

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.36 of 2012

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Bibek Kumar Khetan, S/O Late Sita Ram Khetan, Resident Of Village- Kahalgaon,
P.S- Kahalgaon, District- Bhagalpur.

.... Petitioner

Versus

1. Gouri Devi W/O Dasrath Mandal
2. Upendra Mandal
3. Kanhai Mandal
4. Udal Mandal

Sons of Dasrath Mandal, all are residents of Village- Saidpur Kulkulia, P.S-
Kahalgaon, District- Bhagalpur.

.....Applicant/Petitioner/Petitioners

5. Rajendra Khetan, S/O Sagarmal Khetan, Resident f Kahalgaon, Bazar, Ward No.
8, P.S- Kahalgaon, District- Bhagalpur.

Opposite parties

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Appearance :

For the Petitioner/s : Mr. MRITUNJAY PRASAD SINGH

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-03-2015

Heard learned counsel for the parties.

Taking exceptions to the restoration of the suit at the
appellate stage, the defendants have filed this revision application
assailing the order passed by the appellate court below dated 14th
December, 2011 in Miscellaneous Appeal No. 11 of 2011.

The factual exposes' are that the suit was filed by the
plaintiffs-opposite parties in the year 2003. The said suit was
dismissed for default on 05.04.2006. The Miscellaneous Case No. 06
of 2006 was filed on 05.07.2006 by the plaintiffs under Order IX,
Rule 9 of Section 151 C.P.C. praying for restoration of suit. The said



Miscellaneous Case was dismissed by order dated 15.03.2011 by the trial court holding that the plaintiffs have failed to establish sufficient cause for restoration of the suit. The plaintiffs preferred Miscellaneous Appeal No. 11 of 2011 against the aforesaid order and after hearing the parties, the appellate court below has allowed the appeal, imposed a cost of Rs. 5,000/- on the plaintiffs and restored the suit to its original file. The appellate court below has manifestly passed the said order after expressing the opinion that the disposal of real issues on merits is of paramount importance instead of disposing of the suit for default or on technical ground.

After considering the facts and circumstances and the submissions on behalf of the parties, this Court is not inclined to interfere with the impugned order passed by the appellate court below restoring the suit except to the extent of enhancing the amount of cost to compensate the defendant-petitioner.

In this view of the matter, this revision application is disposed of with modification in the order of the appellate court below by enhancing the cost of Rs. 5,000/- to Rs. 25,000/- to be paid by the plaintiffs to the defendants within a period of eight weeks from today. The aforesaid cost must be deposited in the trial court in seisin of the suit within a period of eight weeks from today and the learned court below shall allow the defendants to withdraw the said amount.

The trial court is further directed to expeditiously take up the hearing of the suit and dispose it of preferably within a period of nine months from the date of receipt/production of a copy of this order. The learned counsel for the parties have expressed their consent that the parties shall co-operate in disposal of the suit within the aforesaid period.

At this juncture, the learned counsel for the plaintiffs-opposite parties has submitted that the plaintiffs have already deposited the amount of Rs. 5,000/- as directed by the appellate court below. If that is so, the plaintiffs are now required to deposit the remaining amount of the cost as directed earlier.

(V. Nath, J.)

Vats/-

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