

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11631 of 2010

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1. Mathura Singh S/o Shri Sitaram Singh, resident of village - Bijarhi, P.O.- Dumari, P.S.- Chenari, Distt- Rohtas
 2. Ram Pyar Singh S/o Shri Sitaram Singh, resident of village- Bijarhi, P.O.- Dumari, P.S.- Chenari, Distt- Rohtas.

.... Petitioner/s

Versus

1. Amawash Singh S/o Late Shankar Yadav, resident of village- Bijarhi, P.O.- Dumari, P.S.- Cherari, Distt- Rohtas
2. Smt. Tileshri Devi W/o Kailash Singh, resident of village- Bijarhi, P.O.- Dumari, P.S.- Chenari, Distt- Rohtas
3. Sheo Parsan Singh S/o Sitaram Singh, resident of village- Bijarhi, P.O.- Dumari, P.S.- Cherari, Distt- Rohtas
4. Rajeshwar Singh @ Dhapa Singh S/o Sri Nathuni Singh, resident of village- Pewandi, P.O.&P.S.- Chenari, Distt- Rohtas, at present village- Bijarhi, P.O.- Dumari, P.S.- Chenari, Distt- Rohtas
5. Bharath Singh S/o Sri Nathuni Singh, resident of village- Pewandi, P.O. & P.S.- Chenari, Distt- Rohtas, at present village- Bijarhi, P.O.- Dumari, P.S.- Chenari, Distt- Rohtas
6. Santosh Singh S/o Sri Nathuni Singh, resident of village- Pewandi, P.O.& P.S.- Chenari, Distt- Rohtas, at present village- Bijarhi, P.O.- Dumari, P.S.- Chenari, Distt- Rohtas.
7. Deo Shankar Tiwary S/o Late Haridwar Tiwary, resident of Khaira, P.O.- Dumari, P.S.- Chenari, Distt- Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Akhouri V.B.Shrivastava, Adv.

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-09-2018

Petitioners before this Court are defendants of Title Suit No. 47 of 2008 pending in the court of Munsif-V, Sasaram. They have filed this writ application for quashing the order dated 29.03.2010 whereby and whereunder the learned court below refused to recall the order dated 21.11.2008 fixing the case for *ex parte* hearing and also to accept the written statement.



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

3. The respondents filed the aforesaid suit for declaration of title against the present petitioners. It appears that respondents-plaintiffs filed requisites for issuance of notice against the defendants on 15.11.2008. The summons were accordingly issued on 17.11.2008. After six days i.e. on 21.11.2008, the record was put up before the court below and the learned court below on being satisfied with the service report against the petitioners fixed the case for *ex parte* hearing. It further appears that the petitioners appeared before the court below on 09.01.2009 and filed a petition to recall the order dated 21.11.2008. They filed written statement on 06.03.2009 along with a petition to accept the said written statement. The court below as per order dated 22.08.2009, rejected the petition dated 09.01.2009 and on subsequent date, the court below as per order dated 05.09.2009, fixed the case for hearing on petition dated 09.01.2009. I further find that the learned court below has not considered the provision of Order V Rule 1 of Code of Civil Procedure, which reads as follows:

“When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant.”

4. The court below issued the summons on 15.11.2008 and



without giving sufficient opportunity to the defendants, fixed the case for *ex parte* hearing. The order further shows that the petition dated 09.01.2009 filed by the defendants was rejected on 22.08.2009, but on subsequent date, the court below fixed the next date on 11.09.2009 for hearing on petition dated 09.01.2009. The court below apparently has committed error in fixing the case for *ex parte* hearing in violation of provision of Order V Rule 1 of Code of Civil Procedure.

5. In view of above discussions, the order dated 29.03.2010 refusing to recall the order dated 21.11.2008 is not sustainable and is accordingly set aside and this writ application is allowed. The court below is directed to give an opportunity to the petitioners to contest the case after accepting their written statement.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22/09/2018
Transmission Date	N/A

