

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10710 of 2012

=====

Basisth Singh son of Late Jokhu Singh, resident of village- Shambhuchak, P.O. Shabbhuchak, P.S. Kalyanpur, District- East Champaran.

.... Petitioner/s

Versus

1. Sitaram Singh son of Late Jokhu Singh, resident of village Shambhuchak, P.O. Shambhuchak, P.S. Kalyanpur, District- East Champaran.
2. Pramod Singh son of Sitaram Singh, resident of village Shambhuchak, P.O. Shambhuchak, P.S. Kalyanpur, District- East Champaran.
3. Sanjay Singh son of Sitaram Singh, resident of village Shambhuchak, P.O. Shambhuchak, P.S. Kalyanpur, District- East Champaran.
4. Mithilesh Singh son of Sitaram Singh, resident of village Shambhuchak, P.O. Shambhuchak, P.S. Kalyanpur, District- East Champaran.
5. Sheodhar Singh son of Late Hari Singh, resident of village Shambhuchak, P.O. Shambhuchak, P.S. Kalyanpur, District East Champaran.
6. Shambhu Singh son of Sheodhar Singh, resident of village Shambhuchak, P.O. Shambhuchak, P.S. Kalyanpur, District East Champaran.
7. Sudhir Kumar son of Shambhu Singh, resident of village Shambhuchak, P.O. Shambhuchak, P.S. Kalyanpur, District East Champaran.
8. Arbind Kumar minor son of Shambhu Singh Under The Guardian Appointed By The Court Namely, Sri Ram Balak Sah Advocate, Civil Court Motihari, East Champaran, resident of village Shambhuchak, P.O. Shambhuchak, P.S. Kalyanpur, District East Champaran.
9. Deepak Kumar minor son of Shambhu Singh Under The Guardian Appointed By The Court Namely, Sri Ram Balak Sah Advocate, Civil Court Motihari, East Champaran, resident of village Shambhuchak, P.O. Shambhuchak, P.S. Kalyanpur, District East Champaran.
10. Rupesh Kumar minor son of Shambhu Singh Under The Guardian Appointed By The Court Namely, Sri Ram Balak Sah Advocate, Civil Court Motihari, East Champaran, resident of village Shambhuchak, P.O. Shambhuchak, P.S. Kalyanpur, District East Champaran.
11. Arun Singh son of Basisth Singh, resident of village Shambhuchak, P.O. Shambhuchak, P.S. Kalyanpur, District East Champaran.
12. Ratnesh Singh son of Basisth Singh, resident of village Shambhuchak, P.O. Shambhuchak, P.S. Kalyanpur, District East Champaran.
13. Badri Singh son of Late Bansi Singh, resident of village Shambhuchak, P.O. Shambhuchak, P.S. Kalyanpur, District East Champaran.
14. Ajay Singh son of Badri Singh, resident of village Shambhuchak, P.O. Shambhuchak, P.S. Kalyanpur, District East Champaran.
15. Anil Singh minor son of Badri Singh Under The Guardian Appointed By The Court Namely Sri Ram Balak Singh, Advocate Civil Court Motihari, East Champaran, resident of village Shambhuchak, P.O. Shambhuchak, P.S. Kalyanpur, District East Champaran.
16. Ajit Singh minor son of Badri Singh Under The Guardian Appointed By The Court Namely Sri Ram Balak Singh, Advocate Civil Court Motihari, East Champaran, resident of village Shambhuchak, P.O. Shambhuchak, P.S.



Kalyanpur, District East Champaran.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Vijay Shankar Shrivastava

For the Respondent/s : Mr. Anil Kumar

=====

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 10-10-2018

Petitioner before this Court is defendant no. 11 in Partition Suit No. 22 of 1994 pending in the court of Sub-Judge-V, East Champaran, Motihari. He has filed this writ application for quashing the order dated 25.04.2012 whereby and whereunder his prayer to recall the order dated 25.05.2010 was rejected.

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

3. The respondent nos. 1 to 4 filed the aforesaid partition suit against the petitioner and other defendants. The petitioner appeared on 01.04.1995. The other defendants also appeared and filed their written statement. In course of trial, this petitioner filed his written statement on 14.09.2009, but did not file any petition to condone the delay in filing written statement. The learned court below refused to accept his written statement as per order dated 25.05.2010. Thereafter, the petitioner filed a petition on 17.12.2011 to recall the said order against which the plaintiff filed rejoinder on 21.03.2012. The learned court below after hearing both



sides rejected the said petition as per impugned order dated 25.04.2012.

4. It has been submitted that this petitioner on wrong advice of Advocate clerk did not file the written statement as he was given impression that in partition suit, he will get his due share if the suit is decided. Subsequently, the petitioner was advised by his lawyer to file written statement.

5. The learned counsel for the respondents on the other hand submits that the petitioner mala fide and deliberately did not file written statement thereby caused delay in disposal of the suit and so the court below has not committed any error in rejecting the said petition.

6. On perusal of documents on record including impugned order as well as report received from the court below, I find that the notice was issued for appearance of some of substituted defendants and after their appearance, the case was posted for proceeding under section 89 of Code of Civil Procedure. It further appears that on 14.06.2017 an intervenor petition was filed and the intervenor was impleaded as defendant to the suit as per order dated 22.10.2017. The intervenor-defendants have recently filed their written statement. A substitution petition has been filed on 01.02.2018 which is pending for disposal. Thus, I find that the trial of suit has



not commenced. If the written statement filed by this petitioner is not accepted, he will be seriously prejudiced.

7. In view of above facts and considering the stage of suit, the impugned order dated 25.04.2012 refusing to recall the order dated 25.05.2010 and accept the written statement of the petitioner is set aside and this writ application is allowed, subject to payment of cost of Rs.4,000 to the plaintiffs before the court below.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13/10/2018
Transmission Date	N/A

