

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13991 of 2010

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Upendra Mishra S/o late Ram Kripal Mishra, resident of Village- Sugao (Tola of Hanuman Sah) P.O. Sugao, P.S. Sugauli, District-East Champaran.

.... Petitioner

Versus

1(a) Chanda Devi W/o late Gopal Prasad

1(b) Sandeep Kumar

1(c) Deepak Kumar

Both are Sons of late Gopal Prasad

1(d) Soni Kumari D/o late Gopal Prasad

All are resident of Village- Chhagaraha (Tola of Hanuman Sah), P.O. Chhapra Bashas, P.S. Sugauli, District- East Champaran.

1(e) Priyanka Devi D/o late Gopal Prasad, W/o Krishna Prasad, R/o Sonarpati, P.O. Motihari, P.S. Motihari town, District- East Champaran.

2. Dashrath Missir S/o late Ram Kripal Missir, Resident of Village- Sugao (Tola of Hanuman Sah) P.O. Sugao, P.S. Sugauli, District-East Champaran.

3. Baiju Missir @ Baijnath Missir S/o late Ram Kripal Missir, Resident of Village- Sugao (Tola of Hanuman Sah) P.O. Sugao, P.S. Sugauli, District-East Champaran.

4. Daddan Missir S/O Late Ram Kripal Missir, resident of Village Sugao (Tola of Hanuman Sah), P.O.-Sugao, P.S. Sugauli, Distt.-East Champaran.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Anshuman Singh, Advocate
Mr. Rakesh Kumar, Advocate

For the Respondent/s : Mr. Dhananjay Kumar No.2, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 13-07-2018

Petitioner before this court is appellant of Title Appeal No.15 of 2006 pending in the court of 9th Additional District Judge, Motihari (East Champaran).

2. The respondents had filed Title Suit No.207 of 2000 against the petitioner which was decreed as per judgment dated 27.05.2006. The petitioner filed a petition before the lower appellate court on 06.12.2008 seeking permission to put his signature on the verification portion of the written statement. The lower appellate court



after hearing both the sides rejected the petition observing that the petitioner is not prejudiced on account of not putting his signature on written statement and its verification.

3. The learned counsel for the petitioner submitted that the petitioner adduced oral and documentary evidences on the basis of pleading as pleaded in the written statement. The petitioner could not put his signature on written statement inadvertently and it was filed before the lower trial court. The learned trial court recorded the evidence of petitioner on the basis of said pleading and decided the suit. It is not in dispute that the written statement and additional written statement were not filed by this petitioner and so the court below has erred in refusing to permit the petitioner to sign the written statement. The said error is purely a procedural error which can be cured at any stage. The learned counsel referred to a decision reported in (2006) 1 Supreme Court Cases 75 (Uday Shankar Triyar vs. Ram Kalewar Prasad Singh and another) wherein the learned Apex Court at paragraph 16 and 17 has observed as follows:-

“16. An analogous provision is to be found in Order 6 Rule 14 CPC which requires that every pleading shall be signed by the party and his pleader, if any. Here again, it has always been recognized that if a plaint is not signed by the plaintiff or his duly authorized agent due to any bona fide error, the defect can be permitted to be rectified either by the trial court at any time before judgment, or even by the appellate court by permitting appropriate amendment, when such defect comes to its notice during hearing.



17.Non-compliance with any procedural requirement relating to a pleading, memorandum of appeal or application or petition for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates. Procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure, a hand-maiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use.”

4. The learned trial court while deciding the suit has considered the pleadings pleaded in the written statement and additional written statement and also the evidence adduced on his behalf. The omission to put signature on pleading is a bonafide error which was detected before lower court. The said defect can be removed at any stage as held by Hon’ble Apex Court as stated above.

5. In view of above discussions, the impugned order refusing to permit the petitioner to sign/verify the written statement is set aside and this writ application is allowed.

Harish/-

(Sanjay Kumar, J)

AFR/NAFR	AFR
CAV DATE	
Uploading Date	19.07.2018
Transmission Date	

