

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2945 of 2015

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Bidya Nand Choudhary Son of Late Ayodhya Choudhary, Resident of Village -
Sultanganj, P.S. - Sultanganj, District - Bhagalpur.

.... Petitioner/s

Versus

1. Janardhan Choudhary Son of Late Laxmi Narayan Choudhary
2. Nirmala Devi Wife of Late Radha Kant Choudhary
3. Ajoy Choudhary
4. Santosh Choudhary
5. Binay Choudhary
All Sons of Late Radha Kant Choudhary
6. Bulli Kumari Daughter of Late Radha Kant Choudhary
All are resident of Sultanganj, P.S. - Sultanganj, District - Bhagalpur.

....Defendant 1st party/Respondent 1st set.

7. Sarjudg Choudhary
8. Jai Prakash Choudhary
9. Uttam Choudhary
10. Dilip Kumar Choudhary
All Sons of Late Dash Rath Choudhary
11. Man Deo Devi
12. Geeta Devi
13. Anjali Devi
14. Kalyani Devi
All Daughter of Late Dash Rath Choudhary, All Residents of Sultanganj, P.S. –
Sultanganj, District - Bhagalpur.

....Defendant 2nd party/Respondent 2nd set.

15. Sagar Choudhary Son of Late Ayodhya Choudhary
16. Mt. Purnima Devi Wife of Late Shiv Shankar Choudhary
17. Satya Narain Choudhary
18. Jiwan Choudhary
19. Mantu Choudhary
20. Lalit Choudhary
All Sons of Late Shiv Shankar Choudhary
21. Sita Devi
22. Jyoti Devi
23. Nilam Devi All Daughters of Late Shiv Shankar Choudhary, Resident of
Sultanganj, P.S. - Sultanganj, District - Bhagalpur.

....Defendant 3rd party/Respondent 3rd set.

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar Singh
For the Respondent/s : Dr. Manoj Kumar

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR



ORAL JUDGMENT

Date: 11-04-2018

The plaintiff of Title Suit No. 111 of 1993 which was pending before Sub-Judge-IV, Bhagalpur, has filed this application for setting aside the part order relating to cost imposed by the court below under the impugned order dated 24.06.2014.

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

3. The petitioner had filed the aforesaid Title Suit No.111 of 1993 for partition of suit property claiming share to the extent of 1/9th and appointment of Survey Knowing Pleader Commissioner for carving out a separate patti with respect to his share. The defendants appeared and filed written statement. The petitioner filed a petition to withdraw the suit which, as per impugned order dated 24.06.2014, was allowed. The suit was ordered to be withdrawn with a condition that if the plaintiff desires to file a fresh suit, that would be permissible subject to payment of cost of Rs.1,500/- per year from the date of institution of suit i.e. year 1993 till the year of withdrawal petition i.e. 2014, payable to the defendants. After withdrawal of said suit, the petitioner filed another suit bearing T.S. No. 48 of 2015. The defendants appeared and raised objection as regards maintainability of the suit in view of the order passed in T.S. No. 111 of 1993. The petitioner therefore has assailed



the part of order whereunder the court below had imposed cost at the rate of Rs.1,500/- per year as condition precedent for filing a fresh suit.

4. On going through this writ application and counter affidavit filed on behalf of the respondents, I find that the petitioner had filed the suit on 15th June 1993 and the withdrawal petition on 19.05.2014. The respondents filed rejoinder on 26.05.2014 and after hearing both sides, the court below allowed withdrawal petition on 24th June 2014. According to the learned counsel for the petitioners, the revisional survey concluded in the year 1996. The land has been recorded in the name of defendants and so a declaration with respect to disputed land was required and it necessitated the withdrawal of suit for filing a fresh suit.

5. On perusal of record it appears that the plaintiff-petitioner had filed the aforesaid T.S. No. 111 of 1993 claiming 1/9th share in the suit property, but after withdrawal of suit, he filed another suit bearing T.S. No. 48 of 2015 for declaration of his title over the entire suit property. In the present suit, the plaintiff has disclosed the date of cause of action as 15.04.1993 which was also the cause of action in earlier suit bearing Title Suit No. 111 of 1993. The plaintiff has not explained the need of filing a fresh suit instead of amending the plaint. The court below while allowing the withdrawal petition,



has imposed the cost of Rs.1,500/- per year as condition precedent for filing a fresh suit which appears to be proper for compensating the defendants as they remained present in course of hearing for twenty years to defend their interest. The court below has not committed any illegality in imposing the cost.

6. In view of above facts, I do not find any merit in this application and this application is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19/04/2018
Transmission Date	

