

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17626 of 2010

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Paras Nath Dubey son of Late Ramayan Dubey, resident of village- Lahana,
P.O.- Kanjharua, P.S.- Koran Sarai, Distt.- Buxar

.... Petitioner/s

Versus

1. Takur Dubey S/O Late Pragas Dubey
2. Brahmeshwar Dubey S/O Late Ramayan Dubey
3. Sri Kant Dubey S/O Late Ramayan Dubey
4. Umesh Dubey S/O Late Ramayan Dubey

All are residents of village-Lahana, P.O.-Kanjharua, P.S.-Koran Sarai,
District- Buxar

5. Jawahar Dubey S/O Late Baghela Dubey
6. Vidyawati Devi W/O Late Mahendra Dubey
7. Dhrup Dubey S/O Late Mahendra Dubey

Respondent nos. 5 to 7 are residents of village- Dasiyaon, P.O.-
Keshath, P.S.- Nawanagar, Distt.- Buxar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhrub Narain, Sr. Advocate
Mr. Anil Kumar Roy, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER,

2 20-02-2015 This application under Article 227 of the Constitution of India has been filed for quashing the order dated 23.8.2010 passed by the learned District Judge, Buxar in Title Appeal No.9 of 2010 whereby he has condoned the delay in filing the appeal. The petitioner is decree holder of Title Suit No.59 of 1990 whereas respondent no.1 is judgment debtor and the other respondents are also in the category of plaintiff in the suit. In Title Suit No.59 of 1990 plaintiffs sought for declaration of title and confirmation of possession or in alternative recovery of possession over the land in question as mentioned in schedule-II of the plaint. The defendants

appeared and denied the claim of the plaintiffs and prayed for dismissal of the suit. On contest, the learned Munsif, Buxar had held that the plaintiffs had proved their title and possession over the suit land. It had also ordered that the defendants shall not interfere with the title and possession of the plaintiffs.

The judgment and decree passed by the learned 2nd Munsif, Buxar in Title Suit No.59 of 1990 was challenged by the respondent no.1 by filing an appeal before the court of District Judge, Buxar. A limitation petition was also filed in the said appeal under section 5 of the Limitation Act for condoning the delay caused in filing the appeal.

After hearing the parties, the learned District Judge, Buxar vide order dated 23rd August, 2010 allowed the application filed under section 5 of the Limitation Act and admitted the title appeal for hearing. The said order dated 23rd August, 2010 is under challenge in the present application.

The court below has considered the medical certificate granted by the doctor regarding the fact that the appellant was suffering from jaundice and he was under treatment from 23.8.2009 to 13.2.2010 and during the aforesaid period he was advised to complete bed rest.

In my considered opinion, there is no illegality in the

order passed by the court below. A reading of section 5 of the Limitation Act itself would reveal that it gives discretion to the court to condone the delay in appropriate cases if the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making application within such period.

Accordingly, the application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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