

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.653 of 2009



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1. Bijay Kumar son of late Surendra Prasad.
 2. Smt. Chinta Kumari
 3. Smt. Asha Devi
 4. Smt. Reeta Devi, all daughters of late Kishori Sao all are resident of village and P.S. Noorsarai, District-Nalanda.
 5. Santosh Kumar son of late Rajendra Prasad resident of village and P.S. Noorsarai District-Nalanda.
 6. Smt. Malti Devi wife of late Kishori Sao resident of village and P.S. Noorsarai, District-Nalanda. Petitioner/s

Versus

1. Satis Sao @ Kumar Ji resident of village Rasalpur (Saidpur) P.S. Fatuha District-Patna.
2. Gopal Sao son of late Haran Sao resident of Mohalla-Rasalpur (Saidpur), P.S. Fatuhan, District-Patna.
3. Bhola Sao son of late Barhu Sao.
4. Satya Bhushan Prasad
5. Satya Prakash Narayan sons of late Laxmi Sao
6. Sarswati Devi widow of late Satyendra Narayan deceased son of late Laxmi Sao.
7. Sharad Kumar.
8. Shekhar Kumar
9. Saurav Kumar son of late Satyendra Narayan, all are resident of village-Rasalpur Saipur, P.S. Fathuhan, District-Patna.
10. Prem Kumar Prasad son of Sona Lal Sao resident of Mohalla Nirzapur Nohta, P.S. Fatuha, District-Patna. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satya Ranjan Sinha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

29 29-04-2015

Heard Mr. Kamla Pd. Rai, the learned counsel for
the petitioners and Mr. Rudal Prasad, the learned counsel for the

opposite parties.

This revision application is directed against the order dated 23.03.2009 by which the learned court below has dismissed the Misc. Case No. 18 of 2008 as not maintainable.

The parties are not at dispute on the fact that the decree was passed in T.S. No. 60 of 1969 on 20.03.1986 and thereafter the Execution Case No. 05 of 1989 was filed by the decree-holder. However, the said execution case came to be dismissed for default by order dated 07.05.1999. The decree-holder-petitioner filed Misc. Case No. 03 of 2003 for restoration of Execution Case No. 05 of 1989. Eventually this misc. Case no. 03 of 2003 also came to be dismissed for default on 29.09.2008. The decree-holder thereafter filed Misc. Case No. 18 of 2008 for restoration of Misc. Case No. 03 of 2003. The learned court below has dismissed the Misc. Case No. 18 of 2008 by the impugned order holding the same to be not maintainable. Earlier notice was issued to the other side by order dated 24.04.2009 in the admission matter and in the said order, it was indicated that the prayer for restoration as made in Misc. Case No. 18 of 2008 might be made on payment of appropriate cost.

After some argument, Mr. Rudal Prasad, the learned counsel for the opposite parties has expressed his

agreement that the Misc. Case No. 03 of 2003 may be directed to be restored on payment of appropriate cost to the opposite parties. This submission has been made in response to the specific prayer made by Mr. Rai, the learned counsel for the petitioner in this regard.

In this view of the matter and also in view of the stand taken by the learned counsel for the parties, this revision application is allowed and the impugned order dated 23.03.2009 dismissing the Misc. Case No. 18 of 2008 is set aside and the Misc. Case No. 03 of 2003 is restored to its original position subject to the payment of a cost of Rs. 5000/- by the petitioner to the opposite parties. The said cost must be deposited by the petitioner in the court below where the Misc. Case No. 03 of 2003 is pending within a period of four weeks from today and the learned court below on appropriate prayer shall allow the opposite parties to withdraw the said amount. In view of the fact that the litigation has persisted for long the learned court below is directed to expeditiously dispose of the Misc. Case. No. 03 of 2003 on its own merits in accordance with law after affording opportunity of hearing to the parties and without prejudiced by this order.

Devendra/-

(V. Nath, J)

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