

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

**Civil Writ Jurisdiction Case No.3812 of 2014**

=====

Ashok Kumar Choudhary

.... .... Petitioner/s

Versus

Madhu Devi Bajaj & Ors

.... .... Respondent/s

=====

**Appearance :**

For the Petitioner/s : Mr. Dharendra Kumar

For the Respondent/s : Mr. N. A. Shamsi (A.S.G.)

=====

**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR**

**SAHOO**

ORAL ORDER

- 3      12-01-2016    **1.**            Heard the learned counsel for the petitioner, the learned counsel appearing on behalf of the respondent No.1 and the learned counsel appearing on behalf of respondent No.2 to 4.
- 2.**            This application under Article 227 of the Constitution of India has been filed by the intervener petitioner for setting aside the order dated 09.12.2013 passed by learned Sub Judge Ist, Banka in Title Suit No.41 of 1999.
- 3.**            It appears that the plaintiff respondent filed aforesaid title suit for declaration of title against the respondent No.2 to 4. The present petitioner filed intervention application before the Court below for being added as party on various grounds. By the impugned order, the Court below has rejected the said application only on the ground that the petitioner has not filed affidavit in

support of the application nor any chit of paper has been filed in support of his case.

4. The learned counsel for the petitioner submitted that in fact as many as, 8 documentary evidences were filed by the petitioner by a list of documents dated 04.08.2009 which has been annexed as Annexure '4' in this writ application. The learned counsel further submitted that in the ordersheet itself dated 17.02.2003, the Court below as mentioned that an application on the affidavit was filed by the petitioner for his addition as party defendant.

5. Perused the order passed by the Court below. From perusal of the order, it appears that the Court below has rejected the application on technical grounds. If there was any defect, the Court below should have directed the petitioner to cure the said defect but without considering the documentary evidences filed along with the list of documents, the Court below on the ground of non-filing of affidavit in support of the application, could not have dismissed the same.

6. In view of the above, the impugned order dated 09.12.2013 passed by the Court below is hereby set aside. This writ application is allowed and the matter is remanded back to the

Court below for a fresh decision after hearing both the parties and considering the documentary evidences produced by the petitioner.

**(Mungeshwar Sahoo, J)**

Sanjeev/-

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|