

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22278 of 2013

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1. Lallan Pandit Son of Jagarnath Pandit, resident of village + Post Office – Jagarnathpur, Police Station - Gopalpur, District - West Champaran.
 2. Mostt. Phul Jhari Wife of Late Jhakar Mahto, resident of village - Mahesara, Post Office - Sundergawa, Police Station - Gopalpur, District - West Champaran
 3. Mostt. Matrani Devi Wife of Late Manager Mahto, resident of village – Mahesara, Post Office - Sundergawa, Police Station - Gopalpur, District - West Champaran

.... Petitioner/s

Versus

1. Ramchandra Mahto Son of Late Budhan Mahto, resident of village - Sargatia, Police Station - Sathi (at present Gopalpur), District - West Champaran.
2. Ram Balak Mahto Son of Late Manager Mahto, resident of village - Mahesara, Post Office - Sundargawa, Police Station - Gopalpur (Sathi), District - West Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shiv Kumar Dwivedy, Adv.

For the Respondent/s : Mr. Brij Kishore Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 09-01-2018

This application has been filed to set aside the order dated 17th July 2013 passed by the learned Sub Judge-III, Bettiah, West Champaran in T.S. No. 279 of 2009 whereby and whereunder the petition dated 16th July 2013 filed by these petitioners to recall the order dated 23rd June 2013 was dismissed.

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

3. It appears that respondent no. 1 had filed T.S. No.279 of 2009 against these petitioners for declaration that the



registered sale deed no. 8089 dated 08.09.2009 executed by the petitioner no. 2 in favour of petitioner no. 1 as void and illegal and further to declare the deed of cancellation dated 04.06.2009 executed by petitioner no. 2 in favour of the respondent no. 1 (plaintiff) as illegal and void. The petitioners filed their written statement and started contesting the case. After closure of evidence of plaintiff, the defendants were directed to adduce evidence. On account of laches on the part of petitioners, their evidence was closed as per order dated 11.04.2013 and the case was fixed for argument.

4. From the documents on record it appears that on subsequent date, the defendant did not appear on 05.06.2013. On following day, the plaintiff was absent and the defendants filed Hajri of their witness. The case was adjourned to 22.06.2013 on which date the plaintiff was present but on account of absence of defendants, their case was closed and the case was fixed for argument. The plaintiffs filed petition to recall the said order which after hearing was rejected as per impugned order 17th July 2013 observing that sufficient opportunity was given to the petitioner to adduce the evidence.

5. Be that as it may. The petitioners want to contest the suit and are ready to adduce the evidence within a time frame to be fixed by the Court below for expeditious disposal of the case.

6. In view of above facts and for the ends of justice,



the impugned order dated 17.07.2013 passed by the court below is set aside. The petitioners are given opportunity to adduce oral evidence within a time frame to be fixed by the Court below, subject to payment of cost to the plaintiffs-respondents to the tune of Rs.2,000/- before the Court below.

7. This application is, accordingly, allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15.01.2018
Transmission Date	

