

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.79 of 2017

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1. Ram Narayan Chandravanshi @ Ram Narayan Singh Son of Late Mallu Singh
 2. Bhola Prasad @ Bhola Singh Son of Late Keshav Singh
 3. Guddu Prasad @ Guddu Singh Son of Late Keshav Singh
 4. Vikrama Singh Son of Late Mallu Singh
 5. Jagdish Singh Son of Late Ram Sakal Singh
 6. Kanahiya Singh Son of Late Mallu Singh
 7. Bandhu Singh Son of Late Mallu Singh
 8. Suval Chand Singh Son of Late Mallu Singh
 9. Shri Kamal Singh Son of Late Mallu Singh
 10. Dinesh Prasad Chandravanshi @ Dinesh Singh Son of Late Keshav Singh All Resident of Village-Taliyan, P.O.-Akhtiyarpur, P.S.-Kargahar, District-Rohtas (Sasaram)

.... Petitioners

Versus

1. Kesh Nath Singh
2. Vashisht Singh
3. Shivmuni Singh All 1 to 3 Son of Late Ram Janam Singh
4. Shivanand Singh
5. Saroj Singh Both Sons of Keshnath Singh All Resident of Village-Rurhari, P.O.-Akhtiyarpur, P.S.-Kargahar, District-Rohtas at Sasaram

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajesh Kumar Mishra
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

4 27-07-2018 Heard both sides.

The petitioners filed this Civil Miscellaneous petition against the order dated 24.11.2016 passed in Title Suit No.598 of 2010 by which the learned Sub-Judge-I, Sasaram rejected the petition of the petitioners to recall the order dated 02.11.2016 by which the evidence of the plaintiffs-petitioners has been closed.



Learned counsel for the petitioners submits that after the order dated 06.04.2016 the petitioners examined six witnesses but the evidence of petitioners has been closed on the ground that by order dated 06.04.2016 petitioners were given three months time to adduce all the witnesses. Learned counsel for the petitioners submits that the petitioners are ready to examine all their witnesses within six months. Defendants also cross-examined each and every witness of the plaintiffs for many days. If the order is allowed to sustain that will result in great injustice to the plaintiffs.

On the other hand, learned counsel for the respondents submits that in view of the provision as contained in Order 18 Rule 4, the plaintiffs have to file the list of witnesses at the beginning of hearing of the suit. The issues were framed on 18.02.2014. The petitioners did not take interest in pursuing the suit after filing the suit. The evidence of the petitioners was earlier closed but on the petition of the petitioners the same order was recalled by the order dated 28.04.2015 on payment of cost of Rs. 1000/-. It is further submitted that much time has already been given to the plaintiffs, and therefore, the court be directed to conclude the case within the shortest period.

Having considered the submission of both sides, and on



perusal of Order 18 Rule 4 of the C.P.C., as amended in the year 2016, it appears that the plaintiffs are mandated to file list of witnesses of all the witnesses at one time at the beginning of hearing of the suit but it appears that the court did not adhere to the provision and allowed the plaintiffs to file evidence of their witnesses one by one. The plaintiffs have already examined six witnesses and if the evidence of the plaintiffs is closed, and if the order is allowed to sustain that will cause injustice to the plaintiffs.

Since the learned counsel for the petitioners also submitted that the plaintiffs are ready to examine all their witnesses within six months, I find that the order dated 24.11.2016 is not sustainable. Accordingly, the order dated 24.11.2016 is set aside and the Civil Miscellaneous petition is allowed with direction to the plaintiffs to examine all their witnesses within six months from the date of receipt of the order.

(Prabhat Kumar Jha, J)

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