

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22083 of 2013

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Vijay Narayan Mishra Son of Late Radha Krishna Mishra, resident of mohalla
Bangali Tola, Buxar Pani Tanki, P.S- Mofassil Buxar, Distt.-Buxar.

.... Petitioner/s

Versus

1. Harishankar Mishra Son of Late Deonath Mishra, resident of village- Mathiya,
P.S-Buxar Mofassil, Distt.- Buxar.
2. Santosh Kumar Mishra Son of late Baban Ji Mishra
3. Most. Kamla Devi wife of late Baban Ji Mishra
4. Rambilash Mishra Son of Late Yadunandan Mishra, resident of Shivpuri, P.S-
Buxar, Distt. Buxar
5. Radhey Shyam Tiwari, Son of Vikarmaditya Tiwari, resident of Shivpuri, P.S-
Buxar, Distt. Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Sinha, Advocate

For the Respondent/s : M/s S.N. Singh and Sandip Singh, Advocates

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-01-2018

This application has been filed to set aside the order dated 23rd August 2013 passed by the learned 1st Additional Munsif, Buxar in Title Suit No. 131 of 2000 whereby and whereunder the learned Court below allowed the petition filed under section 151 of Code of Civil Procedure by the respondent no. 4 and accepted the written statement of respondent no. 4, subject to payment of cost to the petitioner to the tune of Rs.5,000/-.

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

3. The petitioner is plaintiff before the Court below.



He has filed Title Suit No. 131 of 2000 against the respondents for declaration of title over property mentioned in schedule of the plaint.

4. The defendants did not appear and suit proceeded *ex parte*. After closing the evidence of plaintiff, the suit was fixed for argument. After conclusion of argument on 18.01.2013, the date was fixed for judgment on 31.01.2013. The respondent nos. 2 and 3 suddenly appeared on 28.01.2013 and filed a petition along with vakalatnama. The plaintiff filed a petition for filing rejoinder. The learned Court below, vide order dated 03.06.2013, rejected the petition. Thereafter the respondent no. 4 filed a petition on 22.06.2013 praying therein to recall the order dated 05.10.2007 on the ground that on account of his illness, the written statement could not be filed earlier. The plaintiff raised objection by filing rejoinder. The Court below, after hearing both sides, recalled the order and accepted the written statement of respondent no. 4, subject to payment of cost of Rs.5,000/-.

5. It has been submitted that the Court below without assigning any reason, has accepted the written statement. The respondent did not produce any medical report/prescription to support his illness for a long period of six years. The respondent has not satisfactorily explained the abnormal delay for recalling the said order.



6. The learned counsel for the respondents on the other hand submitted that the Court below on being satisfied with the submission made on behalf of the respondent and also for the ends of justice, has rightly accepted the written statement and so the impugned order does not require any interference. In this regard, learned counsel referred a Ruling reported in 1996 (2) PLJR 127 (Rambilas Mahto v. Mahabir Mahto) wherein it has been held that section 151 of the Code of Civil Procedure lays down that nothing in the Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent the abuse of the process of court. These powers are in addition to the powers specifically conferred on the court by the Code. They are complementary to those powers and, therefore, the Court is free to exercise them for the purposes mentioned in Section 151. The only precaution is that such exercise may not be in conflict with the provisions of the Code.

7. The Court below on being satisfied with the submission of respondent no. 4, has observed that for the ends of justice, the respondent is required to be heard and opportunity should be given to him to contest the suit. The Court below considering the alleged laches of respondent no. 4 in order to compensate the petitioner, has awarded an amount of Rs.5,000/- for accepting the



written statement of the respondent.

8. In view of above facts, I do not find any jurisdictional error in accepting the written statement by the learned Court below. This application is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.01.2018
Transmission Date	

