

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.512 of 2015

In
LPA 1206 of 1999

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1. Most. Suraj Mani Devi, widow of Late Shankar Bhagwan Sharma.
 2. Jitendra Kumar, son of Late Shankar Bhagwan Sharma
 3. Harendra Kumar
 4. Surendra Kumar null null
 5. Shailendra Kumar
 6. Sunita Kumari
 7. Anita Kumari Sl. Nos. 3 to 7 are minor sons and daughters of Late Shankar Bhagwan Sharma under the guardianship of their mother Most. Suraj Mani Devi, resident of village- Hathiya Kand Sarai, Police Station- Maner, District- Patna.

.... Petitioner/s

Versus

1. Jugeshwar Prasad Singh, son of Shri Sukhdeo Narain Singh
2. Awadhesh Singh
3. Ram Subhag Singh All sons of Jugeshwar Pd. Singh.
4. Ramanuj Singh
5. Nitya Nand Singh
6. Sheo Narain Singh, son of Janaradan Prasad Singh All residents of village Sarai Hathiya Kand, P.S. Maner, District- Patna.
7. Lakhan Singh, son of Devi Singh, deceased, resident of village- Sarai, Tola, Mahari Bagicha, P.S. Maner, District- Patna.
8. Raj Narain Singh
9. Hira Narain Singh Both sons of Jaishar Singh.
10. Devendra Singh, son of Prem Priya Singh All residents of village- Kathautiya, P.S. Maner, District- Patna.
11. Chhatu Chaudhary, son of Narain Chaudhary (deceased)
12. Sheodahin Pandey, son of Ram Ashish Pandey (deceased)
13. Uma Shankar Pandey, son of Ram Dahin Pandey Sl. Nos. 12 and 13 are residents of village- Kathiya Kand Sarai, P.S. Maner, District- Patna.
14. Bijoy Singh, son of Kuer Singh(deceased) Resident of village Sarai Tola Mahuari Bagicha P.S. Maner, District- Patna.
15. Most. Shyam Sunder Devi, wife of Late Mohan Singh null
16. Rajeshwar Singh (deceased)
17. Padum Sharma (deceased)
18. Nitya Nand Sharma (deceased) Sons of Sri Mohan Singh, resident of village- Sarai Hathiya Kand, P.S. Maner, District- Patna.
19. Mulu Rani Devi, wife of Lal Babu, Resident of village- Kora, P.S. Bihta, District- Patna.
20. Maheshwari Devi, wife of Lal Babu, Resident of village- Simresh, P.S. Phulwari, District- Patna.
21. Ripusudan Singh, son of Banwari Singh, (deceased)
22. Ram Kali Devi, wife of Sri Kishun Singh (deceased)
23. Jagdish Sharma
24. Ramnath Sharma
25. Viveka Nand Sharma sons of Sri Kishun Singh (deceased)
26. Balmiki Singh, son of Chandra Singh (deceased)
27. Kameshwar Singh, son of Jang Bahadur Singh (deceased)

28. Dukhharan Rai, son of Jaipat Rai (deceased)
29. Sita Ram Paswan, son of Gulab Paswan
30. Bakhti Rai, son of Ram Sewak Rai All resident of village- Sarai Hathiya
Kand, P.S. Maner, District- Patna.
31. Harihar Mahto, son of Baijnath Mahton, resident of village- Nasriganj,
P.S. Danapur (Digha) District- Patna.
32. Sheo Ratan Singh, son of Sheo Nandan Singh
33. Dublal Singh, son of Sohan Sardar (deceased)
34. Ashan Singh
35. Raj Nandan Singh Both sons of Chhabila Singh (deceased)
36. Lok Nath Singh
37. Chetan Singh Both sons of Sri Sarai Singh (deceased)
38. Khewan Singh, son of Ram Das Singh (deceased)
39. Ramu Rai, son of Rameshwar Rai
40. Shri Bhagwan Rai, son of Sri Raghunandan Rai All residents of village-
Sarai Tola, Mahuari Bagicha, P.S. Maner, District- Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Kamla Prasad Roy, Adv.
Mr. Satya Ranjan Sinha, Adv.
Ms Rina Kumari, Adv.

For the Respondent/s : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 13-04-2015

This application is filed with a prayer to recall the
order dated 07.01.2014 passed in LPA No. 1206 of 1999.

Heard learned counsel for the petitioners.

It is indeed a tragedy of errors if not of defaults. The
petitioners herein filed Title Suit No.61 of 1975 in the court of
Sub-Judge XI, Patna. The suit was dismissed and thereupon they
filed First Appeal No.251 of 1980 before this Court. However,
there was some shortfall of court fee. Since the appellants did not
pay the deficit court fee, the appeal was dismissed for default on



02.04.1993. They filed MJC No. 27 of 1996 for restoration of First Appeal. Even that was dismissed. Thereafter, the petitioners filed MJC No. 1849 of 1999 for restoration of MJC No.27 of 1996. That application was dismissed on 02.09.1999. The petitioners filed LPA No. 1206 of 1999. The LPA was taken up for hearing on 07.01.2014, i.e., after 15 years. There was no representation for the petitioners. By that time, C.P.C. was amended and remedy of LPA was taken away. Taking these aspects into account, this Court dismissed the LPA. This application is filed with a prayer to restore the LPA.

The default committed by the appellants is with regard to payment of deficit court fee and pursuing the interlocutory applications properly. LPA was also dismissed under those very circumstances. We are, however, of the opinion that the petitioners should not suffer on account of lapses on the part of the office of their Advocate. As regards maintainability of the LPA, against an order or a Decree, passed in First Appeal by a single Judge, LPA, no doubt, is prohibited under the Code of Civil Procedure after 2002. However, the present LPA was presented before the amendment came into force.

We, therefore, allow the appeal and recall the order dated 07.01.2014. Since no body appeared for the respondents at

that time, we do not feel it necessary to issue notice, particularly when we are not deciding the matter on merits. To avoid further complications and delay, we allow this application and restore First Appeal No. 251 of 1980, which was dismissed for default, by recalling the orders passed at various stages and grant four weeks time to the appellants, to pay the deficit court fee as well as to remove all other defects. In default, the First Appeal shall stand dismissed and no further application shall be entertained.

(L. Narasimha Reddy,CJ)

(Ashwani Kumar Singh, J)

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