

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2133 of 2015

In
SA 236 of 2013

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1. Rahul Kumar.
 2. Rajiv Kumar both sons of late Ram Krishna Prasad Singh, resident of village-Bhagatpur, P.,S. Ballia Begusarai, District-Begusarai, at present residing at Mohalla-Mirganj Begusarai, P.S. Begusarai Town, District-Begusarai.

.... Petitioner/s

Versus

1. Rahul Sharma.
2. Rohit Sharma, both sons of late Nawal Kishore Sharma.
3. Lakshmi Sharma, daughter of late Nawal Kishore Sharma.
4. Manju Sharma, wife of late Nawal Kishore Sharma.
5. Sharda Devi, wife of late Kunj Bihari Sharma, all resident of Mohalla-Marwari Minachak Begusarai, P.S. Town Begusarai, District-Begusarai.
6. Manoj Sah.
7. Subodh Sah both sons of late Harilal Sah, both resident of Mohalla Mirganj Begusarai, P.S.-Town Begusaria, District-Begusarai
8. Arti Devi, daughter of late Ramchandra Sah and wife of Sri Umesh Prasad @ Umesh Sah resident of village-Chak Bijulawa, P.S. Bibhutipur, District-Samastipur, presently at and P.S. Dalsinghsarai, District-Samastipur.
9. Bharti Devi,. Daughter of late Ramchandra Sah and wife of Sri Chandra Shekhar Sah resident of village Dahiya, P.S. Bhagwanpur, District-Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dronacharya
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 02-09-2015

Heard Mr. Dronacharya, the learned counsel, who

has appeared, on behalf of the petitioners in this case which has been filed for modification of the judgment and order dated 07.04.2015 passed in S.A. No. 236 of 2013 dismissing the said appeal.

The learned counsel for the petitioners has submitted that there is an error in the said judgment and order dated 07.04.2015 in S.A. No. 236 of 2013 as well as the judgment of the first appellate court in Title Appeal No. 40 of 2011 wherein it has been mentioned that miscellaneous case No. 04 of 1999 for setting aside the T.S. No. 165 of 1986 was filed by Harilal Sah and Shakunti Devi. It has been submitted that, in fact, only Shakunti Devi filed the said miscellaneous case praying for setting aside the ex parte decree and Harilal Sah never joined her in the said miscellaneous case as applicant and had never filed any petition praying for setting aside the said ex parte decree. It has also been submitted that the said fact becomes apparent from the judgment of the trial court.

After considering the submissions and the facts and circumstances of this case, this Court finds that the Second Appeal No. 236 of 2013 has already been finally disposed of. It is not the case on behalf of the petitioners that the fact, said to have been wrongly mentioned in the judgment, has been so mentioned by

this Court for the first time rather the learned counsel for the petitioners has fairly submitted that this Court has only taken into notice the said fact as mentioned in the judgment of the appellate court below and the error has crept in at the lower appellate stage. In this view of the matter, this Court does not find that the relief for modification as prayed by the petitioners in this case can be granted at this stage.

Accordingly, this modification application is dismissed as misconceived.

(V. Nath, J)

Devendra/-

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