

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.98 of 2019

1. Sikandar Yadav and Ors Late Jogi Yadav resident of Mohalla- Sahebganj Chowki, Gwaltoli Lane, P.O.- Champanagar, P.S.- Kotwali (Vishwavidyalaya), District- Bhagalpur.
2. Poroush Yadav @ Miko Yadav Late Jogi Yadav resident of Mohalla- Sahebganj Chowki, Gwaltoli Lane, P.O.- Champanagar, P.S.- Kotwali (Vishwavidyalaya), District- Bhagalpur.
3. Kishore Yadav @ Kishore Kumar Late Jogi Yadav resident of Mohalla- Sahebganj Chowki, Gwaltoli Lane, P.O.- Champanagar, P.S.- Kotwali (Vishwavidyalaya), District- Bhagalpur.
4. Mira Devi Late Ramswarup Yadav resident of Mohalla- Sahebganj Chowki, Gwaltoli Lane, P.O.- Champanagar, P.S.- Kotwali (Vishwavidyalaya), District- Bhagalpur.
5. Pankaj Kumar Yadav Late Ramswarup Yadav resident of Mohalla- Sahebganj Chowki, Gwaltoli Lane, P.O.- Champanagar, P.S.- Kotwali (Vishwavidyalaya), District- Bhagalpur.
6. Kishun Yadav @ Kishan Yadav Late Ramswarup Yadav resident of Mohalla- Sahebganj Chowki, Gwaltoli Lane, P.O.- Champanagar, P.S.- Kotwali (Vishwavidyalaya), District- Bhagalpur.

... .. Appellant/s

Versus

1. Om Prakash Yadav @ Jai Prakash Yadav @ Prakash Yadav and Ors Late Govind Yada resident of Mohalla- Sahebganj Chowki, Gwaltoli Lane, P.O.- Champanagar, P.S.- Kotwali (Vishwavidyalaya), District- Bhagalpur.
2. Ram Bilash Yadav Late Govind Yadav resident of Mohalla- Sahebganj Chowki, Gwaltoli Lane, P.O.- Champanagar, P.S.- Kotwali (Vishwavidyalaya), District- Bhagalpur.
3. Savitri Devi D/o Late Govind Yadav wife of Kaleshwar Yadav resident of Village- Budhuchak, P.O. Shiv Narayanpyr, P.S. Pirpainty, District Bhagalpur.
4. Kabira Devi D/o Late Govind Yadav wife of Janardan Yadav resident of Village- Budhuchak, P.O. Shiv Narayanpur, P.S. Pirpainty, District- Bhagalpur.
5. Rani Devi D/o Late Govind Yadav wife of Umesh Yadav resident of Village and P.O. and P.S.- Dhoraiya, District- Banka.
6. Parwati Devi wife of Rajendra Yadav daughter of Late Jogi Yadav, resident of Mohalla- Kurput, P.O.- Lailakh, P.S. Sabour, District- Bhagalpur.
7. Gita Devi wife of Dev Yadav daughter of Late Yogi Yadav resident of Village and P.O. and P.S. Bishanpur, District- Munger.
8. Gaytri Devi wife of Anil Yadav D/o Late Yogi Yadav resident of Village- Heru Diyara, P.O. and P.S.- Heru Diyara, District- Munger.
9. Porush Yadav Late Ramswarup Yadav resident of Mohalla- Sahebganj Chowki, Gwaltoli Lane, P.O.- Champanagar, P.S.- Nathnagar, District- Bhagalpur.
10. Dazy Devi Late Ramswarup Yadav resident of Mohalla- Sahebganj Chowki, Gwaltoli Lane, P.O.- Champanagar, P.S.- Nathnagar, District- Bhagalpur.
11. Rani Devi Late Ramswarup Yadav resident of Mohalla- Sahebganj Chowki, Gwaltoli Lane, P.O.- Champanagar, P.S.- Nathnagar, District- Bhagalpur.
12. Bindeshwari Yadav Late Banarsi Yadav resident of Village- Amkhoriya, P.O. and P.S. Shakund, District- Bhagalpur, A/P resident of Mohalla- Sahebganj



- Chowki, Gwaltoli Lane, P.O.- Champanagar, P.S.- Kotwali (Vishwavidyalaya), District- Bhagalpur.
13. Maheshwari Prasad Yadav Late Banarsi Yadav resident of Village- Amkhoriya, P.O. and P.S. Shakund, District- Bhagalpur, A/P resident of Mohalla- Sahebganj Chowki, Gwaltoli Lane, P.O.- Champanagar, P.S.- Kotwali (Vishwavidyalaya), District- Bhagalpur.
14. Pankaj Kumar Yadav Late Banarsi Yadav resident of Village- Amkhoriya, P.O. and P.S. Shakund, District- Bhagalpur, A/P resident of Mohalla- Sahebganj Chowki, Gwaltoli Lane, P.O.- Champanagar, P.S.- Kotwali (Vishwavidyalaya), District- Bhagalpur.
15. The Municipal Commissioner, Bhagalpur Municipal Corporation Bhagalpur.
... .. Respondent/s

Appearance :

For the petitioner/s : Mr. Ganpati Trivedi, (Sr. Adv.)
Mr. Manoj Kumar, Adv.
For the Respondent/s : Mr. Swapnil Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 21-01-2019

Heard, Mr. Ganpati Trivedi, learned senior counsel for the petitioners and Mr. Swapnil Kumar Singh, learned counsel for the respondent no. 15.

