

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12411 of 2014

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1. Nandji Singh
 2. Brajendra Singh Both S/o Late Ram Ayodhya Singh R/o Village Ekaona, P.S. Badhara, District Bhojpur.

.... Petitioner/s

Versus

1. Buchiya Kunwar W/o Late Raja Ram Singh R/o Village Ekaona, P.S. Badhara, District Bhojpur. At present R/o Mohalla Park Road Quarter No. 26, Titagarh, P.O. and P.S. Titagarh, District Chaubis (24) Pragna, West Bengal.
2. Ram Sakhi Kunwar W/o Late Baban Singh
3. Santosh Singh
4. Deepak Singh 3 and 4 are S/o Late Baban Singh
5. Chinta Devi
6. Asha Devi
7. Panu Devi
8. Ranju Devi All 5 to 8 are D/o Late Baban Singh All R/o Mohalla Park Road, Quarter No. 26 Titagarh, P.O. and P.S. Titagarh, District Chaubis (24) Pragna, W. Bengal.
9. Rita Devi D/o Late Rajaram Singh and W/o Vijay Singh R/o Village Parsa, P.O. and P.S. Obra, District Aurangabad.
10. Munga Devi D/o Late Rajaram Singh and W/o Rajesh Singh R/o Village Jamharu, P.O. Imamganj, P.S. Paliganj, District Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yogendra Prasad Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 10-11-2015 Heard Mr. Yogendra Pd. Sinha, the learned counsel
for the petitioners.

Calling in question the impugned order by which the learned court below has turned down the prayer of the plaintiff-petitioners for restoration of the suit, the present application under Article 227 of the Constitution of India has been filed.

The plaintiffs filed Title Suit No. 289 of 1998 for partition. In the said suit besides the present plaintiff-petitioners, their father was also one of the plaintiffs. The defendants appeared and filed their written statement and it is the submission on behalf of the petitioners that the defendant nos. 1 and 2 had admitted the claim of the plaintiffs. The aforesaid suit was dismissed for default on 13.04.2005. The restoration application purported to be under Order IX Rule 4 C.P.C. was filed on 29.01.2014 by the present petitioners. The learned court below by the impugned order has rejected the said petition praying for restoration of the suit.

Mr. Sinha, the learned counsel for the petitioners has submitted that this Court has got ample jurisdiction to restore the suit particularly in view of the circumstance that the two defendants had admitted the claim of the plaintiffs. It has also been submitted by the learned counsel that the petitioners had no knowledge of the dismissal of their suit and therefore there is sufficient cause for restoration of the suit and the learned court below has not considered the relevant facts and circumstances

before passing the impugned order.

After perusal of the impugned order, the materials on record and considering the submissions, it is manifest that the suit for partition was filed in the year 1998. The petitioners were two of the plaintiffs out of the three plaintiffs in the said suit as is apparent from the plaint (Annexure-1) of the said suit. It is the submission of the learned counsel for the petitioners that the suit came to be dismissed for default on 13.04.2005. The restoration application was filed on 29.01.2014 praying for recall of the order dated 13.04.2005 and to restore the suit. The learned court below has come to the conclusion that there is no material to establish sufficient cause for grant of the prayer for restoration of the suit after such a long delay. This Court, after considering the averments made in the writ application as well as the fact that the petitioners were themselves plaintiffs in the suit filed in the year 1998, is not inclined to align with the submission on behalf of the petitioners that they remained ignorant of the order dated 13.04.2005 dismissing the suit for default for nearly 9 years before filing the petition for restoration of the suit. There is also no material on record or averment regarding any effort made by the petitioners to make inquiry regarding pending the suit during this period.

This Court, therefore, does not find illegality or irregularity in the impugned order. The writ application is, accordingly, dismissed.

(V. Nath, J)

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