

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1595 of 2016**

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1. Md. Sanaullah, son of Late Ayub, resident of Village and Post Office-
Kanhama, Police Station- Bela, District- Sitamarhi.

.... Petitioner/s

Versus

1. Md. Israil, son of Late Md. Idris,
2. Md. Shafique, son of Late Md. Taslim,
3. Md. Quraish Ahmad, son of Late Md. Jamshed,
4. Jalima Khatoon, wife of Md. Shamsul Haque,
5. Md. Niralay,
6. Md. Ujalay, 5 and 6 sons of Late Md. Umrul,
7. Mostt. Nuria Khatoon, wife of Md. Mohshin.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Najmul Hoda

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER**

3 23-08-2018 Heard both sides.

The petitioner filed this civil miscellaneous petition against the order dated 18.10.2016 passed by Sub Judge I, Sitamarhi in Title Suit No.178 of 2014 by which the learned Sub Judge I rejected the petition of the petitioner for allowing him to examine the witnesses.

Petitioner is the defendant No.2 in the suit. The petitioner filed petition on 28.09.2016 to recall the order dated 26.09.2016 closing the evidence of the defendant and for allowing the petitioner to adduce his evidence but by the impugned order, the petition of the petitioner has been rejected.

Learned counsel for the petitioner submitted that if the



order is allowed to continue, it will occasion failure of justice and the petitioner shall suffer irreparable loss. It is further submitted that on 30.08.2016, the evidence of the plaintiff was closed and on the same day, the case was fixed for argument.

Learned counsel for the respondents, on the other hand, tried to support the order by submitting that the defendant did not appear on any date and he is not at all interested in disposal of the suit but from perusal of the order impugned as well as the entire ordersheet passed in Title Suit No.178 of 2014, it appears that the defendant appeared and filed written statement. The case of the plaintiff was closed on 30.08.2016 and on the same day, the case was fixed for argument. No opportunity was given to the defendant to adduce his evidence. Therefore, I find that the learned Sub Judge has committed gross illegality in rejecting the petition of the petitioner for allowing him to examine witness and produce evidence.

Therefore, the order dated 18.10.2016 is set aside with a direction to the learned Sub Judge I, Sitamarhi to allow the defendant to adduce his evidence. Accordingly, this civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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