

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.773 of 2018

1. Radhe Rai @ Radhe Kumar Rai Son of Garib Nath Rai Resident of village Rudaha Sanathi, P.S. Bochahan, District - Muzaffarpur.
2. Uday Kumar, Son of Garib Nath Rai, Resident of village Rudaha Sanathi, P.S. Bochahan, District - Muzaffarpur.
3. Vijay Kumar, Son of Garib Nath Rai, Resident of village Rudaha Sanathi, P.S. Bochahan, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. Mahesh Prasad Son of Late Jagdish Narayan Verma, Resident of Village Chaupar Bharath, P.O. Sanathi, P.S. Bochahan, District - Muzaffarpur.
- 2.1. Pramila Devi Wife of Late Indra Bhushan Prasad resident of village Muradpur, P.O. Mirzapur, P.S. Ahiyapur, District - Muzaffarpur.
- 2.2. Sujit Kumar Son of Late Indra Bhushan Prasad resident of village Muradpur, P.O. Mirzapur, P.S. Ahiyapur, District - Muzaffarpur.
- 2.3. Satyajit Kumar Son of Late Indra Bhushan Prasad resident of village Muradpur, P.O. Mirzapur, P.S. Ahiyapur, District - Muzaffarpur.
- 2.4. Viswajit Kumar Son of Late Indra Bhushan Prasad resident of village Muradpur, P.O. Mirzapur, P.S. Ahiyapur, District - Muzaffarpur.
4. Ashok Kumar Verma, Son of Late Vishwanath Prasad, Resident of village Chaupar Bharath, P.O. Sanathi, P.S. Bochahan, District - Muzaffarpur.
5. Kishore Kumar Verma, Son of Late Vishwanath Prasad, Resident of village Chaupar Bharath, P.O. Sanathi, P.S. Bochahan, District - Muzaffarpur.
6. Anup Kumar Verma, Son of Late Vishwanath Prasad, Resident of village Chaupar Bharath, P.O. Sanathi, P.S. Bochahan, District - Muzaffarpur.
7. Abhay Kumar Verma, Son of Late Vishwanath Prasad, Resident of village Chaupar Bharath, P.O. Sanathi, P.S. Bochahan, District - Muzaffarpur.
8. Sanjay Kumar Verma, Son of Late Vishwanath Prasad, Resident of village Chaupar Bharath, P.O. Sanathi, P.S. Bochahan, District - Muzaffarpur.
9. Roopa Devi, daughter of Late Vishwanath Prasad and Wife of Nityanand Sahay, Resident of village and P.O. Raj Pakar, P.S. Sakra, District - Muzaffarpur.
10. Bibha Devi, daughter of Late Vishwanath Prasad and wife of Satendra Prasad Srivastava, resident of village, P.O. and P.S. Areraj, District - East Champaran.
11. Baby Srivastava Wife of Late Ranjit Kumar Presently residing at Mohalla 1. Ganeshpur, P.S.- Ahiyapur, District- Muzaffarpur.
11. Kajal Kumari Daughter of Late Ranjit Kumar Presently residing at Mohalla 2. Ganeshpur, P.S.- Ahiyapur, District- Muzaffarpur.
11. Sweety Kumari Daughter of Late Ranjit Kumar Presently residing at 3. Mohalla Ganeshpur, P.S.- Ahiyapur, District- Muzaffarpur.



11. Nikhil Son of Late Ranjit Kumar Presently residing at Mohalla Ganeshpur,
4. P.S.- Ahiyapur, District- Muzaffarpur.
12. Atul Kumar Son of Late Madhusudan Prasad Srivastava Resident of village
1. Chaupar, P.O. Sanathi, P.S. Bochahan, District - Muzaffarpur.
13. Chanda Srivastava, Wife of Kaushal Kumar, Resident of village Chaupar,
P.O. Sanathi, P.S. - Bochahan, District - Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Vaidehi Raman Prasad Singh
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

16 29-08-2023 Heard learned counsel for the parties.

2. The present application has been filed for quashing of the order dated 13.09.2017 passed by Munsif East, Muzaffarpur in Title Suit No. 256/1995 closing the evidence of the defendants. Learned counsel for the petitioners also prays for quashing of the order dated 04.12.2017 passed by learned Munsif East, Muzaffarpur in Title Suit No. 256/1995 rejecting the petition dated 13.09.2017 filed by the defendants for recall of the order dated 13.09.2017.

3. It has been submitted by learned counsel for the petitioners that the evidence of the plaintiff was concluded on 15.06.2016. Thereafter, the Presiding Officer was transferred and the court was vacant till 15.06.2017. On 09.08.2017, the defendants was directed to adduce their evidence thereafter on 24.08.2017 also the defendants was directed to adduce the



evidence. On 13.09.2017, no evidence was adduced by the defendants and no time petition was filed by the defendants and therefore the Munsif, East, Muzaffarpur has closed the evidence of the defendants. The defendants thereafter filed an application for recall of the order dated 13.09.2017 which has been dismissed by order dated 04.12.2017. In the order dated 04.12.2017, the Munsif, East, Muzaffarpur has noted that the suit was of year 1995 since the defendants failed to produce evidence on three consecutive dates and the same was closed and therefore the order dated 13.09.2017 should not be recalled. It has been submitted by learned counsel for the petitioners that the Munsif, East has failed to note that though the suit was of year 1995 but the evidence of the plaintiff was closed on 15.06.2016 and thereafter on two dates, the time petition was filed by the defendants but because of non-appearance of the defendants lawyers on 13.09.2017 the evidence was closed.

4. In my opinion, in the interest of justice, the petitioners should get one chance to lead their evidence when the plaintiff himself has taken 21 years to conclude his evidence. Moreover, the suit should not be decided *ex-parte*.

5. In view thereof, this application is allowed.

6. The order dated 13.09.2017 and 04.12.2017 passed



by Munsif East, Muzaffarpur in Title Suit No. 256/1995 is hereby quashed.

7. The petitioners/defendants is permitted to lead his evidence without taking any unnecessary adjournments since the suit is of year 1995, it is directed that the same may be decided within nine month from the date of communication of this order.

(Sandeep Kumar, J)

Ranjeet/-

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