

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.101 of 2013

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1. Ram Lao Pandey Son Of Late Bujhawan Pandey Resident Of Village- Adhwara Chintaman, P.S.- Sakra, District- Muzaffarpur
 2. Ram Prabesh Pandey Son Of Late Bidya Sagar Pandey Resident Of Village- Adhwara Chintaman, P.S.- Sakra, District- Muzaffarpur
 3. Ashok Pandey Son Of Late Bidya Sagar Pandey Resident Of Village- Adhwara Chintaman, P.S.- Sakra, District- Muzaffarpur
 4. Subodh Pandey Son Of Late Bidya Sagar Pandey Resident Of Village- Adhwara Chintaman, P.S.- Sakra, District- Muzaffarpur
 5. Ram Lalit Pandey Son Of Bujhawan Pandey Resident Of Village- Adhwara Chintaman, P.S.- Sakra, District- Muzaffarpur
 6. Smt. Sundeshwari Devi Wife Of Sri Kant Chaudhary Resident Of Village And P.O.- Bela, P.S.- Bela Ashram, District- Muzaffarpur
 7. Smt. Gayatri Devi Wife Of Ram Sanahi Tiwary Resident Of Village And P.O.- Bela, P.S.- Bela, District- Muzaffarpur
 8. Shail Kumari Devi Daughter Of Late Chatarbhuja Pandey Resident Of Village- Adhwara, P.S.- Sakra, District- Muzaffarpur
 9. Pramila Devi Daughter Of Late Chatarbhuja Pandey Resident Of Village- Adhwara, P.S.- Sakra, District- Muzaffarpur
 10. Pinki Devi Wife Of Tarkeshwar Mishra Resident Of Village And P.O.- Silout, P.S.- Maniari, District- Muzaffarpur
 11. Mostt. Mina Devi Wife Of Late Shailendra Pandey Resident Of Village- Adhwara Chintaman, P.S.- Sakra, District- Muzaffarpur
 12. Manju Devi Daughter Of Bidaya Sagar Pandey (Deceased) Resident Of Village- Adhwara, P.S.- Sakra, District- Muzaffarpur
 13. Pushpandra Pandey Son Of Bidaya Sagar Pandey (Deceased) Resident Of Village- Adhwara, P.S.- Sakra, District- Muzaffarpur
 14. Munna Kumar Son Of Shailendra Pandey (Deceased) Resident Of Village- Adhwara, P.S.- Sakra, District- Muzaffarpur
 15. Sudha Devi Daughter Of Late Achhaibar Pandey Resident Of Village And P.O.- Marken, P.S.- Sakra, District- Muzaffarpur
 16. Sudha Devi Wife Of Late Anil Pandey Resident Of Village- Adhwara Chintaman, P.S.- Sakra, District- Muzaffarpur
 17. Baidyanath Pandey Son Of Late Achhaibar Pandey Resident Of Village- Adhwara Chintaman, P.S.- Sakra, District- Muzaffarpur
 18. Sushil Pandey Son Of Late Achhaibar Pandey Resident Of Village- Adhwara Chintaman, P.S.- Sakra, District- Muzaffarpur
 19. Mukesh Pandey Son Of Late Nageshwar Pandey Resident Of Village- Adhwara, P.S.- Sakra, District- Muzaffarpur
- Plaintiffs Appellants

.... Appellants

Versus

1. Ram Janam Pandey Son Of Late Nand Pandey Resident Of Village- Adhwara Chintaman, P.S.- Susta Mohamadpur P.S.- Sakra, District- Muzaffarpur
2. Ravindar Pandey Son Of Lage Jaga Pandey Resident Of Village- Adhwara, P.O.- Susta Mohamadpur P.S.- Sakra, District- Muzaffarpur
3. Ram Naresh Pandey Son Of Ram Prit Pandey Resident Of Village- Adhwara, P.O.- Susta Mohamadpur P.S.- Sakra, District- Muzaffarpur

