

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1816 of 2017**

1. Devendra Bhagat
2. Ramchandra Bhagat
3. Shyamnandan Bhagat
4. Satyendra Bhagat All sons of Late Rampukar Bhagat
5. Ramdeo Bhagat son of late Narayan Bhagat All residents of Pratap Tanr, P.S. - Bhagwanpur, District - Vaishali.

... .. Petitioner/s

Versus

1. Rita Devi daughter of late Janak Bhagat, wife of Gangesh Chaudhary resident of Pratap Tanr, P.S. Bhagwanpur, District - Vaishali.
2. Sakunti Devi wife of Satyanarayan Bhagat resident of Patiyasa, P.S. - Ahiyapur, District - Muzaffarpur.
3. Parwati Devi wife of Chandrika Bhagat resident of Laxmipur, P.S. - Mahua, District - Vaishali.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Gajendra Kumar Jha, Advocate Mr. Surya Kant Mishra, Advocate
For the Respondent No.1:		Mr. Ravish Mishra, Advocate

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

Date : 22-07-2025

Heard learned counsel for the parties.

2. The present civil miscellaneous petition is directed against the order dated 27.02.2017 passed by learned Additional District Judge-V, Vaishali at Hajipur in Probate Case No. 36 of 2018, whereby and whereunder the learned trial court rejected the petition dated 27.04.2016 filed by the petitioners.

3. Learned counsel for the petitioners submits that the petitioners are objectors/defendants in Probate Case No. 36



of 2008 which has been proceeding as testamentary suit after contest. The evidence of petitioner no. 2 Ramchandra Bhagat was closed on 26.09.2013. Thereafter, a petition was filed on 27.04.2016 for recall of the order closing the evidence of petitioner Ramchandra Bhagat. The said application was rejected vide order dated 27.02.2017. Learned counsel further submits that the petition for recall was rejected on the ground that it was not moved by the learned counsel for the petitioners. Learned counsel further submits that only one opportunity may be given to petitioner Ramchandra Bhagat to adduce his evidence for determination of controversy between the parties. If he is not allowed to adduce his evidence he will be severely prejudice.

4. Learned counsel appearing on behalf of respondent no. 1 vehemently opposes the contention made by learned counsel for the petitioner. Learned counsel for respondent no. 1 submits that the petitioner Ramchandra Bhagat has not been taking any interest in probate case filed by respondent no. 1 though he has been actively pursuing in Probate Case No. 13 of 2008. The evidence of petitioner Ramchandra Bhagat was closed in the year 2013 and two years thereafter he filed petition for recall which shows malafide intention on part of the



petitioner Ramchandra Bhagat. Learned counsel further submits that there is no reason as to entitle petitioner Ramchandra Bhagat to seek recall of order dated 26.09.2013.

5. Having regard to the rival submission of the parties and perusal of the record, the fact is apparent that petitioner no. 2 Ramchandra Bhagat has been sleeping over the matter and did not take up pains to adduce evidence. Despite repeated query by the Court, learned counsel for the petitioner failed to answer when the evidence of the defendants/petitioners was started and he has only been offering this Court the date of closing of evidence of petitioner Ramchandra Bhagat. However, considering the fact that there are two probate cases between the parties and both the cases are continuing in the same court and also considering the fact that endeavour of the courts should be determination of the controversy between the parties on merit, by way of last opportunity, petitioner Ramchandra Bhagat could be allowed to adduce his evidence before the learned trial court.

6. Therefore, without further going into merits of the case, impugned order dated 27.02.2017 is set aside and the petition dated 27.04.2016 is allowed, subject to payment of cost of Rs.25,000/- to be paid to the plaintiff/respondent no. 1 on the



next date of hearing before the learned trial court. Learned trial court is directed to ensure that evidence of petitioner Ramchandra Bhagat is recorded preferably on two dates and learned counsel for respondent no. 1 is directed to ensure that cross-examination of the witness is completed in these two dates.

7. Accordingly, the present petition stands allowed.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.07.2025
Transmission Date	NA

