

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11736 of 2013

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1. Baban Jee Mishra Son of Late Brahmdeo Mishra, resident of village - Raghunathpur, Police Station - Dhansoi, District - Buxar at present residing at mohalla - Rambagh, P.S. Buxar Town, District – Buxar.
 2. Santosh Kumar Mishra Son of late Baban Jee Mishra, resident of village - Raghunathpur, Police Station - Dhansoi, District - Buxar at present residing at mohalla - Rambagh, P.S. Buxar Town, District - Buxar
 3. Ram Vilash Mishra Son of Late Yadu Nandan Mishra, resident of mohalla - Sheopuri, Police Station- Buxar, District – Buxar.

.... Petitioner/s

Versus

1. Bijay Narayan Mishra Son of Late Radha Krishna Mishra, resident of mohalla - Bengali Tola Near Buxar Water Tank, Police Station - Buxar, District - Buxar
2. Hari Shankar Mishra Son of Late Deonath Mishra, resident of mohalla - Mathiya, Police Station - Buxar, District – Buxar.
3. Radhey Shyam Tiwary Son of Late Bikramaditya Tiwary, resident of mohalla - Sheopuri, Police Station - Buxar, District – Buxar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.N. Singh, Advocate

For the Respondent/s : Mr. Ashok Kr. Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 17-01-2018

This application has been filed to set aside the order dated 03.06.2013 passed by the learned Additional Munsif-I, Buxar in Title Suit No. 131 of 2000 whereby and whereunder the Court below rejected the petition dated 28.01.2013 filed by the petitioners. These petitioners were defendants and their prayer to recall the order dated 12.01.2012 was rejected. The Court below had fixed the case for *ex parte* hearing as per aforesaid order dated 12.01.2012.

2. Heard learned counsels for the petitioners as well



as the respondents.

3. The respondent no. 1 filed the aforesaid suit against these petitioners and other defendants for declaration of title over the property mentioned in schedule of the plaint. In the aforesaid case, these petitioners did not appear, resultantly the case was fixed for *ex parte* hearing as per order dated 12.01.2012. The petitioners filed a petition on 28.01.2013 to recall the said order which after hearing was rejected on 03.06.2013. It appears that respondent no. 3 had filed written statement which was accepted by the Court below as per impugned order dated 03.06.2013, subject to payment of cost of Rs.5,000/-. The petitioners also want to contest the suit after recalling the order fixing the case for *ex parte* hearing. The written statement of respondent no. 4 has been accepted and opportunity has been given to contest the case. The plaintiff filed C.W.J.C. No. 22083 of 2013 which has been dismissed today itself after hearing both the parties. If the petitioners are not allowed to contest the suit, they would be seriously prejudiced particularly in view of the fact that other defendants have been allowed to contest the case by the Court below itself.

4. In view of above facts and also for the ends of justice, the impugned order dated 03.06.2013 refusing to recall the order dated 12.01.2012 is set aside, subject to payment of cost to the



petitioners-plaintiffs to the tune of Rs. 5,000/-.

5. This application is accordingly allowed.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.01.2018
Transmission Date	