4. Raghubar Pandey Son Of Late Ram Sagar Pandey Resident Of Village-Adhwara, P.O.- Susta Mohamadpur P.S.- Sakra, District- Muzaffarpur
 5. Ram Nath Pandey Son Of Late Ram Sagar Pandey Resident Of Village-Adhwara, P.O.- Susta Mohamadpur P.S.- Sakra, District- Muzaffarpur
 6. Bindeshwar Choudhary Son Of Late Sonelal Choudhary Resident Of At And P.O.- Ramna, P.S.- Mithanpura Town And District- Muzaffarpur
 7. Arun Thakur, son of Late kishori Lal Thakur, resident of Village Kushaiya, PS. Waris Nagar, District Samastipur.
- Defendants Respondents

.... Respondents

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Appearance :

For the Appellant/s : Mr. Ashok Priyadarshi
For the Respondent/s : Mr. Amar Nath Jha

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 15-04-2015

Heard Mr. Ashok Priyadarshi, learned Counsel appearing for the appellants.

2. The appellants have filed this second appeal against the dismissal of their appeal by the appellate court below as barred by limitation.

3. The factual expose are that the appellants filed a suit for partition, which was decreed and a preliminary decree was passed in the year 1969. The plaintiffs prayed for preparation of final decree on the basis of said preliminary decree and the final decree was admittedly passed on 23.3.1988. The said final decree was put to execution and the delivery of possession was effected and confirmed on 4.7.2008 by the Executing Court in Execution Case No. 8 of 1989. After the delivery of possession the defendant-appellants filed Partition Appeal No. 2 of 2009 on 5.1.2009 assailing the final decree passed on 23.3.2008.

4. Before the appellate court the appellants also filed a



petition under Section 5 of the Limitation Act wherein by way of explaining the delay of 21 years in filing the appeal the submission was made that the appellants were wrongly advised by their lawyer not to file appeal but to question the validity of the final decree in the execution proceeding itself. It was also the case of the appellants that the Executing Court did not entertain their objection to the validity of the final decree and proceeded to deliver possession in accordance with the final decree to the plaintiffs-decree holder.

5. After hearing the parties the learned appellate court below has come to the finding that the appellants and prior to them their predecessors had contested the issue throughout at all stages till the effecting of delivery of possession in execution proceeding and their objections had also been heard and disposed of and thereafter the delivery of possession has finally been made. The appellate court below has also taken into notice that the matter between the appellants and the respondents even traveled up to the High Court in Civil Revision applications which were disposed of after hearing the appellants as well. The appellate court below in this backdrop of facts has come to the conclusion that the delay of nearly 21 years in filing the appeal has not been sufficiently explained by the appellants and accordingly has declined to condone the delay and dismissed the appeal.

6. Mr. Priyadarshi, learned Counsel for the appellants has made the sole submission before this Court that the appellate court below has failed to consider that the appellants were prevented from filing the appeal within time due to wrong advice of their Counsel. Elaborating the submission learned Counsel has also placed the

impugned judgment of the appellate court below to show that this plea was emphatically raised there. No further submission has been made on behalf of the appellants.

7. After perusal of the impugned judgment and consideration of the submissions it is limpid that the appellate court below has reached to the conclusion that the appeal was barred by limitation and the delay of nearly 21 years has not been cogently explained only after hearing the parties and consideration of the admitted facts and circumstances. During course of argument no perversity or unreasonableness in the findings could be established on behalf of the appellants. Even otherwise also, it is admitted fact that the appellants or their predecessors had the knowledge of the final decree passed on 4.7.2008 and in their presence, the order was passed by this Court in Civil Revision applications directing the Executing Court to expedite the disposal of the execution proceeding. The specious plea on behalf of the appellants regarding wrong advice of the Counsel does not appear to be convincing in view of the fact that said Counsel is said to have died in 2005 and thereafter the appellant must have engaged other Counsel.

8. Ex. Consequenti, this Court does not find any substantial question of law arising for consideration in this appeal, which is accordingly dismissed.

(V. Nath, J.)

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