of justice allow the prayer of the intervenor-defendants to adduce evidence as prayed in the petition dated 02.09.2013(Annexure-3).



5. Learned counsel for the respondents however has supported the impugned order and has submitted that the suit has been pending since 1987 and has been fixed for final argument which fact is also apparent from the impugned order.

6. After considering the submissions and the materials on record, it is manifest that the intervenor-defendants in the suit have succeeded in lingering the matter since after their impleadment as parties in the suit. From the different orders annexed with the application, it is demonstrably clear that the intervenor-defendant Rajendra Choudhary was allowed last opportunity to examine himself in the suit but even thereafter he failed to examine himself and prayed for adjournment. By order dated 13.03.2012 the evidence of intervening-defendant was closed. It is surprising that thereafter no petition for recall of the said order was promptly filed by the intervenor-defendants who had chosen for recall much later by filing petition on 08.02.2013 which was again rejected by the learned court below on 21.02.2013. Even thereafter another petition was filed on 02.09.2013 making same prayer on behalf of the intervenor-defendants which has been rejected by the impugned order after taking notice of the entire facts and circumstances and the conduct of the intervenor-defendants. There is also no explanation as to why the intervenor-defendant Rajendra Choudhary

has not joined the present petitioner in filing this application although from the records, it appears that his illness has been made a ground for recall of the earlier order. There is no averment in the present application that the present petitioner was prevented by any sufficient cause praying for recall of the earlier order dated 13.03.2012 by filing petition before the learned court below.

7. Considering the facts and circumstances of the case, this Court is not inclined to exercise its jurisdiction under Article 227 of the Constitution of India to interdict the impugned order, particularly in view of the fact that the suit has been pending since 1987 and the learned court below has already directed for its hearing on day to day basis.

8. Accordingly, the present application is dismissed.

9. The petitioner shall be at liberty to raise objection, if such occasion arises, under Section 105(1) of the C.P.C.

(V. Nath, J)

Ranjan/-

|                   |          |
|-------------------|----------|
| AFR/NAFR          | NAFR     |
| CAV DATE          | N.A.     |
| Uploading Date    | 19.09.16 |
| Transmission Date | N.A.     |