

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.165 of 2016

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1. Nageshwar Nath Tiwari son of Late Daroga Tiwari
2. Jagat Narayan Tiwari son of Late Daroga Tiwari
3. Hari Narayan Tiwari son of late Daroga Tiwari All are residents of Village- Barwat Parssain, Police Station- Bettiah Muffasil, District- West Champaran.
4. Sharda Devi wife of Late Lal Babu Mishra, daughter of Late Daroga Tiwari, resident of village- Manpur Police Station- Govindganj, District- East Champaran at Present resident of village- Barwat Parssain Police Station- Bettiah Muffasil, District- West Champaran.

.... Petitioner/s

Versus

1. Pradeep Kumar Pandey son of Late Ramashray Pandey
2. Sandeep Kumar Pandey son of Late Ramashray Pandey
3. Amit Kumar Pandey son of Late Ramashray Pandey
4. Most. Savitri Devi Wife of Late Ramashray Pandey
5. Krishna Pandey son of Late Janardan Pandey
6. Surendra Pandey son of Late Gorakh Pandey
7. Birendra Pandey son of Late Gorakh Pandey
8. Shiv Narayan Pandey son of Late Gorakh Pandey
9. Shambhu Pandey son of Late Gorakh Pandey
10. Sindhu Pandey son of Late Gorakh Pandey
11. Kripa Narain Pandey Son of Late Ramagya Pandey
12. Shashi Kant @ Sushil Pandey Son of Late Ramagya Pandey All are residents of Village- Barwat Parssain, Police Station- Bettiah Muffasil , District- West Champaran
13. Prabhawati Devi daughter of Late Ramagya Pandey, Wife of Jagdish Dubey, resident of Dubwaliya, Police Station- Chanpatia, District- West Champaran
14. Geeta Devi Daughter of Late Ramagya Pandey wife of Bambam Chaubey, resident of Village- Bijbania, Police Staton Chanpatia, District- West Champaran.
15. Ajay Pandey son of Late Shyamdeo Pandey,
16. Mukul Pandey son of Late Nagina Pandey
17. Rajeev Pandey son of Late Nagina Pandey
18. Ranjan Pandey son of Late Nagina Pandey
19. Sanjay Pandey son of Late Nagina Pandey
20. Rajeshwar Pandey Son of Late Madan Pandey,
21. Kameshwar Pandey son of Late Madan Pandey, 15 to 21 are residents of village- Barwat Parssain, Police Station- Bettiah Muffasil, District- West Champaran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bashishtha Narayan Mishra

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA



ORAL ORDER

5 11-04-2018 Heard Mr. Bashistha Narayan Mishra, learned counsel for the petitioners and Mr. Bakshi S.R.P. Sinha, learned senior counsel and Mr. Waliur Rahman, learned counsel for the respondents.

The petitioners being aggrieved by the order dated 24.02.2016 passed in Title Suit No.169 of 2006 filed this civil miscellaneous petition by which Sub Judge IV, Bettiah allowed the petition of the respondent Nos.1 to 7, 9, 14 and 15 and accepted his written statement subject to payment of cost of Rs.800/-.

The learned counsel for the petitioners submits that vide order dated 06.02.2007, some of the defendants were debarred from filing written statement. The defendants filed petition on 17.03.2007 to recall the order dated 06.02.2007. The same petition remained pending. It is further submitted that on 19.03.2009, the petition dated 17.03.2007 was dismissed on account of non-appearance of the defendants. The defendants again filed petition on 29.02.2012 to recall the order debarring the petitioner from filing written statement but the same was allowed on 24.02.2016 without giving any reason.

On the other hand, Mr. Bakshi S.R.P.Sinha and Mr. Waliur Rahman, learned counsels for the respondents submit that



from perusal of the entire ordersheet, it would appear that learned Sub Judge debarred the defendant from filing written statement on 06.02.2007 but the defendant filed petition on 17.03.2007. The Court directed the defendant to file written statement only thereafter hearing would be made on the petition for recall of the order dated 06.02.2007. The suit remained pending but on one pretext or other when the defendant did not appear on 19.03.2009, the petition of the defendants to recall the order dated 06.02.2007 was dismissed. Again the defendant filed petition on 29.02.2012. Learned Sub Judge vide order dated 11.02.2014 accepted the written statement on payment of cost of Rs.2,000 but on the same day later on another order was written which says that the order wrote in the margin shall be effective only after full hearing and the same remained pending. Learned Sub Judge vide order dated 24.02.2016 again accepted the written statement recalling the order debarring the defendant from filing written statement on payment of cost of Rs.800/-.

Having considered the submissions and on perusal of the photocopy of the entire ordersheet of Title Suit No.169 of 2006, I find that the learned Sub Judge has written the order in very casual manner. From perusal of the order dated 06.02.2007, it appears that defendants were debarred from filing written statement but when the defendant filed petition on 17.02.2007, the



Court ordered to file written statement only then hearing will be made on the petition for recall. The defendant filed written statement on 11.06.2007 but the same remained pending till 19.03.2009 and on that day, the defendant did not appear but the Sub Judge without looking to the record and perusing the earlier order dismissed the petition of recalling the order dated 06.02.2007. When the defendants came to know about this order they filed petition on 29.02.2012. The same petition was allowed accepting the written statement subject to payment of cost of Rs.2,000/- but on the same day, another order was drawn making the same order subject to full hearing on the petition and ultimately written statement was accepted vide order dated 24.02.2016 subject to payment of cost of Rs.800/-.

In the interest of justice, the defendant should be allowed to file written statement on payment of cost but his petition remained pending for years and casual order was passed. Ultimately, the written statement of the petitioner has already been accepted. Therefore, in supervisory jurisdiction, I am not inclined to interfere with the order impugned.

Accordingly, this civil miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

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