

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1626 of 2018

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Bhuwar Rai son of Late Shiv Devan Rai Resident of Village- Panapur, P.S. Danapur, District- Patna. At present residing at Nasariganj Biscuit Factory More, East of Sanichara School, P.O. Digha, P.S. Danapur, District- Patna.

... .. Petitioner/s

Versus

1. Prabhu Rai son of Late Sakhichand Rai resident of Village- Chakia Tola Khaspur, P.S. Maner, P.O. Danapur, District- Patna.
2. Bahdu Rai son of Late Ram Dayal Rai resident of Village- Chakia Tola Khaspur, P.S. Maner, P.O. Danapur, District- Patna.
3. Binod Rai Son of Sri Sohan Rai resident of Village- Chakia Tola, Sherpur, P.S. Maner, P.O. Danapur, District- Patna.
4. Shambhu Rai Son of Sri Sakaldip Rai resident of Village- Chakia Tola Khaspur, P.O. Daudpur, P.S. Maner, District- Patna. At present residing at Biscuit Factory More, P.O. Digha, P.S. Maner, District- Patna.
5. Sanjiv Kumar Rai son of Late Ganga Dayal Rai Resident of Village- Khaspur, P.O.- Daudpur, P.S. Maner, District- Patna. At present residing at 39 Tiljula Road, Kolkata- 39, District- (West Bengal).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Prasad Singh
For the Respondent/s : Mr. Shambhu Sharan

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

5 05-09-2023 Heard the parties.

2. This application has been filed for quashing of the order dated 16.08.2018 passed by learned Sub-Judge-III, Danapur in Title Suit No. 126/2011 whereby and where under the learned court has dismissed the recall petition filed by the petitioner praying for recall the order dated 14.05.2018 by which order the learned court has closed the evidence of the plaintiff.



3. By order dated 16.08.2018 passed by the Sub Judge, Danapur in Title Suit No. 126/2011, the application dated 14.05.2018 for recall of the order dated 14.05.2018 has been rejected. Therefore, the plaintiff has been debarred from leading any further evidence.

4. Learned counsel for the petitioner has submitted that the application for recall was filed on the ground that on the date the petitioner was debarred from leading any further plaintiff evidence the witness had fallen ill and because of that reason the witness could not be produced and examined. He has further submitted that he should be allowed to lead further evidence in the interest of justice. He also submits that cost of Rs. 3,000/- has been deposited by the plaintiff.

5. Learned counsel for the defendants/respondents have submitted that the plaintiff/petitioner was given reasonable chance to lead his evidence but because of his negligence the present order was passed and he was debarred from leading his evidence.

6. I have considered the submission of the parties. The suit is for declaration of title over 2 *kathas* 2 *dhurs* of land in the district of Patna, in my opinion, the suit should be decided on merit after contest and in the interest of justice I am of the view



that the impugned order cannot be sustained and the impugned order is set aside. The petitioner is permitted to lead his evidence in the court below within two weeks from the date of communication of this order. He will not seek unnecessary adjournments.

7. With the aforesaid observation, this application is disposed of.

8. The plaintiff/petitioner has also given undertaking before this Court that he will lead his evidence continuously so that there will be no delay in disposal of the suit.

(Sandeep Kumar, J)

Ranjeet/-

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