

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.495 of 2017**

- 1.1. Hari Shankar Ram S/o Late Gharbharan Ram Resident of Village- Khadahi,
P.S.- Kateya, District- Gopalganj.
2. Gauri Shankar Ram S/o late Gharbharan Ram Both are residents of Village-
Khadahi, P.S. Kateya, District- Gopalganj.

... .. Petitioner/s

Versus

Ravindra Chauhan Son of late Rishideo Chauhan, Resident of Village-
Indrawan, Khadahi, P.S. Kateya, Distt. Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Pandey, Advocate
For the Respondent/s : Mr. Javed Aslam, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 09-02-2024

Heard learned counsel for the parties and I intend to
dispose of the matter at the stage of admission itself.

2. The present petition has been filed seeking
following relief(s):-

*“(a) For setting aside order dated 03.11.2016
passed in Title Suit No. 956 of 2014 by Sri Depriya
Kumar, learned Sub Judge-14, Gopalganj, whereby
and whereunder petition dated 03.06.2016 filed on
behalf of the petitioners under Order 9 Rule-7 and
under Section 151 of the CPC to recall the orders
dated 11.05.2015, 10.11.2015 and 25.04.2016, has*



been rejected.

(b) For setting aside order dated 11.05.2015 passed in Title Suit No. 956 of 2014 whereby and whereunder the petitioners have been debarred from filing written statement in the connected suit.

(c) For setting aside order dated 10.11.2015 passed in Title Suit No. 956 of 2014 by learned court below whereby and whereunder the learned court below rejected the written statement filed on behalf of the petitioners and ordered for ex-parte hearing.

(d) For setting aside order dated 25.04.2016 passed in Title Suit No. 956 of 2014 whereby and whereunder due to not showing reasonable cause for late filing of aforesaid written statement by the petitioners, the petition dated 10.11.2015 on behalf of petitioners for admitting their written statement and recalling of order of ex-parte hearing has been rejected.

(e) For any other relief/reliefs for which the petitioners may be found entitled in the eye of law for the ends of justice.”

3. Learned counsel for the petitioners submits that the respondent was the plaintiff before the learned Trial Court and he has filed Title Suit No. 956 of 2014 in the Court of learned Sub Judge-I, Gopalganj against the petitioners/defendants for declaration of sale deed dated 18.07.2014 of the defendants as null and void and also to declare title and possession over the



suit land. In the aforementioned case, the defendants appeared on 23.01.2015 and prayed for time to file written statement and the next date was fixed on 11.05.2015. Again, on 11.05.2015, a time petition was filed on behalf of the defendants seeking time for filing written statement, but the learned Court below debarred the defendants from filing written statement. Thereafter, on 10.11.2015, the defendants filed written statement along with a petition to recall the order dated 11.05.2015, but the learned Court below rejected the written statement filed on behalf of the defendants and further fixed the case for *ex parte* hearing. The said petition dated 10.11.2015 was rejected by the learned Court below vide order dated 25.04.2016. Thereafter, another petition under Order IX, Rule 7 read with Section 151 of the Code of Civil Procedure was filed on behalf of the defendants on 03.06.2016 to recall the orders dated 11.05.2015, 10.11.2015 and 25.04.2016 and further to accept the written statement on behalf of the defendants. Learned Sub Judge-14, Gopalganj, after hearing the parties, rejected the petition dated 03.06.2016 with a finding that no good cause was shown.

4. Learned counsel further submits that though there is laches on the part of the petitioners/defendants, but in the



interest of justice subject to cost, they may be allowed to contest the case.

5. Learned counsel appearing on behalf of the respondent vehemently opposes the submissions made on behalf of the petitioners. Learned counsel further submits that a number of opportunities were given to the petitioners/defendants for filing their written statement, but they chose not to file any written statement. Further, in the present petition, the petitioners have challenged a number of orders with prayer to set aside these orders.

6. Without going into much discussion and merits of the case, in view of the ratio laid down by Hon'ble the Supreme Court in the case of **Kailash Vs. Nanhku & Ors.** reported in **(2005) 4 SCC 480**, I am of the view that for adjudication of real controversy between the parties, the petitioners/defendants could be given an opportunity to contest the suit by filing their written statement. Further, it appears that the written statement of the petitioners/defendants had already been filed on 10.11.2015, if the same is accepted subject to payment of cost, not much prejudice would be caused to the plaintiff/respondent.

7. Therefore, in order to provide an opportunity to the petitioners/defendants, their application dated 03.06.2016 is



allowed and order of learned Trial Court dated 03.11.2016 is set aside, subject to cost of ₹5,000/- to be paid within one month from the date of this order.

8. Accordingly, the instant petition stands allowed.

(Arun Kumar Jha, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	13.02.2024
Transmission Date	