2. By way of the present application preferred under Article 227 of the Constitution of India, the petitioners have challenged the order dated 27.04.2018 passed by the learned Sub-Judge-XIII, Bhagalpur in Title Suit No. 455 of 2014 whereby he has dismissed the petition dated 23.03.2018 filed by the petitioners to recall the order dated 04.05.2016 by which the suit proceeded under Order 8 Rule 10 of the Code of Civil Procedure (for short 'CPC').

3. Mr. Ganpati Trivedi, learned senior counsel appearing for the petitioners submitted that the court below erred



in dismissing the petition filed by the petitioners, who were defendants in Title Suit No. 455 of 2014. He contended that while refusing to recall the order passed under Order 8 Rule 10 CPC, the court below failed to appreciate that the ex-parte decision would deprive the defendants from putting their defence. It erred in not condoning the delay in filing the written statement and permitting the petitioners to file the same after recalling the previous order. It also failed to exercise its jurisdiction vested in it by law as Order 8 Rule 1 of the CPC and the proviso thereto as amended read with Order 8 Rule 9 of the CPC clothed the court below in permitting the defendants to file written statement.

4. Learned counsel appearing for the respondent no. 15 submitted that the order impugned is neither perverse nor unreasonable. Hence, no interference, at this stage, is warranted.

5. I have heard learned counsel for the parties and carefully perused the record.

6. The respondents no. 1 to 5 have filed Title Suit No. 455 of 2014 with the following reliefs:-

- (i) The court be pleased to hold and declare that the plaintiffs are the exclusive and absolute owners of the suit land of the Schedule-III of the plaint having all manner, right and interest therein and the defendants



had/have no concern in any manner with the suit land of the Schedule-III of the plaint and survey khatian of suit plot no.- 2875 'kha' and 2876 (part) of Khata No. 448 recorded in the name of Late Jogi Yadav, father of the defendant no. 1 to 7 and suit plot no.- 2874 of Khata No.- 1463 recorded in the name of Nagarpalika, Bhagalpur is wrong, illegal and null and void, out of jurisdiction and not binding upon the plaintiffs.

- (ii) The court be further pleased to pass a decree of recovery of possession of the suit land in favour of the plaintiffs with a direction to the defendant 1st Party & 2nd Party to give possession over the suit land within time fixed by the court failing which delivery of possession be given to the plaintiffs over the suit land of the Schedule-III of the plaint through the process of the court.
- (iii) The court be further pleased to restrain the defendant 1st Party and 2nd Party to make any construction over the suit land by an order of interim injunction till the disposal of the suit.
- (iv) Cost of the suit be awarded to the plaintiffs.



- (v) Any other relief or reliefs which the court may think fit and proper be awarded to the plaintiffs.

7. On receipt of summons, the petitioners appeared in the suit on 22.01.2016 and were asked to file their written statement. However, they failed to file written statement. The respondent no. 15 has been contesting the suit by filing written statement. Though the petitioners did not file any written statement, they participated in the cross-examination of witnesses examined on behalf of the plaintiffs as also on behalf of the respondent no. 15. When the suit became mature for final hearing, the petitioners filed the application dated 23.03.2018 praying to recall the order passed on 04.05.2016 under Order 8 Rule 10 of the CPC.

8. Having considered that the petitioners have entered into appearance upon issuance of summons and participated in the proceeding on several dates and cross-examined the witnesses examined on behalf of the plaintiffs as also the respondent no. 15, but no effort was taken by the petitioners for more than two years for recall of the order passed under Order 8 Rule 10 of the CPC, the court below held that it would not be proper to allow the petitioners to file written statement at such belated stage.



9. As per Order 8 Rule 1 of the CPC, a defendant is required to file written statement of his defence within 30 days from the date of service of summons. The proviso to the said Rule provides that where the defendant fails to file written statement within the said period of 30 days, he shall be allowed to file the same on such other date as may be specified by the court for reasons to be specified in writing, which shall not be later than 90 days from the date of service of summons. Thus, Order 8 Rule 1 of the CPC casts an obligation on the defendants to file written statement within 30 days from the date of service of summons or within the extended time falling within 90 days.

10. It is true that the proviso to Order 8 Rule 1 of the CPC does not take away the power of the court to take the written statement on record though filed beyond the time as provided for, in the instant case, since the petitioners participated in the proceeding right from the beginning and cross-examined the witnesses examined on behalf of the plaintiffs without any objection or without filing any application for recall of the order whereby they had been debarred from filing the written statement, in the opinion of this Court, no illegality can be found with the order impugned whereby the court below refused to recall its order dated 04.05.2016 passed under Order 8 Rule 10 of the CPC.



11. In that view of the matter, I am not inclined to interfere with the order impugned. The application is dismissed.

(Ashwani Kumar Singh, J)

pradeep/sneha

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.01.2019
Transmission Date	

