

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16500 of 2013

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Mosmat Shanti Devi Wife of Late Gautam Singh @ Mohan Singh, resident of village & P.O.- Bangra, P.S.- Maharajganj, District- Siwan.

.... Petitioner/s

Versus

1. Bijuli Prasad Son of Late Pashram Prasad, resident of village- Sihauta, P.O. & P.S.- Maharajganj, District- Siwan
2. Ram Ishawar Prasad Son of Late Pashram Prasad, resident of village- Sihauta, P.O. & P.S.- Maharajganj, District- Siwan
3. Kamala Devi Wife of Bijuli Prasad, resident of village- Sihauta, P.O. & P.S.- Maharajganj, District- Siwan
4. Shohila Devi Wife of Ram Ishawar Prasad, resident of village- Sihauta, P.O. & P.S.- Maharajganj, District- Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s B.K. Singh and Ramadhar Shekhar, Advs
Respondent/s : Mr. Surendra Kr. Thakur, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-11-2017

Heard learned counsels for the petitioner as well as the respondents.

2. The learned counsel for the petitioner prays to dispose of the Interlocutory Application No. 9853 of 2015 which is pending for disposal.

3. On perusal of record it appears that the said interlocutory application was filed for substitution of petitioner, Mosmat Shanti Devi who died on 04.09.2015 leaving behind her Nanad, Janaki Devi as her sole surviving legal heir. This fact has not been denied by the learned counsel for the respondents.



4. The prayer, as made above, is allowed and Janaki Devi wife of Brij Kumar Singh is ordered to be substituted in place of present petitioner, Most. Shanti Devi.

5. I.A. No. 9853 of 2015 is, accordingly, disposed of.

6. This application has been filed to quash the order dated 01.06.2013 passed by learned Sub Judge-VI, Siwan in T.S. No. 94 of 2007 whereby and whereunder the written statement of respondent was expunged and they were directed to file written statement afresh.

7. The fact in brief is that the original plaintiff Mosmat Shanti Devi had filed an eviction suit against all the respondents. Respondent nos. 1 and 2 are full brothers and respondent nos. 3 and 4 are their wives. They all appeared and filed written statement jointly. All respondents-defendants admitted the relationship of landlord and tenant. While the case was pending for trial, it was dismissed for default.

8. The petitioner filed miscellaneous case for restoration of said suit. All the four defendants opposed the miscellaneous case, but ultimately it was restored. Subsequently, the respondent nos. 3 and 4 filed a vakalatnama and prayed to permit them to file a fresh written statement. They asserted that they had no knowledge about the pendency of the suit. They have not appeared in the case and so they



should be given opportunity to file a fresh written statement. The Court below, as per impugned order dated 01.06.2013, allowed the petition and permitted them to file a fresh written statement. In order to appreciate the fact, I would like to reproduce the order passed by the Court below which runs as follows:-

“Both filed attendance. Plaintiff filed time petition. On call both ld. counsels appeared with defendant. Heard and perused the record. After direction plaintiff absent and all the defendants present which shows that the statement of defendant is true. Hence for the ends of justice the written statement filed by defendant is hereby expunged and defendants are hereby directed to file a fresh written statement.

Put up on 20.06.2013 for written statement”.

Sd/-

9. From the impugned order it appears that the Court below without assigning any reason, accepted the petition of the defendants. The Court below expunged the written statement filed earlier and ordered them to file a fresh written statement. The contention of the learned counsel for the petitioner is that the original appellant was an old lady and on account of parliamentary election in her constituency, the communication was disturbed and on the relevant date the election was to be held. The petitioner under



compelling circumstances could not appear in the Court and the impugned order was passed without considering the merit of the case. The learned Court below without giving any opportunity to the petitioner or seeking any explanation from the defendants allowed the petition on account of which the petitioner has been seriously prejudiced.

10. Be that as it may. From the impugned order it is evident that the order on defendants' petition for expunging their earlier written statement and allowing them to file a fresh written statement has been passed without considering the merit of the case or giving any opportunity to the petitioner..

11. In view of above facts, the impugned order dated 01.06.2013 passed in T.S. No. 94 of 2007 is set aside and the Court below is directed to give an opportunity to the petitioner to file rejoinder and pass the order on merit after hearing both sides.

12. With the above observation and direction, this application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04.12.2017
Transmission Date	

