

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21074 of 2012

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Allauddin Mian @ Md. Allaudin Mian Son of late Sarfuddin Mian Resident of Mohalla- Ramna, Jolha Toli, Sherghati, P.S. Sherghati, District- Gaya.

... .. Petitioner/s

Versus

- 1.1. Pradeep Singh Son of late Ramjit Singh
- 1.2. Brij Nandan Singh Son of late Ramjit Singh Both Resident of D.N. Market, Jagdeo Path More, Bailey Road, P.S. Sachiwalay, District- Patna.
- 2.1. Sheo Pujan Singh Son of late Jagdip Singh
- 2.2. Sanjay Singh Son of late Jagdip Singh
- 2.3. Bimlesh Singh Son of late Jagdip Singh All are Resident of D.N. Market, Jagdeo Path More, Bailey Road, P.S. Sachiwalay, District- Patna.
3. Rasid Mian S/o late Sobrati Mian
4. Khurshid Mian Son of Rojid Mian Respondent no. 4 and 5 are Resident of Mohalla Piparpanti, Sherghati, P.S. Sherghati, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Subodh Kumar Jha Mr. Arun Kumar Sinha Mr. Rajan Prasad
For the Respondent/s	:	Mr. Sanjay Pandey No. 5.

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

10 26-04-2024 Heard learned counsel for the petitioners and learned counsel appearing on behalf of the Respondents.

2. The present application has been filed for quashing the order dated 10.07.2012 passed by the Sub Judge IV, Gaya in Title Suit No. 195/08/314/08 by which the application dated 11.06.2012 of the petitioner for recall of the order dated 10.07.2012 has been rejected.

3. The application dated 11.6.2012 was filed by the petitioner for recall of order dated 10.07.2012 by which the Sub-



Judge, Gaya had closed the evidence of the petitioner. The suit has been filed for declaration of Title over the suit land. The Court below had directed for appointing a Survey Knowing Pleader Commissioner in the year 2009. The Survey Knowing Pleader Commissioner had delayed the case and submitted the report on 04.03.2016. After the dismissal of the application for recall of the order, the petitioner has moved this Court and during the pendency of this case in this Court witnesses have been examined both the sides and the case is pending for argument.

4. In the meantime, some of the defendants have died and the process for substituting their legal heirs is being adopted by the parties in the Court below and its taking time.

5. Learned counsel for the petitioner has submitted that one last chance may be given to him by reopening the evidence so that the petitioner may not suffer.

6. Learned counsel for the Respondents has opposed the prayer of the petitioner and has submitted that earlier also the evidence of the of the petitioner was closed twice, but the petitioner has not been vigilant enough and again evidence of the petitioner was closed.

7. In the facts of the case, I am of the view that in the



interest of justice, one last chance should be given to the petitioner to lead his evidence and, therefore the impugned order dated 10.7.2012 passed by Sub-Judge, Gaya is hereby quashed.

8. The petitioner will pay a cost of Rs. 5,000/- to the contesting Respondents i.e. 2(a), 2(b) and 2(c) in the Court below within one month from today failing which this order will loose its affect.

9. The Court below will proceed in the matter in accordance with law and if the petitioner wants some more witnesses to be examined, he will be permitted to do so. Since the Advocate Commissioner report has come on record, the Respondents may be permitted to cross-examine the same.

10. This application is allowed with the aforesaid directions.

11. The suit is of the year 2008, the parties are directed to co-operate in the disposal of the suit so that the suit is disposed of at the earliest.

12. The Sub-Judge, Sherghati is directed to proceed in the suit and will not adjourn the suit on flimsy grounds on prayer of either of the sides.

(Sandeep Kumar, J)

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