

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.648 of 2017

1. Gopi Das Son of Late Ram Briksh Das,
2. Dhanuka Das, Son of Late Dhiranjan Das,
3. Salikram Das, Son of Late Tufani Das,
4. Shivjanam Das, Son of Late Nanhak Das,
5. Faguni Das, Son of Late Bajari Das,
6. Rajaram Das, Son of Late Chirai Das,
7. Aditya Das, Son of Late Ram Chandra Das,
8. Dhukarni Devi, Wife of Late Nanhak Das,
9. Dhukan Das, Son of Late Ramratan Das,
10. Dinanath Das, Son of Late Bishvanath Das,
11. Munshi Das @ Munshi Bind, Son of Late Beyadar Das,
12. Ramjatan Ram, Son of Barat Ram,
13. Gopali Das, Son of Late Prit Das,
14. Layati Kumari, Daughter of Ghutuman Das,
15. Hari Nandan Das, Son of Late Atabar Das,
16. Bidyanand Das, Son of Late Atabar Das,
17. Shiv Das, Son of Late Nanhak Das,
18. Sarswati Devi, Wife of Late Ramdas Das,
19. Chotwaran Das, Son of Tufani Das,
20. Akhlesh Das, Son of Late Kameshwar Das,
21. Rajendra Das, Son of Bhui Das,
22. Sarju Das, Son of Bajari Das,
23. Surya Dayal Das, Son of Sarju Das,
24. Sidh Nath Das, Son of Faguni Das,
25. Ramjanam Das, Son of Late Nanhak Das,
26. Lalan Das, Son of Gopali Das,
27. Punit Rai @ Punit Das, Son of Chaitbaran Das,
28. Surendra Das, Son of Salikram Das,
29. Ashok Das, Son of Vidyanand Das,
30. Bipan Das, Son of Nanhak Das,
31. Satyendra Das, Son of Ram Janam Das,
32. Brahamdeo Das, Son of Gopi Das,
33. Bishun Deo Das, Son of Gopi Das,
34. Ramanand Das, Son of Sadeshi Das,
35. Sharda Das, Son of Sadeshi Das, All are resident of Village- Gajipur, P.S.-



Karpi, District- Arwal.

... .. Petitioner/s

Versus

1. Jitendra Yadav
2. Ram Bharosa Yadav, Both are sons of Late Charandeep Yadav, Resident of Village- Sonbhadra, P.S.- Karpi, District- Arwal.
3. Dileshwar Singh Yadav,
4. Dineshwar Yadav, Both sons of Ramdas Yadav,
5. Bholi Yadav, Son of Mukhlal Yadav,
6. Ranjeet Yadav, Son of Ram Dulari Yadav,
7. Jamuna Das, Son of Radha Das, All are resident of Village- Gajipur, P.S.- Karpi, District- Arwal.
8. Ganeshwar Yadav, Son of Late Ramcharitra Yadav, Resident of Village- Thakur Bigha, P.S.- Karpi, District- Arwal.
9. Radhika Devi, Wife of Vijay Yadav, Resident of Village- Sonbhadra Mathiya, P.S.- Karpi, District- Arwal.
10. Lakhan Deo Yadav, Son of Late Chandradeo Yadav, Resident of Dorahatara, P.S.- Tekari, District- Gaya. at present resident of Village- Gajipur, P.S.- Karpi, District- Arwal.
11. Bigan Das, Son of Radha Das, Resident of Village- Gajipur, P.S.- Karpi, District- Arwal.
12. Smt. Geeta Devi, Wife of Vidya Nand Singh, Resident of Village- Sonbhadra, P.S.- Karpi, District- Arwal.
13. Vijay Prasad Singh, Son of Late Charandeep Yadav, Resident of Village- Sonbhadra, P.S.- Karpi, District- Arwal.
14. Abhay Singh, Son of Ram Bharosa Singh Yadav, Resident of Ram Nagar Colony, Danapur, P.S.- Danapur, District- Patna.
15. Nirbhay Kumar, Son of Ram Bharosa Singh, Resident of Village- Sonbhadra, P.S.- Karpi, District- Arwal.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. S.K.Lal, Advocate Mr.Pritish Kumar Lal, Advocate
For the Respondent/s	:	Mr.Shri Prakash Srivastava, Advocate Dr Kumar Uday Pratap, Advocate Mr. Dhaneshwar Gutpa, Advocate

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date : 05-03-2020

Heard learned counsel for the petitioners and learned



counsel for the respondents.

2. The present petition has been filed for the following reliefs --

“i) For setting aside the order dated 21.02.2017 passed by Sub Judge-I, Arwal in Title Suit No. 130 of 2009 as contained in Annexure-4 whereby and whereunder the learned Court has refused the prayer of the petitioners for recalling the order dated 07.02.2017 whereunder the learned Court has closed the evidence of the petitioners on the prayer being made by the respondents that too behind the back of the petitioners.

ii) Pending disposal of the instant application stay the further proceeding of the Title Suit No. 130 of 2009 pending in the Court of Sub Judge-I, Arwal.

iii) Any other relief(s) to which the petitioners is found entitled to for giving complete justice to the petitioner.”

3. Learned counsel for the petitioners submits that the learned Court below has failed to exercise jurisdiction vested in it and ought to have recalled the order dated 07.02.2017 as sought on behalf of the defendants/petitioners. Reference is invited to the said order which contains obvious insertion and overwriting. It appears that the case was adjourned for the defendants' evidence, but as an afterthought, the same was changed through overwriting and



the case posted for argument. It is submitted that the matter has not proceeded thereafter and as such no prejudice will be caused to the plaintiffs/respondents if the defendants are granted time to lead evidence by way of Commissioner's report etc.

4. Learned counsel for the plaintiffs/respondents appears and opposes the petition, submitting that the ground raised by the defendants/petitioners is a new one and was not agitated before the learned Court below.

5. Having heard the parties and on consideration of the materials on record, this Court is of the view that the learned Court below has erred in rejecting the prayer of the defendants/petitioners on the ground that the petition therefor was not maintainable, without however assigning any reason whatsoever for such view. The impugned order has therefore, been passed in a vague and cryptic manner and is a non-speaking order. Considering the stage of progress of the trial no serious prejudice will be caused to the plaintiffs/respondents if the defendants/petitioners are granted opportunity to lead evidence for just decision in the case.

6. Accordingly, the impugned order dated 21.02.2017 is hereby quashed and the defendants/petitioners



are granted three months’ time to adduce evidence from the date of receipt/production of a copy of this judgment.

7. The petition stands allowed as above.

(Vikash Jain, J)

Chandran/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.03.2020
Transmission Date	NA

