

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1692 of 2013

In
SA 632 of 1993

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1. Kailasiya Kunwar, W/o Late Gaya Sah.

2. Sanat Sah.

3. Dhananjay Sah.

Both Sons of Late Gaya Sah.

All Residents of Village-Barka Chhap, P.s.-Mirganj, District-Gopalganj.

4. Suganti Devi, D/o Late Gaya Sah and W/o Ashok Sah, R/o Village-Resaura, P.S.-Maharajganj, District-Siwan.

-Heirs of the **Appellant-Petitioners.**

Versus

1. Hairhar Sah, Son of Late Sakhichand Sah.

2. Radhiki.

3. Filkail.

4. Raukallia.

All D/o of Late Sakhi Chand Sah.

All residents of Village- Chhap Mathia, P.S.-Mirganj, District-Gopalganj.

–Respondents-Opposite Parties.

5. Atwaria Devi died on 02.04.20015, heirs of respondent no.1 (Opposite party no.5) here.

- a. Kameshwar Sah.

- b. Om Prakash Sah.

- c. Jai Prakash Sah.

- d. Jai Kishun Sah.

- e. Ramji Sah.

All sons of late Atwaria Devi and Khelari Sah.

- f. Kunti Devi.

- g. Tara Devi.

- h. Kishori Devi.

- i. Rukmani Devi.

All daughters of Late Atwaria Devi and Khelari Sah.

All R/o Village-Surbir, P.S.-Maharajganj, District-Siwan.

6. Budha Devi, W/o Sri Kishun Sah, R/o Village-Balia Pokhara, P.S.-
Maharajganj, District-Siwan.
7. Lakhpatia, W/o Kanhaiya Sah, R/o Village-Kanpura, P.S.-Goria Kothi,
(Gautam Budh Nagar) District-Siwan.
8. Panpatia, W/o Ram Kishun Sah, R/o Village-Balia, Pokhara, P.S.-
Maharajganj, District-Siwan.
9. Ram Brikcha Singh, died on 22.12.1999 heirs of respondent no.6.
- a. Manager Sah.
- b. Ashok Singh.
- c. Daroga Singh.
- d. Shashak Singh.
- All sons of Ram Brikcha Singh.
- e. Shiv Kalia Devi.
- f. Folojia Devi.
- h. Lal Jharia Devi.
- i. Phool Jharia Devi.
- All daughter of Late Ram Brikcha Singh.
10. Gopi Chand Sah, S/o Babu Lal Sah.
11. Ram Narain Singh, S/o Harihar Sah.
12. Respondent no.9 Ram Chandra Sah died on 09.02.2002, heirs of
respondent no.9.
- a. Baleshwar Sah.
- b. Krishna Sah.
- c. Surendra Sah.
- d. Jitendra Sah.
- e. Amarjit Sah.
- g. Sandhya Devi.
- h. Meera Devi.
- i. Sunita Devi.
- i. Munni Devi.
- All Daughters of Late Ram Chanda Sah.
- All R/o Village- Chhap Mathia, P.S.-Mirganj, District-Gopalganj.
13. Pulpatia, W/o Hari Chan Sha, R/o Village-Manapura, P.O.+ P.S.-
Barharia, District-Siwan. **-Respondents-Opposite Parties.**
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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

6 22-07-2015

Heard the learned counsel for the petitioners.

This restoration application has been filed for re-admission of this appeal which stood dismissed by the order dated 20.09.1999. The interlocutory application (I.A.No.2781/2015) has been filed under Section 5 of the Limitation Act, praying for condonation of delay in filing the restoration application.

The learned counsel for the petitioners has made his submissions that the petitioners who are the heirs and legal representatives of the deceased sole appellant Gaya Sah had earlier no knowledge of the pendency of this appeal and therefore no petition for restoration could be filed earlier. It has, therefore, been prayed that since the said S.A.No.632/1993 was earlier admitted for hearing, a lenient view should be taken and the same be restored to its original file after condonation of delay.

From the averments made in the interlocutory application (I.A.No.2781/2015) for condonation of delay, it transpires that the statement has been made in paragraph 3 to the



effect that the petitioners had no knowledge of the pendency of the second appeal before this Court and they could get the knowledge of the same on 21.07.2012 and after that they filed the two interlocutory applications (I.A.No.5197/2012 and I.A.No.5198/2012) in the second appeal, praying for substitution of the deceased appellants and also some of the respondents. However, no corroborative material/event has been brought on record or stated in the petition to substantiate as to how, in fact, it was only on 21.07.2012 that the petitioners could get the knowledge of the pendency of the appeal. From the perusal of the order dated 20.09.1999 passed in the second appeal, it is apparent that the said order had been passed after hearing the parties. Admittedly, the sole appellant died in the year 2008 and had not taken any step for restoration/re-admission of the second appeal right from 1999 up to 2008. There is absolutely no explanation on behalf of the petitioners with regard to inaction of the sole appellant in the second appeal for so many years. The statement made in the petition for condonation of delay appears to be casual in nature and this Court is not persuaded to find that sufficient cause has been made out for condonation of the long delay in filing the restoration application.

Accordingly, the prayer for condonation of delay is

declined. Consequently, the restoration application is also dismissed.

(V. Nath, J)

Nitesh/-

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