

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7373 of 2012

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1. Md. Wali Alam Son Of Late Sahebjan, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali
 2. Smt. Manju Devi Wife Of Sri Hari Narayan Rai Resident Of Village:-Sherpur Kampura, P.S.:Gangabridge, Hajipur P.O.:Jadua, District:- Vaishali

.... Petitioner/s

Versus

1. Md. Farukh Son Of Late Md. Jaan, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
2. Md. Ayub Son Of Late Md. Jaan, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
3. Md. Shakil Son Of Late Md. Jaan, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
4. Mosst. Ajijun Nisha Wife Of Late Md. Yakub, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
5. Md. Ehshan Son Of Late Md. Yakub, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
6. Md. Ershad Son Of Late Md. Yakub, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
7. Noor Alam Son Of Late Sahebjaan, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
8. Mahmud Alam Son Of Late Sahebjaan, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
9. Ajij Fatima Wife Of Late Sahebjaan, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
10. Rukhshana Khatun Wife Of Wali Alam, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
11. Rukhshana Khatun Alias Jugnu Daughter Of Late Sager Alam, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
12. Md. Ashique Minor Son Of Late Sagar Alam, Through Mother Guardian And Next Friend Munni Khatun, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
13. Md. Farid Minor Son Of Late Sager Alam, Through Mother Guardian And Next Friend Munni Khatun, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
14. Afsana Khatun Minor Daughter Of Late Sager Alam, Through Mother Guardian And Next Friend Munni Khatun, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
15. Juli Minor Daughter Of Late Sager Alam, Through Mother Guardian And Next Friend Munni Khatun, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
16. Gogu Minor Son Of Late Sager Alam, Through Mother Guardian And Next Friend Munni Khatun, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
17. Soni Minor Daughter Of Late Sager Alam, Through Mother Guardian And Next Friend Munni Khatun, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:-Vaishali.
18. Mostt. Shamima Khatun Wife Of Late Sager Alam, Resident Of Village:-Jadhua Bag Tola, P.S.:Hajipur Nagar, District:- Vaishali.
19. Mosst. Janki Devi Wife Of Late Nandeshwar Rai, Resident Of Village:-Khilvat P.S.:Bidupur, P.O.:Vidupur, District:-Vaishali.
20. Ram Shobit Rai Son Of Late Ishwardhari Rai, Resident Of Village:-Terasia,



- P.S.:Gangabridge, P.O.:Ratnakar, District:- Vaishali.
21. Banarshi Rai Son Of Late Ishwardhari Rai, Resident Of Village:- Terasia, P.S.:Gangabridge, P.O.:Ratnakar, District:- Vaishali.
22. Smt. Kismatiya Devi Wife Of Sri Chandra Bhusan Rai, Resident Of Village:- Sherpur Karnpura, P.S.:Gangabridge, Hajipur P.O.:Jadua, District:- Vaishali.
23. Smt. Sulekha Devi Wife Of Sri Sanjay Rai, Resident Of Village:- Sherpur Karnpura, P.S.:Gangabridge, Hajipur P.O.:Jadua, District:- Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. MAHESH NARAYAN PARBAT, Sr.Adv.
Mr. Ved Prakash Srivastava, Advocate

For the Respondent/s : Mr. Bhubneshwar Prasad, Advocate.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 10-10-2018

Petitioners are defendants in Title Suit No.562 of 2002 pending in the Court of Sub Judge-VI, Vaishali at Hajipur. They have filed this application for quashing the order dated 10.12.2011 whereby and whereunder the petition filed by these petitioners to recall the order dated 24.01.2011 was rejected.

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

3. It appears that the respondent Ist set filed the aforesaid suit for cancellation of sale deed dated 19.09.2002 executed by Bibi Rukhsana Khatoon and others in favour of petitioner no.2 and others and another sale deed dated 18.09.2002 executed by the aforesaid vendors in favour of Most. Janki Devi and others as illegal, inoperative and void. In course of trial the learned court below closed the evidence of these petitioners as nobody appeared on their behalf when the case was called out. The prayer of these petitioners to adduce evidence was allowed on 10.12.2010 subject to payment of



cost of Rs.300/-. The contention of learned counsel for the petitioners is that the said order was passed considering the alleged laches of petitioners in examining the witness which had taken place prior to passing of the order dated 10.12.2010. The court below has erred in rejecting in the petition considering the past conduct of the petitioners. The petitioner was under impression that the court will direct them to produce the witness and only thereafter they had to examine the witness. The petitioners are willing to contest the case by adducing evidence within a time frame to be fixed by the court below.

4. Considering the submission of learned counsel for the petitioners and also for the ends of justice, the impugned order dated 10.12.2011 and 24.01.2011 is set aside and the writ application is allowed subject to payment of cost of Rs.3,000/- payable to the plaintiffs before the court below. The court below is directed to give an opportunity to the petitioners to adduce evidence within a time frame and expedite the trial.

5. This writ application is accordingly allowed.

B.Kr./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.10.2018
Transmission Date	N/A

(Sanjay Kumar, J)

