

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16715 of 2014

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Nirmal Kumar Sah son of Late Suryadeo Sah, through Smt. Sushila Devi wife and next friend, At- Mirzapurganj, P.S.- Vidyapati Nagar, District- Samastipur.

.... Petitioner/s

Versus

1. Chandan Kumar, son of Gopaljee Sah
2. Smt. Renu Sah, wife of Chandan Kumar, both Mohalla- Ganesh Chauk, Magardahi Ghat Road, P.S.- Samastipur, Distt.- Samastipur
3. Ram Naresh son of Late Deb Narayan Sah, At- Mirzapurganj, P.S.- Vidyapati Nagar, District- Samastipur
4. Ram Chandra Sah, son of Late Deb Narayan Sah, At- Mirzapurganj, P.S.- Vidyapati Nagar, District- Samastipur
5. Smt. Usha Devi, wife of Bhola Sah
6. Smt. Kiran Devi, wife of Ram Kishore Sah
7. Smt. Rani Devi wife of Late Achhe Lal Sah
8. Smt. Munni Devi wife of Upendra Sah, all married daughters of Late Suryadeo Sah, resident of village- Mirzapurganj, P.S.- Vidyapati Nagar, District- Samastipur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Radha Krishna Singh, Adv.
For the Respondent/s : Mr. K.N. Choubey, Sr. Adv.
Mr. Bajarangi Lal, Adv.

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 04-09-2018

Petitioner before this Court is plaintiff in Partition Suit No. 57 of 1999 pending in the court of Sub-Judge-III, Samastipur. He has filed this application for quashing the order dated 06.03.2014 whereby and whereunder the suit was dismissed as withdrawn.

2. Heard learned counsels for the petitioner as well as the respondents and perused the record.

3. This writ application was initially filed by the father of the petitioner. After the death of original plaintiff, the petitioner



was substituted. He has sued the respondents through his next friend Smt. Sushila Devi who is wife of the petitioner.

4. The learned counsel of the petitioner submits that an unauthorized Advocate filed a petition on 09.05.2011 in the said suit praying therein to permit the plaintiff to withdraw the suit. The plaintiff having come to know about this fact, filed a petition on 02.08.2012 to reject the said petition dated 09.05.2011. The matter was heard in presence of both parties on 14.09.2012 and the court below directed the plaintiff to remain present. Thereafter on 06.12.2012 the case was fixed for the evidence of plaintiff. Subsequently, the suit was dismissed as withdrawn in absence of the petitioner as per impugned order dated 06.03.2014. Thus the court below has committed error in dismissing the suit without going through the stage of trial and so the impugned order is fit to be quashed.

5. The learned for the respondents on the other hand submitted that the petitioner has not filed this writ application with clean hands. He has suppressed the material fact. The petitioner had filed a Miscellaneous Case No. 64 of 2014 for setting aside the impugned order, but this fact has not been disclosed by the petitioner in the writ application. It has been further submitted that an another title suit bearing No. 33 of 1998 was filed by one Kalo Devi against



the petitioner and some other defendants seeking declaration of title over the land mentioned in schedule-I of the plaint which was dismissed and a title appeal bearing No. 11 of 2013 was filed before the District Judge, Samastipur. The said appeal has also been dismissed by the learned Presiding Officer of Fast Track Court. So in view of the judgment passed in Title Suit No. 33 of 1998, the present writ application is not maintainable. It has been further submitted that the proper remedy for the petitioner is to file a suit against the Advocate who allegedly filed the withdrawal petition. On these grounds, the learned counsel for the respondents has prayed to dismiss writ application.

6. On going through the order sheet placed on record, I find that the suit was pending in vacant court. The order sheet dated 07.09.2012 shows that on call both the parties appeared and on their request, the suit was fixed on 14.09.2012 and after hearing both sides the plaintiff was directed to remain present in the court. The order sheets dated 29.12.2013, 03.01.2014 and 12.01.2014 show that the court was vacant and as per order dated 06.03.2014 the suit was fixed for reply and evidence. It further appears that the record was placed before Presiding Officer on 06.03.2014. The impugned order further shows that the learned counsel for the defendant no. 5 was present and the withdrawal petition purported to have been filed by the plaintiff



was pressed by the learned counsel for the defendant and the suit was dismissed. It is not in dispute that the advocate who filed the withdrawal petition was not duly authorized by the plaintiff. The said petition was heard in absence of the petitioner and the court below without perusing the record and ascertaining the stage of trial has dismissed the suit.

7. Thus, I find that the court below has committed gross error in passing the impugned order. The said order is not sustainable and is accordingly set aside and this writ application is allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.09.2018
Transmission Date	N/A

