

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1322 of 2014

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1. Jai Krishna Yadav Son of Late Subasan Yadav Resident of Village - Sukashan, P.S. Kishanpur, District - Supaul
2. Rajiv Kumar Yadav Son of Shri Ram Avtar Yadav Resident of Village - Sukashan, P.S. Kishanpur, District - Supaul
3. Ram Avtar Yadav Son of Late Badri Yadav Resident of Village - Sukashan, P.S. Kishanpur, District - Supaul
4. Bindeshwari Yadav Son of Late Subran Yadav Resident of Village - Sukashan, P.S. Kishanpur, District - Supaul
5. Gonar Yadav Son of Late Subran Yadav Resident of Village - Sukashan, P.S. Kishanpur, District - Supaul
6. Pawan Yadav Son of Late Bambholi Yadav Resident of Village - Sukashan, P.S. Kishanpur, District - Supaul

.... Petitioners

Versus

1. Bihari Yadav Son of Late Pokhram Gope Resident of Village - Sukashan, P.S. Kishanpur, District - Supaul

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Amrit Abhijat, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

3 19-01-2018 This writ application has been filed to set aside the order dated 20.09.2013 passed by learned Munsif, Supaul in Title Suit No.08 of 2008 whereby and whereunder the learned Munsif rejected the petition dated 16.08.2013 filed by the petitioners to recall the order dated 15.05.2013. As per order dated 15.05.2013 the learned court below has closed the evidence of the petitioners (defendants). The petitioners have further prayed to set aside the order dated 15.05.2013 whereby the evidence of the petitioners was closed.



2. Heard learned counsel for the petitioners as well as the respondent.

3. The respondent filed Title Suit No.08 of 2008 in the court of Munsif, Supaul. After closure of evidence of plaintiff, the defendants were directed to adduce evidence. In course of evidence, the defendants filed attendance and affidavit of their witness Shyamsudar Yadav for his evidence. They produced the said witness for cross-examination on 19.12.2012. The case was not taken up for examination and it was deferred to 03.02.2013 for cross-examination of said witness. On the date of cross-examination the Presiding Officer was again out of station and so their witness could not be cross-examined. Thereafter the case was adjourned to 27.02.2013 on which date the defendants were present along with their witness but as the Presiding Officer was on leave, his cross-examination could not be done. The case was then fixed to 16.03.2013. The defendants along with their witness appeared in Court but on account of absence of Presiding Officer, their witness could not be cross-examined. It has been submitted that the witness to be cross-examined on behalf of defendants remained present on several occasions but on account of absence of Presiding Officer, their witness could not be cross-examined. On earlier occasion the evidence of plaintiff was closed but on the



petition of defendants, their time petition for producing the witness was allowed subject to cost of Rs.50/- as per order dated 22.11.2012. The said order was not complied in consequence of which their evidence was closed as per order dated 15.05.2013. The court below refused to recall the said order which has been challenged before this Court.

4. It has been contended that the petitioners are poor labourours and had gone to Punjab in connection with their livelihood. The petitioners were willing to adduce evidence which is apparent from their conduct. The petitioners produced their witness on several occasions but on account of absence of Presiding Officer, their witness could not cross-examined. In the interest of justice, the impugned order dated 20.09.2013 as well as the order dated 15.05.2013, whereunder the evidence of petitioners has been closed, are set aside.

5. This writ application, is accordingly, allowed.

Harish/-

(Sanjay Kumar, J)

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