

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16010 of 2014

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Krishna Murari Prasad Son of Late Kailash Prasad, Original Resident of Bhingari Bazar, P.S.- Khampar, District- Deoria (Uttar Pradesh). Now Resident of Dharamganj, P.O.+P.S.+ District- Kishanganj.

.... Petitioner/s

Versus

1. Sanjay Kumar Choudhary
2. Arun Kumar Choudhary
- Both sons of Late Ram Raj Mistry.
3. Jyoti Devi, Widow of Late Ram Raj Mistry,
- All resident of Mohalla- Dharamganj, P.O.+P.S.+District- Kishanganj.

.... Respondent/s

with

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Civil Writ Jurisdiction Case No. 1466 of 2015

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Krishna Murari Prasad Son of Late Kailash Prasad, Original Resident of -Bhingari Bazar, P.S- Khampar, District- Deoria (Uttar Pradesh). Now Resident of Dharamganj, P.O+P.S- District - Kishanganj.

.... Petitioner/s

Versus

1. Sanjay Kumar Choudhary
2. Arjun Kumar Choudhary. Both Sons of Late Ram Raj Mistry.
3. Jyoti Devi, Widow of -Late Ram Raj Mistry.
- All resident of Mohalla- Dharamganj, P.O+P.S+ District- Kishanganj.

.... Respondent/s

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Appearance :

(In CWJC No.16010 of 2014)

For the Petitioner/s : Mr. Sarangdhar Jha

For the Respondent/s : None

(In CWJC No.1466 of 2015)

For the Petitioner/s : Mr. Sarangdhar Jha

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 01-05-2018

These two writ applications have been filed by the plaintiff
of Title Suit No. 3 of 2004 for setting aside the orders dated



30.01.2014 and 28.06.2014 respectively passed by Sub-Judge-I, Kishanganj. The learned court below, as per order dated 30.01.2014, rejected his time petition and closed his evidence. The petitioner filed a petition on 03.03.2014 under section 151 of Code of Civil Procedure to recall the said order dated 30.01.2014, which after hearing was rejected on 28.06.2014. The petitioner has filed the second C.W.J.C. No. 1466 of 2015 against the said order dated 28.06.2014.

2. Heard learned counsel for the petitioner. The respondents in spite of service of notice, did not appear. It appears that after settlement of issues, the petitioner filed an affidavit of his examination-in-chief on 08.05.2012. He was partly cross-examined and the case was adjourned to several dates. The petitioner appeared before the court below on 26.06.2013, 27.06.2013 and 17.01.2014 on which dates he was partly cross-examined and case was deferred for further cross-examination. The petitioner claims to be resident of Uttar Pradesh from where he used to come to attend the court. It has been submitted that on account of dilatory tactics of the defendants, his cross-examination could not be concluded by the conducting lawyer and the court below closed evidence and fixed the case for evidence of defendants without giving any opportunity to the petitioner to examine other witness. The said order has seriously prejudiced the petitioner. The petitioner filed petition to recall the said



order which has also been dismissed. The court below has rejected the petition filed by the petitioner without assigning any reason. From submission of learned counsel for the petitioner and documents on record it appears that his cross-examination could not be concluded on account of laches of respondents and the case was adjourned after cross-examining the plaintiff's witness in part.

3. In the above facts and circumstances, the impugned orders dated 30.01.2014 and 28.06.2014 are set aside and both the writ applications are allowed. The court below is directed to give an opportunity to the petitioner to adduce evidence.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.05.2018
Transmission Date	

