

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20883 of 2012

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Prem Chand Singh, Son of Ramji Singh, Resident of Village- Pithwaiyan, P.O.- Doiyan, P.S.- Dinara, District- Rohtas at present residing at NH-30, Kochas, P.S. & P.S.- Kochas, District- Rohtas.

.... Petitioner/s

Versus

1. Kamta Raut @ Kamta Prasad Singh, Son of Ram Sanchi Raut
2. Amit Chand Singh, Minor Son of Kamta Raut, represented by his father Kamta Raut, Both resident of Village- Chitaini, P.O- Dighiba, P.S- Kochas, District- Rohtas

.... Plaintiff Respondent 1st set

3. Devmuni Raut
4. Sitaram Raut
5. Chandrama Raut, All 3 to 5 are son of Ramsanehi Raut
6. Vikrama Singh
7. Umashankar Singh
8. Mahendra Singh
9. Pramod Singh, All 6 to 9 are sons of Devmuni Raut,
10. Bechan Singh,
11. Nitish Kumar, All 10 and 11 are Minor sons of Vikrama Singh, Represented by their father Vikrama Singh,
12. Sukhari Singh, Minor Son of Umashankar Singh, Represented by his father Umashankar Singh,
13. Sunil Kumar Singh, Minor Son of Mahendra Singh, Represented by his father Mahendra Singh,
14. Sanjay Singh,
15. Ashok Singh, Both 13 and 14 are sons of Sita Ram Singh,
16. Munna, Minor Son of Pramod Singh, Represented by his father Pramod Singh,
17. Vikas Kumar, Minor Son of Sanjay Singh, Represented by his father Sanjay Singh,
18. Shiv Mandir Singh,
19. Ravindra Singh, Both are son of Chandrama Singh,
20. Arvind Singh, Minor Son of Chandrma Singh, Represented by his father Chandrma Singh, All 3 to 20 are resident of Village- Chitaini, P.O.- Dighita, P.S.- Kochas, District- Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bishwa Nath Choudhary, Advocate
For the Respondent no.1 : Mr. Sudama Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 08-05-2018

This application has been filed for setting aside the order
dated 12.09.2012 passed by Sub Judge-V, Sasaram in Title Suit



No.356 of 2001.

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

3. The respondent Ist set filed the aforesaid title suit against the respondent second set for partition of suit property mentioned in schedule-kha and ga of the plaint. During the pendency of the suit, the petitioner purchased the land and he was impleaded as party to the suit. The petitioner intervenor/defendant filed written statement and he was given an opportunity to adduce evidence on 13.08.2012. Both the parties filed their hazri. The defendant no. 19 (intervenor) did not appear and so his case was closed on 13.08.2012. The petitioner filed a petition on 23.08.2012 to recall the said order which after hearing was rejected and the case was fixed for further proceeding.

4. The learned counsel for the petitioner submits that the petitioner was not given sufficient opportunity to examine his witnesses. The court below had fixed the case on 13.08.2012 for evidence of petitioner but he could not examine any witness, on that date, although his lawyer had appeared. The Presiding Officer was on leave on 02.08.2012 and so the next date was fixed on 01.09.2012 by the Bench Clerk. The respondent Ist set got the said date changed and fixed the next date on 13.08.2012 which was not known to the petitioner and so the petitioner could not appear before the court below. The case was accordingly closed without giving any



opportunity to the petitioner.

5. The learned counsel for the respondents on the other hand submits that in spite of sufficient opportunity, the petitioner did not examine the witness and so the court below has rightly closed his evidence and fixed the case for further proceeding.

6. On perusal of impugned order as well as documents annexed with the counter affidavit of respondents, it appears that the suit was filed in the year 2001. During the pendency of the suit, the petitioner purchased 1 katha land along with house from defendant no.1 and 3 by virtue of registered sale deed dated 06.12.2007. The defendants filed amendment petition in their written statement on 03.07.2009 and after hearing both the parties, the learned court below allowed the amendment petition of the defendants on 24.07.2009. From perusal of order dated 24.07.2009, it appears that both the parties had already closed their evidence and the suit was pending for argument. The petitioner was impleaded as defendant no.19 on the basis of said sale deed dated 06.12.2007 and thereafter he filed written statement on 11.07.2010. On the prayer of this petitioner, the case was fixed for evidence of defendant no.19 on which date, the petitioner did not appear and his case was closed. The court below while rejecting recall petition has observed that this petitioner has purchased the land measuring 1 kathas from defendant nos.1 to 3 during the pendency of the suit. The petitioner was impleaded as party to the suit as defendant no.19 and he filed written statement. The fate of the case of this



petitioner depends upon the title of his vendors who are defendant nos.1 to 3 and they have already adduced evidence in support of their case. This petitioner was impleaded only to avoid multiplicity of the suit. The petitioner in spite of sufficient opportunity did not examine witness. The conduct of the petitioner shows that he was not interested in getting the suit disposed of. The evidence of both the parties has been closed and the matter is pending for argument. The petitioner would not be prejudiced in view of the fact that his vendors have already adduced evidence. The court below considering all these facts has rightly rejected the prayer of the petitioner whereunder the case has been fixed for argument.

7. In view of the above facts, the impugned order does not require any interference under inherent power of this Court and as such this application is dismissed.

(Sanjay Kumar, J)

B.Kr./-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

