

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.388 of 2018

1. Umesh Kumar Mahto son of Late Bhimlall Mahto @ Bhim Mahto
2. Kamakhya Devi D/O Late Bhimlall Mahto @ Bhim Mahto, both residents of Village-Kalyanpur, P.O. Rahuwa, PS-K.Nagar, Distt-Purnia.

... .. Petitioner/s

Versus

1. Jagdish Mahto
2. Nirmal Kumar Mahto
3. Subodh Kumar Mahto, all three sons of Late Mohan Lal Mahto
4. Rama Devi W/O Late Mohan Lal Mahto, All 1 to 4, R/O Village-Kalyanpur, P.O. Rahuwa, PS-K.Nagar, Distt-Purnia.

.....Plaintiffs-Respondents 1st Party.

5. Satya Narayan Mahto
6. Binod Mahto 5 to 6 sons of Late Bhimlall Mahto @ Bhim Mahto, both residents of Village-Kalyanpur, P.O. Rahuwa, PS-K.Nagar, Distt-Purnia & Ors.

..... defendant no.2 and 3, Respondent 2nd party

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Arbind Kumar Singh
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 26-07-2022 Heard the parties.

The petitioners are defendant no.1 and 4 in the Title Partition Suit bearing T.S. No. 191/2015 and have challenged the impugned orders dated 06.12.2016 and 04.01.2018 by which the petitioners have been debarred from filing their written statement and further a petition for recall dated 06.01.2017 has been dismissed by order dated 04.01.2018.

Learned counsel for the petitioners submits that the petitioners appeared in the suit for the first time as defendants



on 10.06.2016 and was granted time to file written statement. The petitioners were to file written statement and for that purpose one document i.e., Cadastral Survey Khatian was required and the same was not in their possession. Accordingly, they were trying to obtain the said document for the purpose of filing written statement. In the meantime, *vide* order dated 06.12.2016, the petitioners were debarred from filing their written statement. Learned counsel submits that immediately on the next date fixed, the petitioners filed their written statement along with the recall petition which has been dismissed by the learned Sub Judge- 1, Purnea without appreciating the fact and law in correct perspective.

On the other hand, learned counsel for the respondents/plaintiffs submits that other two brothers of the defendants No.1 and 4 as petitioners have filed their written statement within time and it is unbelievable that these defendants could not file their written statement for want of certain documents.

Having heard learned counsel for the parties and taking into consideration the law laid down by Hon'ble Apex Court in the case of ***Salem Advocate Bar Association, T.N. v. Union of India*** as reported in (2005) 6 SCC 344 wherein it has



been held that provision of Order 8 Rule 1 is not mandatory and is directory and the fact that WS was filed along with the recall application, I am of the opinion that in order to advance the cause of justice and prevent the miscarriage of justice to the petitioners/defendants, the impugned orders are fit to be set aside. Accordingly, the impugned orders dated 06.12.2016 and 04.01.2018 passed in Title Suit No. 191/2015 are, hereby, set aside and the learned court below is directed to accept the written statement filed by the petitioners on 06.01.2017 along with recall application.

With the aforesaid observation and direction, the present petition stands disposed of.

(Anil Kumar Sinha, J)

perwez

U			
---	--	--	--

