

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.883 of 2024

1. Vijay Kumar Rai @ Vijay Kumar Singh @ Vijay Singh S/o Sri Samarth Rai, Resident of Khushiya Chak, P.O. - Chipura Khurd, P.S.- Gaurichak, District - Patna.
2. Devanan 2 Singh, S/o Vijay Kumar Rai @ Vijay Kumar Singh @ Vijay Singh, Resident of Khushiya Chak, P.O.- Chipura Khurd, P.S. - Gaurichak, District - Patna.

... .. Petitioner/s

Versus

1. Pankaj Kumar S/o Late Krishna Rai, Resident of village - Khushiya Chak, P.O. - Chipura, Khurd, P.S.- Gaurichak, District - Patna.
2. Subham Kumar, minor Son of Late Vidya Prasad Vidyarthi, Resident of village - Khushiya Chak, P.O. - Chipura, Khurd, P.S.- Gaurichak, District - Patna.
3. Sudhanshu Kumar, minor son of Late Vidya Prasad Vidyarthi Resident of village - Khushiya Chak, P.O. - Chipura, Khurd, P.S.- Gaurichak, District - Patna.
4. Piyush Kumar, minor son of Late Vidya Prasad Vidyarthi, Resident of village - Khushiya Chak, P.O. - Chipura, Khurd, P.S.- Gaurichak, District - Patna.
5. Nilam Devi, W/o Surendra Prasad, resident of village Alampur, P.S. - Kachchi Dargah, District - Patna.
6. Sarita Devi, W/o Late Sudarshan Prasad, resident of village and P.O. - Bairiya, P.S. - Gopalpur, District- Patna.
7. Pratima Devi, W/o Ranjan Rai, resident of village - Ram Nagar, Postal Park, P.O. - G.P.O., P.S.- Jakkanpur, District - Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Binay Kumar, Advocate Mr. K.K. Singh, Advocate
For the Respondent/s	:	Mr. Rakesh Kumar Chandram, Advocate Mrs. Sujata Ojha, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

2 09-01-2025 Heard learned counsel for the parties.

2. The petitioners are aggrieved by the order dated
18.06.2024 passed by the learned Civil Judge (Sr. Division)-VI,



Patna City, Patna in Title Suit No. 294 of 2009 whereby and whereunder the learned trial court rejected the petition dated 08.02.2024 filed by the defendants/petitioners under order XVII read with Section 151 of the Code of Civil Procedure to recall the order dated 18.01.2024 by which the evidence of the defendants/petitioners was closed.

3. Learned counsel for the petitioners submits that the respondents are the plaintiffs in Title Suit No. 294 of 2009 and the petitioners are defendants and the matter has been running at the stage of the evidence of defendants. The evidence of the defendants was closed on 18.01.2024 due to the fact that the witness did not turn up when the case was called for hearing. However, the order sheet of the same date at 12.30 PM mentions the fact that the examination-in-chief of the witness Mahesh Roy was filed and copy was also given to the learned counsel for the plaintiffs/respondents. Learned counsel further submits that for non-appearance on call, the evidence of the defendants was closed. Learned counsel further submits that the defendants have to examine only two more witnesses in the case and if time is fixed, the defendants/petitioners would file the examination-in-chief of the other witness and produce both the witnesses for cross-examination.



4. The contentions of the learned counsel for the petitioners have been vehemently opposed by the learned counsel for the respondents. Learned counsel further submits that the defendants were given a number of opportunities and despite such opportunities, the defendants did not produce the witnesses and kept on lingering the matter. The said fact is also reflected from the impugned order that the defendants were given last chance on 05.10.2023 for adducing their evidence. Learned counsel further submits that even prior to that date, the evidence of the defendants was closed and it was reopened at the prayer of the defendants.

5. I have given my thoughtful consideration to the submission of the parties. Since its a small matter and the endeavor of the court should be to dispose of the matter on merits after consideration of evidence of the parties and hence, without further going into details, the impugned order dated 18.06.2024 is set aside and the prayer of the defendants/petitioners made in petition dated 08.02.2024 is allowed subject to payment of cost of Rs. 10,000/- to be paid to the plaintiffs/respondents on the first date before the learned trial court. The learned trial court is directed to fix two dates for examination of the two witnesses of the defendants and not to



grant any further opportunity to the defendants for adducing the evidence. Thereafter, the learned trial court is directed to conclude the trial earliest and not later than within six months from the date of receipt/production of this order.

6. With the aforesaid direction, the present petition stands disposed of.

(Arun Kumar Jha, J)

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