

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5253 of 2015

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Parwez Jamaluddin Khan. Son of Darjat Khan. Mutawalli Mir Dahu Wakf Estate, Sujaganj Masjid Committee. Resident of Mohalla - Habibpur, Police Station - Jagdishpur, District - Bhagalpur.

... .. Petitioner/s

Versus

1. Usman alias Md. Usman Ghani.
2. Nasar alias Md. Nasar Firoz.
3. Sweaty alias Nazia Firoz.
4. Baby alias Tarannum Firoz. Nos.1 and 2 sons of Md. Firoz Bakht, Nos.3 and 4 daughters of Md. Firoz Bakht. All resident of Mohalla - Tatarpur, Police Station - Tatarpur, District - Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Syed Firoz Raza
For the Respondent/s : Dr. Manoj Kumar, Adv. and Sweety Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT

Date : 03-12-2018

The sole defendant of Title Suit No. 205 of 1988 pending in the court of Munsif-I, Bhagalpur has filed this writ application for quashing the order dated 22.01.2015 whereby and whereunder his prayer to give opportunity to adduce evidence was refused.

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

3. The respondents filed the aforesaid suit for declaration of recent survey entry with respect to suit land as illegal and void and the defendant no. 1 had or has no manner of concern with the same. After closing the evidence of plaintiff, the defendant was directed to adduce evidence. In spite of sufficient



opportunity, the defendant did not examine any witness and his evidence was closed. The defendant filed a petition to recall the said order and prayed to give opportunity to adduce evidence which was rejected as per impugned order.

4. It has been submitted that his conducting lawyer Sri Bhavesh Narayan Sah and Mohammad Khalil died on 05.11.2008 and 15.01.2011 simultaneously and the pairvikar did not inform about the stage of trial. The petitioner could not visit the court as he met a rail accident and remained confined to bed for several years. He was treated by the local doctor as well as at Delhi also. The petitioner under the compelling circumstance could not produce any witness and so impugned order is fit to be set aside.

5. The learned counsel for the respondents on the other hand opposed the submission. It has been submitted that the suit was filed in the year 1988 and the defendant appeared in the year 1990 and filed written statement in the year 1997. The defendant deliberately did not examine the witness in order to prolong the disposal and so the court below has rightly rejected his prayer.

6. On going through the impugned order and documents on record, I find that his two conducting lawyers died simultaneously and he was under treatment for several years. So considering the willingness of the defendant to contest the suit and



also for the ends of justice, the impugned order dated 22.01.2015 refusing to give opportunity to the petitioner to adduce evidence is set aside and this writ application is allowed subject to payment of cost of Rs.5,000/- to the plaintiffs before the court below. The court below is directed to give an opportunity to the petitioner to adduce evidence.

(Sanjay Kumar, J)

mkchy/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04.12.2018
Transmission Date	N/A

