

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12216 of 2013

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Laxman Yadav @ Laxman Prasad Yadav Son Of Sri Khusilal Yadav Resident Of
Village- Daha, P.S.- Gamharia, District- Madhepura. Petitioner/s

Versus

1. Sri Kamleshwari Yadav Son Of Late Rupo Yadav Resident Of Village Daha,
P.S.- Gamharia, District Madhepura
 2. Sri Arun Kumar Bharti Son Of Sri Kamleshwari Yadav Resident Of Village
Daha, P.S.- Gamharia, District Madhepura
 3. Sri Raj Kumar Bharti Son Of Sri Kamleshwari Yadav Resident Of Village
Daha, P.S.- Gamharia, District Madhepura. Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Chaudhary Shayam Nandan, Adv.
Mr. Sanjay Kumar Singh, Adv.
For the Respondent/s : Mr. Sharda Nand Mishra, Adv.
Mr. Dhananjay Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 07-02-2017

Heard learned counsel for the parties.

By the impugned order, the learned court below has rejected the prayer of the defendant-petitioner for recall of the earlier order by which the direction was issued in the suit to proceed under Order 8 Rule 10 C.P.C. and the prayer of the defendant to file written statement was turned down.

After considering the submissions and the materials on record including the medical papers annexed with the petition which according to the petitioner substantiates his explanation for non-filing of the written statement even after the specific direction in that regard, this



Court finds that the suit has been filed for declaration of right, title and interest over the immovable property. Though, the defendant-petitioner did not file the written statement within the time granted by the court in that regard, this Court, in the interest of justice, is inclined to allow the prayer of the defendant-petitioner for contesting the suit after filing the written statement in accordance with law but after imposing cost upon the defendant in order to compensate the plaintiff.

Accordingly, this application is allowed and the impugned order is set aside subject to the payment of cost of Rs. 10000/- by the petitioner to the plaintiff. The amount of cost shall be deposited by the defendant-petitioner in the learned court below within a period of six weeks from today and the plaintiff shall be entitled to withdraw the same on permission by the learned court. The order passed by the learned court below for proceeding with the suit under Order 8 Rule 10 C.P.C. is recalled and the written statement filed by the defendant-petitioner is accepted and the defendant-petitioner is allowed to contest the suit in accordance with law/rules.

The present application is, accordingly, allowed.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	10.02.2017
Transmission Date	

