

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4668 of 2011

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Mohammad Muzaffar Hussain, son of Kafil Ahmad, resident of Mohalla-Sarai Sattar Khan (Bakarganj), P.S. Laheriasarai, District-Darbhangha.

.... Petitioner

Versus

1. Rajoo Kharga, son of Late Ramautar Kharga, resident of Mohalla-Bakarganj, P.S. Laheriasarai, District-Darbhangha.
2. Sri Dhyani Mahto son of Late Siya Ram Mahto, resident of Mohalla-Sarai Sattar Khan (Bakarganj), P.S. Laheriasarai, District-Darbhangha.
3. Satyanarayan Sah, son of Ayodhi Sah
4. Smt. Sundeshwari Devi, wife of Satyanarayan Sah
Both are residents of Mohalla-Sarai Sattar Khan (Bakarganj), P.S. Laheriasarai, District-Darbhangha.
5. Ejaz Ahmad son of Gayasuddin, resident of Mohalla-Sarai Sattar Khan (Bakarganj), P.S. Laheriasarai, District-Darbhangha.
6. Md. Obaid
7. Md. Maqui
8. Md. Sakil
9. Md. Jamil

All sons of Md. Khalil, resident of Mohalla-Sarai Sattar Khan (Bakarganj), P.S. Laheriasarai, District-Darbhangha.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Najeeb Ahmad, Advocate
Mr. Iqbal Asif Niazi, Advocate

For the Respondent/s : Mr. Uma Shankar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

5 21-03-2018 The petitioner is defendant of Title Suit No.33 of 2002 pending in the Court of Subordinate Judge-VI, Darbhanga. He has filed this writ application for quashing the order dated 27.01.2011 whereby and whereunder the learned court below allowed the petition dated 25.11.2010 filed by the plaintiffs (respondents 1st set) and recalled the order dated 05.08.2008 whereunder the



evidence of the plaintiffs was closed.

2. Heard learned counsel for the petitioner and the respondents.

3. The respondents 1st set filed the aforesaid suit for declaration of title and confirmation of possession over the land mentioned in the plaint besides some other reliefs. The evidence of the plaintiffs was closed by order dated 05.08.2008 and the defendant was directed to produce witness. The defendant did not produce witness on several occasion and his evidence was also closed as per order dated 05.12.2008. The defendant filed a petition on 01.05.2009 to recall the order dated 05.12.2008. It appears that the plaintiffs on 24.08.2009 filed a petition to recall the order dated 05.08.2008 whereunder his evidence was closed. The said petition was not pressed and it was dismissed on 10.12.2009. The respondents 1st set (plaintiffs) filed another petition on 25.11.2010 praying therein to recall the order dated 05.08.2008 and permit them to adduce evidence. The court below as per impugned order dated 27.01.2011 allowed the petition and recalled the order dated 05.08.2008 and directed the plaintiffs to produce their witness.

4. Learned counsel for the petitioner submits that the respondents 1st set deliberately did not produce witness, so their



evidence was closed considering the deliberate laches as no explanation was given for not producing witnesses in Court. The learned court below on 15.07.2008 had imposed a cost of Rs.300/- while giving time to the respondents 1st set as a last chance. The said cost has not been paid and so the impugned order giving opportunity to the respondents 1st set (plaintiffs) is not sustainable and is fit to be set aside.

5. Learned counsel for the respondents, on the other hand, submits that the court below has not committed any jurisdictional error in permitting the respondents 1st set (plaintiffs) to adduce evidence and so this writ application is not maintainable.

6. On perusal of order sheet which has been annexed by the petitioner with the writ application, it appears that several opportunities were given to the defendant-petitioner and his evidence was closed. The evidence of plaintiffs was also closed as per order dated 05.08.2008 and the said order was recalled and the plaintiffs were given opportunity to examine the witness. The grievance of the petitioner is that he is being harassed on account of deliberate laches on the part of plaintiffs.

7. Be that as it may. It appears that the respondents 1st set (plaintiffs) did not deposit the cost imposed on them by the



court below while allowing time petition. The court below considering the willingness of the respondents 1st set to contest the suit and also for the ends of justice has given opportunity to the plaintiffs to adduce evidence.

8. Thus, I find that the court below has not committed any jurisdictional error in permitting the plaintiffs to adduce evidence. This application is devoid of merit and is accordingly dismissed.

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(Sanjay Kumar, J)

