

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.313 of 2005

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Smt.Parmeshwari Devi, daughter of Dukhit Singh, wife of Dinesh Singh,
resident of Village Rampur, PO Angrahi, PS Haspura, District Aurangabad
..... (Plaintiff.....Appellant)

.... Appellant

Versus

1. Jamuna Prasad Singh @ Jamuna Prasad
 2. Sarju Singh
 3. Rajgir Singh
 4. Rajdeo Singh, all nos. 1 to 4 & Ors sons of late Jagnarain Singh, all residents of Village Rampurkaithi, PS Angrahi, PS Haspura, District Aurangabad
 5. Sonful Devi, wife of Suraj Kumar resident of Village Khedru Bigha, PO Karpi, PS Karpi, District Jehanabad
 6. Panful Devi, wife of Gopal Prasad Singh, resident of Village Meghpura, PS Khudran, District Aurangabad
- (Defendants Respondents)

.... Respondents

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Appearance :

For the Appellant/s : Mr Bhuneshwar Prasad

For the Respondent/s : M/s Bal Mukund Pd. Sinha, Ram Swaroop
Prasad and Pratik Kumar Sinha

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

14 10-02-2015 Heard Mr. Bhuneshwar Prasad, learned Counsel for the
appellant in support of the petition for condonation of delay (I.A. No.
589 of 2006).

Learned Counsel for the respondents has also been heard. A
counter affidavit has also been filed to the limitation petition.

This appeal has been filed against the judgment and decree
dated 30.3.1998 passed in Title Appeal No. 70 of 1995/ 1 of 1998, by
the 3rd Additional District Judge, Aurangabad. The present appellant
was the plaintiff in the said suit. After dismissal of the said suit, she
preferred the aforesaid appeal which was dismissed on
30.3.1998. The present Second Appeal has been filed on 25.11.2005,

whereas according to the office report the limitation expired on 29.6.1998.

In the condonation petition, statement has been made that the appellant is an illiterate, pardanasheen and rustic lady, living in an interior village. It has also been stated that she had asked her Counsel to obtain the copy of the final judgment and decree passed in the appeal but she fell ill in the month of March 2004 and was suffering from jaundice and other ailments and remained so ill till November 2004. It has been further stated that her son went to Aurangabad and obtained the copy of the judgment on 28th March 2005 and thereafter the present appeal has been filed after managing the funds.

In the counter affidavit the respondents have denied the assertion of the plaintiff and submitted that it is a gross case of negligence and a valid right has accrued to the respondents.

After careful consideration of the facts and submission on behalf of the parties, it is limpid that the present appellant as plaintiff filed the suit wherein she also examined her as witness (PW 10). After the dismissal of the suit, present appellant preferred appeal and after dismissal of the appeal in the month of March 1998, the present Second Appeal was filed in the month of November 2005. From the records, it does not appear that the appellant is an illiterate lady as from the affidavit with I.A. No. 9192 of 2014 filed in this appeal it is transparent that the appellant had put her signature on the said affidavit and a bare perusal of the said signature reflects that the same has been made by a person who knows writing.

From the impugned judgment of both the courts below it also transpires that the plaintiff had examined herself as witness not through commission and has not claimed the right relating to benefits to a person under disability. It transpires that the affidavit to the limitation petition (I.A. No. 569 of 2006) has been sworn by the son of the present appellant stating that he was appellant no. 2 in this appeal, but from the memo of appeal it appears that the name of son of the appellant as appellant no. 2 in this appeal had been deleted by the appellant herself after the defect in that regard was pointed out by the Stamp Reporter. Even with regard to her case that she fell ill in the year 2004 due to jaundice and remained so for long eight months, no supporting material by way of medical prescription, certificate etc. has been filed.

This Court, therefore, is not persuaded to come to the conclusion that the appellant was prevented by sufficient cause from not filing this appeal for long seven years.

In the result, the prayer for condonation of delay in filing this appeal is rejected. Consequently, the Second Appeal is also dismissed as barred by limitation.

(V. Nath, J.)

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