

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.833 of 2018

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1. Madan Prasad, son of Vishwanath Prasad, resident of Village- Baliwan Sagar, P.O.- Baliwan, P.S.- Bishambharpur, District- Gopalganj.

.... Petitioner/s

Versus

1. Shashikant Sukul son of Late Shivji Shukul resident of Village- Baliwan Sagar, P.O.- Baliwan, P.S.- Bishambharpur, District- Gopalganj.
2. Sunil Sah son of Baijnath Sah.
3. Ashutosh Prasad son of Baijnath Sah. resident of Village- Baliwan Sagar, P.O.- Baliwan, P.S.- Bishambharpur, District- Gopalganj.
4. Idrish Miya son of Late Jumrati Miya.
5. Samsul Haque son of Late Jumrati Miya.
6. Musumat Basiran wife of Late Jumrati Miya resident of Village- Shiswa, P.O.- Shiswa, P.S.- Bishambharpur, District- Gopalganj.
7. Ramagya Yadav, son of Amla Yadav.
8. Ramadhar Yadav son of Phulchand Yadav. resident of Village- Baliwan Raimal P.O.- Baliwan Sagar, P.S.- Bishambharpur, District- Gopalganj.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Saroj Kumar Sharma
Mrs. Kiran Kumari Sharma
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

2 31-07-2018 Heard both sides.

The petitioner seeks quashing of the order dated 27.02.2018 passed by Sub Judge I, Gopalganj in Title Suit No.397 of 2005 by which the petition of the petitioner to allow him to file written statement and contest the suit has been rejected.

The petitioner is defendant No.8 in the court below. The defendant appeared in the suit but did not file any written statement within the prescribed period after his appearance.



Ultimately, the defendant No.8 was restrained from filing written statement on 16.07.2007 and the suit proceeded for hearing. The petitioner even thereafter did not appear in the suit since 11.08.2006. The petitioner filed petition for recalling the order dated 16.07.2007 and the learned Sub Judge rejected the petition of the petitioner vide order dated 27.02.2018 that the petitioner did not file written statement even after being afforded sufficient opportunity and now plaintiff has already examined four witnesses, therefore, the petition for recalling the order dated 16.07.2007 has been dismissed.

The learned counsel for the petitioner submits that petitioner is one of the defendants in the case and due to wrong advice of his learned counsel, he could not file written statement in time. The petitioner should be allowed to contest the suit failing which the petitioner shall suffer irreparable loss and great injustice would be caused to him.

It is evident from the order that the petitioner appeared in the year 2006 itself in the suit and he left attending the suit since 11.08.2006. The petitioner had not filed written statement within a prescribed period of 90 days from the date of his appearance. After more than 12 years, the petitioner filed petition to allow him to contest the suit. Till date only four witnesses on behalf of the



plaintiff have been examined. I find that if the petitioner is not allowed to file written statement or contest the suit, the petitioner would suffer irreparable loss and, therefore, I find that in the interest of justice, the petitioner should be allowed to file written statement for contesting the suit on payment of suitable cost. Since the petitioner did not appear for more than ten years in the suit, the cost is assessed to Rs.20,000/- which shall be payable to the plaintiff.

Accordingly, the order dated 27.02.2018 is set aside and the petitioner is allowed to file written statement within 30 days from the date of receipt of this order subject to payment of cost of Rs.20,000/- to the plaintiff within 30 days thereafter. Accordingly, this civil miscellaneous petition is allowed.

(Prabhat Kumar Jha, J)

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