

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18883 of 2013

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1. Smt. Kishori Devi wife of Late Vijay Kumar Singh resident of village Olapur Gangaur, P.S. Gangaur (Khagaria), District Khagaria
 2. Rajesh Kumar Singh @ Rajesh Singh son of Late Vijay Kumar Singh resident of village Olapur Gangaur, P.S. Gangaur (Khagaria), District Khagaria
 3. Mintu Singh @ Raushan Kumar son of Late Vijay Kumar Singh resident of Village Olapur Gangaur, P.S. Gangaur (Khagaria), District Khagaria
 4. Rakhi Singh wife of Manish Singh C/O Awadhesh Singh at Village Bakhtiarapur, P.S. Bakhtiarapur, District Patna
 5. Priti Singh wife of Vikas Singh C/O Engineer Narendra Singh, resident of Mohalla - Chitragupta Nagar, P.S. Kankarbagh, District Patna

.... Petitioners

Versus

1. Raj Kumar Singh son of Tribeni Prasad Singh resident of Village Olapur Gangaur, P.S. Gangaur (Khagaria), District Khagaria
2. Amrendra Prasad Singh son of Tribeni Prasad Singh resident of Village Olapur Gangaur, P.S. Gangaur (Khagaria), District Khagaria
3. Sanjay Kumar Singh son of Tribeni Prasad Singh resident of Village Olapur Gangaur, P.S. Gangaur (Khagaria), District Khagaria
4. Vinay Kumar Singh son of Tribeni Prasad Singh resident of Village Olapur Gangaur, P.S. Gangaur (Khagaria), District Khagaria
5. Rajiv Kumar Singh son of Tribeni Prasad Singh resident of Village Olapur Gangaur, P.S. Gangaur (Khagaria), District Khagaria
6. Bipin Kumar Singh son of Nand Kumar Singh resident of Village Olapur Gangaur, P.S. Gangaur (Khagaria), District Khagaria
7. Naveen Kumar Singh son of Nand Kumar Singh resident of Village Olapur Gangaur, P.S. Gangaur (Khagaria), District Khagaria
8. Praveen Kumar Singh son of Nand Kumar Singh resident of Village Olapur Gangaur, P.S. Gangaur (Khagaria), District Khagaria
9. Babu Ram Udgar Singh son of Late Suraj Narain Singh resident of Village Olapur Gangaur, P.S. and District Khagaria
10. Avinash Kumar Singh @ Mantun Singh son of Ram Udgar Singh resident of Village Olapur Gangaur, P.S. and District Khagaria
11. Phanindra Singh son of Late Chandrika Singh resident of Village Olapur Gangaur, P.S. and District Khagaria
12. Abhimanyu Kumar son of Phanindra Singh resident of Village Olapur Gangaur, P.S. and District Khagaria
13. Gayatri Devi wife of Late Sachindra Singh resident of Village Olapur Gangaur, P.S. and District Khagaria
14. Sanjeev Kumar Singh son of Late Sachindra Singh resident of Village Olapur Gangaur, P.S. and District Khagaria
15. Most. Lalo Devi wife of Late Parmeshwari Singh resident of Village Dumari, P.S. Singhaul (Mufasil), District Begusarai
16. Balmiki Singh son of Late Parmeshwari Singh resident of Village Dumari, P.S. Singhaul (Mufasil), District Begusarai
17. Pashupati Singh son of Late Parmeshwari Singh resident of Village Dumari, P.S. Singhaul (Mufasil), District Begusarai
18. Kedar Singh son of Late Kamta Singh resident of Village Dumari, P.S. Singhaul (Mufasil), District Begusarai



19. Awadh Singh son of Late Kamta Singh resident of Village Dumari, P.S. Singhaul (Mufasil), District Begusarai
20. Sagar Singh son of Late Kamta Singh resident of Village Dumari, P.S. Singhaul (Mufasil), District Begusarai
21. Ganga Singh son of Late Kamta Singh resident of Village Dumari, P.S. Singhaul (Mufasil), District Begusarai
22. Lalan Singh son of Late Kamta Singh resident of Village Dumari, P.S. Singhaul (Mufasil), District Begusarai
23. Rubi Singh wife of Rakesh Singh at present residing near Guru Govind Singh College, Indra Nagar, Nasik, Nasik Road, Maharastra

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dronacharya, Advocate
: Mr. Arghesh Kumar, Advocate

For the Respondent/s : Mr. Vijay Anand, Advocate
: Mr. Om Prakash Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 02-08-2018

This writ application has been filed by the defendants 1st party of Title Suit No.18 of 1995 for setting aside the order dated 06.08.2013 whereby and whereunder the defendant nos.2 to 4 who are respondent nos.6, 7 and 8 before this court were permitted to file written statement subject to payment of cost of Rs.1700/- payable to the plaintiffs and contesting defendants.

2. Heard both sides and perused the record.

3. It appears that respondent nos.1 to 5 filed the aforesaid suit on the file of Subordinate Judge-I, Khagaria for partition claiming 1/4th share in the suit property as mentioned in the plaint. After issuance of notices parties appeared and filed their written statement. The defendant no.2 appeared on 10.01.1997 but



subsequently left taking interest. The defendant nos.2, 3 and 4 did not appear. The court below framed issues on 02.04.1998. Subsequently defendant no.1 died on 16.12.1998 and his legal heirs were brought on record. The defendant no.5 died and his heirs were impleaded as party to the suit. The suit proceeded ex-parte against the defendant nos.2 to 4 as per order dated 23.11.1996. It further appears that when the evidences of petitioners were going on, the defendant nos.2, 3 and 4 filed the petition on 05.06.2013 praying therein to recall the order dated 23.11.1996 whereunder they were debarred from filing written statement. The said prayer was opposed by the petitioners on the ground that the defendants nos.2 to 4 at the instance of plaintiffs have filed written statement at belated stage only to prolong the disposal of the suit. The court below after hearing both sides allowed the prayer of defendant nos.2 to 4 subject to payment of cost of Rs.1700/-.

4. On perusal of impugned order as well as the documents on record, I find that the defendant nos.2 to 4 are co-sharers of plaintiffs and other defendants. The present petitioners while opposing the prayer of defendant nos.2 to 4 had submitted to give them an opportunity to rebut the case of defendant nos.2 to 4 and considering their prayer the court below allowed the petition and gave them opportunity to rebut the case of defendant nos.2 to 4. The prayer of defendant nos.2 to 4 was allowed in presence of all the parties. Out of



them, the defendants 1st party have assailed the said order. The plaintiffs-respondents have no grievance against the said order.

5. The Hon’ble Supreme Court in the case of **Sandeep Thapar Vs. SME Technologies Private Limited, 2014 (2) P.L.J.R. 284 (SC)** has held that the power of Court to extend time for filing written statement beyond time schedule prescribed by Rule 1 is not taken away completely. Extension of time is permissible not in a routine manner but only if it was needed to be given in exceptional cases so as to prevent grave injustice and the Hon’ble Supreme Court further held that in appropriate cases to compensate the other side cost may be awarded and in that the Hon’ble Supreme Court awarded Rs.50,000/- cost for filing written statement.

6. In the present case, I find that the written statement has already been filed by defendant nos.2 to 6 and it has been accepted by the court below. The court below further awarded cost in favour of petitioner and other contesting defendants.

7. In view of above discussions I do not find any merit in the writ application. This writ application is devoid of merit and is accordingly dismissed.

Harish/-

(Sanjay Kumar, J)

AFR/NAFR	
CAV DATE	
Uploading Date	07.08.2018
Transmission Date	

