

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15875 of 2015

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Geeta Devi wife of Amaras Rai, resident of mauja and P.O.- Belour, P.S- Pannapur,
District- Chapra at Saran.

.... Petitioner/s

Versus

1. Babu Lal Rai son of late Bricksha Raut
2. Ramjhari Devi wife of Babu Lal Rai
3. Tarkeshwar Rai son of Babu Lal Rai
4. Madan Rai Son of Babu Lal Rai, all resident of mauja- Suryapura, P.O. -
Kishunpura, P.S- Basantpur, District Siwan.
5. Reeta Devi wife of Umesh Rai, resident of mauja- Sanakwali, P.O.- Barahipur,
P.S.- Mashrakh, District Siwan.
6. Manju Devi wife of Jageshar Rai, resident of mauja- Sidhwalia, P.O. and P.S-
Sidhwalia, District- Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Chandra, Adv.

For the Respondent/s : M/s Vijay Bardhan Pandey and Chandra Kant, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 13-08-2018

Petitioner before this Court is plaintiff of T.S. No. 153 of 2014 pending in the court of Sub-Judge-III, Siwan. She has filed this application for quashing the order dated 13.07.2015 passed by the court below whereby and whereunder the prayer of defendant nos. 3 and 4 was allowed, subject to payment of cost of Rs.1,000/- to the other side.

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

3. The learned counsel for the petitioner submits that the



impugned order allowing the petition of respondent nos. 3 and 4 is cryptic and does not disclose the reason for allowing the petition. The said order does not disclose as to which order has been recalled.

4. On perusal of impugned order as well as order sheet on record I find that the suit was filed by the petitioner for partition of suit property mentioned in schedule-I of the plaint. The defendant nos. 3 and 4 filed petition to recall the order dated 19.07.2014 whereunder the suit was fixed for ex parte hearing. The prayer of the defendant nos. 4 and 5 to recall the order fixing the case for ex parte hearing was allowed subject to payment of cost of Rs.800/-. The defendants did not file written statement and so as per order dated 25.03.2015, they were debarred from filing written statement. Thereafter, a petition was filed on 18.06.2015 to recall the said order debarring the defendants from filing written statement. The learned court below allowed the said petition on 13.07.2015 subject to payment of cost of Rs.1,000/-.

5. On going through the record I find that the order of court below is very cryptic and does not disclose the fact whereunder he allowed the prayer of the defendants, but when I consider the petition and rejoinder filed by the parties for recalling the said order, I find that the defendants could not file written statement on 25.03.2015 for want of necessary documents. The plaintiff filed an amendment



petition on 11.05.2015 on account of which the defendants did not file written statement. According to respondents-defendants, they ought to have been given opportunity to file written statement after amendment of plaint.

6. Thus, the court below in the above facts and circumstances, has rightly permitted the defendants to file written statement, subject to payment of cost of Rs.1,000/-. There appears no jurisdictional error in allowing the said petition.

7. In view of above facts, this application appears to be devoid of merit and is accordingly dismissed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	20.08.2018
Transmission Date	N/A

