

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1033 of 2012

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1. Bhola Mahto S/O Late Chaichu Mahto @ Chaichu R/O Village -
Khakhara, P.S. Aurangabad Mufassil, Distt. – Aurangabad.
 2. Deo Raj Mahto S/O Late Chaichu Mahto @ Chaichu R/O Village -
Khakhara, P.S. Aurangabad Mufassil, Distt. - Aurangabad
 3. Singheshwar Mahto S/O Late Chaichu Mahto @ Chaichu R/O Village -
Khakhara, P.S. Aurangabad Mufassil, Distt. - Aurangabad

.... Petitioner/s

Versus

1. Kariman Kumhar@Kariman Prajapati s/o late Jhumak Kumar R/O
Village - Khakhara, P.S. Aurangabad Mufassil, Distt. – Aurangabad.
2. Puran Kumar, son of late Jhumak Kumar.
3. Chapuran Kumar son of late Jhumak Kumar, both are resident of
villa-Khakhara P.S. Aurangabad (M) District-Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anirudh Kumar Verma

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

4 23-09-2015 Heard Mr. Anirudh Kumar Verma, the learned
counsel appearing on behalf of the petitioners.

The present application has been filed for restoration of C.R. No. 846 of 2007 which stood rejected due to non-compliance of the order dated 16.11.2011. From the records, it transpires that the present restoration application has been filed on 24.02.2012 although the order dated 16.11.2011 was evidently passed on the prayer of the learned counsel for the petitioners.

From the perusal of the averments made in the

restoration application, it appears that a casual explanation has been furnished for non-compliance of the direction of the Court and the only plea is that it was due to mistake that the direction could not be complied. It has, however been also pleaded that the case has got merit and there is chance of success.

In view of aforesaid fact, the learned counsel for the petitioners has been heard on merits of the revision application as well granting the opportunity to substantiate the plea that the case has merit.

After considering the submissions and materials on record, it is pellucid that the Civil Revision Application no. 846 of 2007 was filed against the order passed by the executing court refusing to allow the amendment sought by the petitioners in the execution case. It transpires that by filing petition under section 153 C.P.C., the petitioner had prayed for amendment in the execution petition by introducing the relief for recovery of possession over the suit land. From the impugned order, it however transpires that the petitioners, who had filed the suit, were granted the decree in T.S. No. 50 of 1987 /46 of 1988 (Annexure - 1 in the revision application) declaring their title over the suit property and confirming their possession over the same. Further, the defendants were also restrained from interfering in the possession of the petitioner- plaintiffs- decree



-holder. The execution case, thereafter, was filed for executing the aforesaid decree praying for recovery of possession. It also transpires from the impugned order that by earlier order 04.10.2002, the executing court below allowed the prayer for recovery of possession but the said order was set aside by this Court by order dated 09.12.2004 passed in C.R. No. 1948 of 2003 and the special leave petition filed against the said order before the Hon'ble Apex Court was also rejected. It was further also observed in the order passed in the revision application that the appropriate remedy of the petitioner-decree-holder was to file petition under order 39 Rule 2 (a) C.P.C. From the impugned order, it also appears that petitioners had, in fact, filed such a petition in accordance with law. In the aforesaid facts and circumstances, the executing court declined the prayer of the petitioners-decree-holder for amendment by adding the relief for recovery of possession over the suit property.

As mentioned above, the aforesaid civil revision was dismissed for non-compliance of the order dated 16.11.2011. The present restoration application has been filed with a bald statement that due to the mistake, the aforesaid order could not be complied. The elaboration on the aspect of the mistake has been omitted. This is the only explanation furnished in the restoration application besides the assertion that the case has merit but this

Court, in the fact situation, as aforenoticed, is not inclined to accept the same.

Considering the aforesaid facts and circumstances, this Court does not find that the sufficient cause has been made out for restoration of the C.R. No. 846 of 2007.

In result, the restoration application is dismissed.

(V. Nath, J)

Devendra/-

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