

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1108 of 2023

In
Civil Writ Jurisdiction Case No.3626 of 2015

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1. Ramji Sao, Son of Late Jitan Sao @ Bhola Sao, Resident of Village-Rajgir Mali Tola, Police Station Rajgir, District-Nalanda.
 2. Raj Kumar Sao, Son of Ramji Sao, Resident of Village-Rajgir Mali Tola, Police Station Rajgir, District-Nalanda.
 3. Budhan Sao, Son of Ramji Sao, Resident of Village-Rajgir Mali Tola, Police Station Rajgir, District-Nalanda.
 4. Gopal Sao, Son of Ramji Sao, Resident of Village-Rajgir Mali Tola, Police Station Rajgir, District-Nalanda.
 5. Rakesh Sao Son of Ramji Sao Resident of Village-Rajgir Mali Tola, Police Station Rajgir, District-Nalanda.
 6. Ramesh Sao Son of Ramji Sao Resident of Village-Rajgir Mali Tola, Police Station Rajgir, District-Nalanda.
 7. Chhote Sao Son of Ramji Sao Resident of Village-Rajgir Mali Tola, Police Station Rajgir, District-Nalanda.

... .. Petitioner/s

Versus

1. Narayan Sao, Son of Late Jitan Sao @ Bhola Sao Resident of Village-Rajgir Mali Tola, Police Station Rajgir, District-Nalanda.
2. Surkesh Sao Son of Narayan Sao Resident of Village-Rajgir Mali Tola, Police Station Rajgir, District-Nalanda.
3. Sonu Sao Son of Narayan Sao Resident of Village-Rajgir Mali Tola, Police Station Rajgir, District-Nalanda.
4. Chinta Devi Wife of Narayan Sao Resident of Village-Rajgir Mali Tola, Police Station Rajgir, District-Nalanda.
5. Vimla Devi Wife of Jaddy Singh Resident of Village-Rajgir Mali Tola, Police Station Rajgir, District-Nalanda.
6. Jaddu Singh Son of Late Pragash Singh Resident of Village-Rajgir Mali Tola, Police Station Rajgir, District-Nalanda.
7. Deelip Kumar Son of Jaddu Ram Resident of Village-Rajgir Mali Tola, Police Station Rajgir, District-Nalanda.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Syed Firoz Raza, Advocate
For the Respondent/s : Mr. Pankaj Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

2 28-11-2023 Heard learned counsel for the petitioners as well as
learned counsel for respondent nos. 1, 4, 5 and 6.

2. It has been submitted that respondent nos.1, 4, 5 and 6 are the main contesting respondents before the learned trial court. Order dated 01.02.2019 shows that one Mr. Pankaj Kumar appeared and sought time for filing *vakalatnama*. Perusal of record also shows that respondent no.7 has been validly served and notice of respondent nos. 2 and 3 was received by respondent no.1, who is stated to be the father of respondent nos.2 and 3.

3. Matter is fixed for hearing on the point of admission and with the consent of parties, the same is taken for disposal at the stage of admission itself.

4. It has been submitted on behalf of the petitioners that on 21.03.2014 petitioners/plaintiffs filed a petition for appointment of Survey Knowing Pleader Commissioner to report on the existing structure of plot no. 3753 of the subject matter of the suit. The said petition was dismissed for non-prosecution by the learned Sub-Judge-VII, Biharshariff, Nalanda on 25.06.2014. Thereafter, another application has been



filed on 21.07.2014 for recalling the order dated 25.06.2014 but the learned Sub-Judge-VII also dismissed this application vide order dated 02.02.2015. Learned counsel further submits that this order was passed without considering the fact that the earlier application was dismissed in default and it was not rejected after considering the merits of the said application. Even the order dated 02.02.2015 does not mention anything except the fact that as the earlier application was rejected due to non attendance of the learned counsel of the plaintiffs, the said order could not be recalled. Learned counsel further submits that several dates were fixed in the present matter before 25.06.2014 and the learned counsel for the plaintiffs/petitioners was present all such dates but unfortunately on 25.06.2014, as the learned for the plaintiffs/petitioners was engaged in other court during relevant time, therefore, he could not appear before the court and the application dated 21.03.2014 came to be dismissed. Learned counsel further submits that the application dated 21.03.2014 was for proper adjudication of the case and not deciding the same on its merit would adversely affect the plaintiffs/petitioners.

5. Learned counsel appearing on behalf of the respondents opposes the submissions made on behalf of the



petitioners. However, learned counsel for the respondents submits that he has no objection if the application dated 21.03.2014 is decided on merit in time bound manner.

6. Perused the records.

7. Having considered the rival submissions and materials available on record, it appears the order dated 02.02.2015 has been passed without taking due consideration of the submission of learned counsel for the petitioners/plaintiffs. Hence, the orders dated 25.06.2014 and 02.02.2015 are set aside and the learned trial court is directed to consider the application dated 21.03.2014 within a period of one month from the date of receipt of this order.

8. Accordingly, the instant petition stands disposed of at the stage of admission itself.

(Arun Kumar Jha, J)

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