

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11722 of 2014

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1. Sham Lal Sah Son of Late Rudal Sah Resident of Village Kadamwa, P.O+ P.S-
Ghorasahan, District- East Champaran.

.... Petitioner/s

Versus

1. Ganga Devi @ Akali Devi W/o Baidyanath Sah
2. Baidyanath Sah Son of Late Rudal Sah
3. Ashok Kumar Sah Son of Baidyanath Sah All are residents of Village Kadamwa,
P.S- Ghorasahan, District- East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar, Adv

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 09-08-2016

Heard learned counsel for the petitioner.

The defendant is the petitioner in the present application who has sought the relief for quashing the order dated 24.01.2014 passed by the learned court below refusing to recall the earlier order dated 07.12.2013 whereby the evidence of the defendant-petitioner was closed. From the materials on record and considering the submissions on behalf of the petitioner, it is apparent that the evidence of the petitioner started on 22.01.2012 and thereafter the petitioner had been granted 33 opportunities for leading evidence. On 17.08.2013 the learned court below granted



the last opportunity to the defendant-petitioner to complete his evidence. It further appears that the defendant-petitioner continued to linger the matter and ultimately on 07.12.2013 the evidence of the defendant-petitioner was closed. Thereafter the petitioner filed the petition (Annexure-1) on 03.01.2014 praying for recall of the order dated 07.12.2013. By the impugned order the learned court below after taking into consideration the facts and circumstances and the conduct of the defendant-petitioner has refused to recall the order dated 07.12.2013.

The learned counsel for the petitioner has submitted that the petitioner be granted last opportunity to complete his evidence. It has, however, been also accepted that there has been laches on the part of the petitioner.

From the materials on record, it appears that the suit has been filed in the year 2006 and several opportunities had been granted to the petitioner to complete his evidence but he continued to dilate the proceeding. In view of the amendment in the Code of Civil Procedure, the learned court below has rightly passed the order refusing to recall the impugned order. This Court in the background of these facts and circumstances of the case is not inclined to invoke its jurisdiction under Article 227 of the Constitution of India to interdict the impugned order.

The application is, accordingly, dismissed.

(V. Nath, J)

WE

NOT OFFICIAL

Ranjan/-

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