

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17582 of 2013

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Md. Farooque Khan Son of Late Hadis Khan, resident of village- Semri, P.O.-
Rajanpura, Police Station- Mazharul Haque Nagar (Hasanpura), District- Siwan.

.... Petitioner/s

Versus

1. Sabir Khan Son of Late Hawaldar Khan, resident of village- Semri, P.O.-
Rajanpura, Police Station- Mazharul Haque Nagar (Hasanpura), District- Siwan
2. Ramuna Sah Son of Late Dhola Sah, alleged son of Bali Sah, resident of village-
Semri, P.O.- Rajanpura, Police Station- Mazharul Haque Nagar (Hasanpura),
District- Siwan
3. Bibi Noor Khatoon Wife of Md. Basharuiddin Khan, resident of village- Semri,
P.O.- Rajanpura, Police Station- Mazharul Haque Nagar (Hasanpura), District-
Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Irshad Ahmad Khan and Abdul Mannan Khan, Advs.

For the Respondent/s : Mr. Shailendra Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-11-2017

The petitioner has filed this application for setting aside the order dated 07.05.2013 passed by the learned Sub-Judge-VIII, Siwan in Title Suit No. 123 of 2007 whereby and whereunder the learned Sub-Judge allowed the amendment petition filed on behalf of the plaintiff.

2. Heard learned counsels for the petitioner and the respondents.

3. The plaintiff no. 1 filed the Title Suit No. 123 of 2007 against the petitioner and others for declaration of title and recovery of possession over 13 dhur land of plot no. 809 fully described in



schedule of the plaint. The defendant appeared and filed the written statement. After filing of written statement, the plaintiff filed a petition on 06.12.2012 for amending the plaint. The Court below on 07.05.2013 called out the case and as nobody appeared for the plaintiff, he allowed the amendment petition. The order runs as follows:-

“Both filed attendance. On call Ld. counsel for plaintiff appeared and pressed his petition dt. 6.12.12. Heard and perused the record. After repeated call nobody appeared for defendant nor rejoinder is on record. Hence for the ends of justice the amendment petition dt. 6.12.12. is hereby allowed. O/c required to do needful.

Put up on 13/5/13 for the interest witnesses by plaintiff and list of witnesses and documents by deft.”

4. The contention of the learned counsel for the petitioner is that the advocates were on strike and therefore nobody could appear and file rejoinder on two consecutive dates i.e. on 21.01.2013 and 11.03.2013. The petitioner has been seriously prejudiced as he was not heard and the Court below passed the impugned order without perusing the petition and considering the nature of amendment. The Court below allowed the petition only for the reason that nobody appeared to oppose the petition.

5. In the facts and circumstances of the case, the impugned



order dated 07.05.2013 passed in Title Suit No. 123 of 2007 is set aside. The Court below is directed to give an opportunity to the petitioner defendant and pass order on merit.

6. With the above observation/direction, this application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	30.11.2017
Transmission Date	

