

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.820 of 2016

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Pradhan Marandi, son of Hupan Marandi, resident of village-Boglabari, P.S.-
Dagarua, District-Purnea. Defendant No.1/Petitioner.

Versus

1. Phool Mai Marandi, wife of Sabu Lal Soren & daughter of Late Hupan Marandi, resident of village-Dannar, P.O. Babhani, P.S. Dagarua, District-Purnea.
2. Baukhi Marandi, wife of Hupun Hansda and daughter of Late Hupan Marandi, resident of village-Bogla Bari, P.S.- Dagarua, District-Purnea.
(Plaintiffs in the court below)
3. Kosalya Marandi, wife of Bijay Soren and daughter of Late Rupan Marandi, resident of village-Bogla Bari, P.S.-Dagarua, District-Purnea.
(Defendant no.2 in the court below)
.... Respondents.

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Appearance :

For the Petitioner : Mr. Kumar Uday Singh, Adv.
For the Respondents : Mr. Yogesh Chandra Verma, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

Date: 11-04-2017

Heard Mr. Kumar Uday Singh, learned counsel for the defendant no.1-petitioner and Mr. Yogesh Chandra Verma, learned Senior Counsel for the plaintiffs-respondents.

The legal sustainability of the impugned orders by which the learned court below has rejected the written-statement filed on behalf of defendant no.1-petitioner and further rejected the prayer for review of earlier orders, has been questioned in this application under Article-227 of the Constitution.

The factual matrix of the case discloses that the suit has been filed for partition by the plaintiff. After service of summons, the defendant no.1-petitioner appeared in the suit on 14.07.2015.



- 2 -

From the order-sheet at Annexure-4, it transpires that after appearance of defendant no.1-petitioner, on his prayer, the case was adjourned for filing the written-statement. In this regard, the order dated 26.11.2015 will be relevant by which the learned court below had allowed the prayer for adjournment as made by the defendant with further direction to the defendant to file written-statement on 04.01.2016, which was the next date fixed. It again transpires from the order dated 04.01.2016 that defendant in compliance to the earlier direction of the learned court below, filed his written-statement on 04.01.2016. It, however, appears that by order dated 18.03.2016, the learned court below has refused to accept the written statement filed by the defendant on 04.01.2016. It is apposite to mention here that the suit was not posted for hearing as is evident from the order-sheet up till 18.03.2016. Defendant no.1-petitioner thereafter filed petition for recall of the said order on 22.04.2016, but the same has also been dismissed by order dated 24.06.2016 (Annexure-4). The order dated 18.03.2016 and the order dated 24.06.2016 have been assailed in the present application.

Mr. Kumar Uday Singh, learned counsel appearing for the defendant no.1-petitioner has submitted after referring to the different orders passed in the suit till 04.01.2016 that there is no laches on the part of defendant no.1-petitioner in filing the written-



- 3 -

statement and, in fact, the written-statement was filed on 04.01.2016, which was the date fixed for filing the written-statement, as is evident from the earlier order dated 26.11.2015. Mr. Singh next contended that the provision of Order-VIII Rule-1 of Civil Procedure Code is meant to expedite hearing of the suit and not to scuttle the same.

Per contra, Mr. Yogesh Chandra Verma, learned Senior Counsel for the plaintiff-respondents has emphasized the delay in filing the written statement and has also submitted that the earlier orders passed by the learned court below including the order dated 26.11.2015 were mechanical orders, which the court ought not to have passed. It has been argued that in view of the stipulations in the provisions of Order-VIII Rule-1 CPC, the learned court below was required to give reasons for granting time for filing the written statement, which it had omitted to do. The learned Senior Counsel has also submitted that the cost, as envisaged under the said provision, is to be awarded in case of acceptance of written statement after the statutory period of 30 days.

It is manifest from the order-sheet (Annexure-4) that by order dated 26.11.2015, the learned court below fixed 04.01.2016 in the suit for filing the written statement by the defendants. The written-statement thereafter was filed by defendant no.1-petitioner on 04.01.2016. The non-mention of reasons by the learned court below



- 4 -

for adjournment of the suit to 04.01.2016 for filing the written-statement cannot be a ground for penalizing the defendant no.1-petitioner as the said omission cannot be attributable to the defendant no.1-petitioner in any way. In the subsequent orders, which are impugned in the present application, i.e., order dated 18.03.2016 and 24.06.2016, the earlier order granting opportunity to the defendant to file written statement has not at all been taken into notice. Therefore, in rejecting the written statement filed by defendant no.1-petitioner and also rejecting the prayer for recall of the said order, in this background, the learned Court below has definitely committed material irregularities.

In the result, both the impugned orders are quashed and the written-statement filed by defendant no.1-petitioner on 04.01.2016 in T.S. No.348 of 2016 is accepted. The learned Court below is further directed to proceed, expeditiously, in accordance with law.

This application accordingly stands allowed.

(V. Nath, J.)

Trivedi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2017
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