

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.23276 of 2013**

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Sunil Kumar S/O Banshi Sai, resident of Mohalla Bharaopar, P.O- Biharsharif, P.S- Laheri, District- Nalanda.

.... .... Petitioner

Versus

1. Shanti Devi W/O Late Badri Sao, resident of Mohalla Murarpur, P.S- Laheri, P.O- Biharsharif, District- Nalanda.
2. Raja Sao S/O Chotu Sao, resident of Mohalla Murarpur, P.S- Laheri, P.O- Biharsharif, District- Nalanda.
- 3 (a). Most. Sunita Devi, Widow of Late Suraj Sao  
(b). Sanjit Kumar Sao, S/o Late Suraj Sao  
(c). Sanju Devi  
(d). Anju Kumari,  
Both are D/o Late Suraj Sao
4. Ashok Sao S/o Chotu Sao  
All resident of Mohalla Murarpur, P.S- Laheri, P.O- Biharsharif, District- Nalanda.

.... .... Respondents

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**Appearance :**

For the Petitioner/s : Mr. Shailendra Kumar, Advocate  
For the Respondent/s :

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**CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR**  
**ORAL JUDGMENT**  
**Date: 10-09-2018**

Petitioner before this court is plaintiff of Title Suit No.131 of 2000 pending in the court of Subordinate Judge VII, Biharsharif (Nalanda). He has filed this writ application for quashing the order dated 16.08.2013 whereby and whereunder his application to recall the order dated 18.01.2008/21.01.2008 closing the evidence of petitioner was rejected.

2. Heard learned counsel for the petitioner.

3. It appears that in course of trial, the petitioner examined eight witnesses. During evidence, the petitioner (plaintiff) sought



some amendment in the pleading in order to avoid further litigation and complications and the petitioner filed amendment petition on 11.09.2007. The respondent filed a rejoinder and after hearing both sides, the learned court below as per order dated 18.07.2008 rejected the amendment petition. The petitioner filed Civil Revision No.1214 of 2008 before this court against the said order which was subsequently converted into C.W.J.C. No.16290 of 2011. The order rejecting the amendment petition was set aside by this court on 17.10.2011.

4. The learned counsel for the petitioner submitted that on account of filing the amendment petition and civil revision before this court, he did not examine the plaintiff and other witnesses as the proceeding before the court below was stayed by this court as per order dated 18.09.2008 and so there was no occasion for the petitioner to examine witness. The petitioner after order of this court in C.W.J.C. No. 16290 of 2011 filed a petition to recall the order closing the evidence of the petitioner which was rejected without considering the submission of petitioner. The petitioner wants to examine the plaintiff and some more witnesses. The observation of this court that sufficient opportunity was given to the petitioner to bring evidence is against the material on record as the further proceeding before the court below was stayed by this court.



5. In view of above facts, the impugned order refusing to recall the order dated 18.01.2008/21.01.2008 is set aside and this writ application is allowed. The court below is directed to give an opportunity to the petitioner to adduce the evidence.

(Sanjay Kumar, J)

Harish/-

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