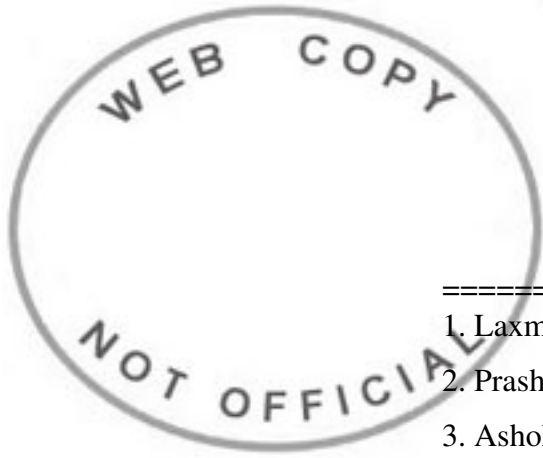




IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.45 of 2015
In
Civil Writ Jurisdiction Case No. 633 of 2002
With
Interlocutory Application No.220 of 2015
And
Interlocutory Application No. 221 of 2015
In
Letters Patent Appeal No.45 of 2015

- =====
1. Laxman Prasad
 2. Prashuram Prasad
 3. Ashok Prasad

Sons of Sita Ram Mahto All residents of Village - Lakhanpur, P.O. - Chand Chaura, P.S. - Civil Lines, District - Gaya.

.... Appellant/s

Versus

1. State of Bihar through the Collector, Gaya.
2. The Superintendent of Survey, Gaya.
3. The Assistant Superintendent of Survey, Gaya.

..... Respondents 1 to 3/ Respondents 1st Set.

4. Bishnu Lal Bahiya
5. Sri Kesho Lal Bhaiya

Sons of late Ganesh Lal Bhaiya

Both residents of Mohalla - Chand Chaura, P.S. - Civil Lines, District - Gaya.

... .. Petitioners/ Respondents 2nd Set.

6. Shiv Prasad Singh S/o Late Parmeshwar Mahto
Resident of Mohalla - Lakhanpura, Ward No. 23 under Gaya Municipal Corporation, P.O. Civil Lines, District - Gaya.

7. Smt. Nilam Devi W/o Jainath Prasad Singh
Resident of Mohalla - Dandibagh PHED, P.S. Civil Lines, District - Gaya.

.... Respondents 4 and 6-Respondents 3rd Set.

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Appearance :

For the Appellant/s : Mr. Amrendra Nath Vishawas, Advocate
For the Respondent/s : Mr. Abbas Haider, S.C.-16

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

4 12-02-2015

I.A. No.221 of 2015

This application under Section 5 of the Limitation Act is filed with a prayer to condone the delay of 9 years 94 days in preferring the Letters Patent Appeal against the order dated 11.03.2005 passed by the learned Single Judge in CWJC No.633 of 2002.

The writ petition was filed by the respondents 4 and 5 herein, with a prayer to set aside the order dated 14.09.2001 passed by the 2nd respondent herein, in relation to survey of a land. The writ petition was mainly contested by respondents 6 and 7 herein, who figured as respondents 4 and 6, and Sahodari Devi, the aunt of the appellants, who figured as respondent no.5. The writ petition was allowed by the learned Single Judge after undertaking extensive and thorough discussion on merits.

The appellants claim to be the legal heirs of late Sahodari Devi, and according to them, the order in the writ petition is nullity since Sahodari Devi died on 24.10.2004, whereas the writ petition was decided thereafter without bringing

her legal representatives on record. Further case of the appellants is that they came to know about the writ petition only in the recent past, and soon thereafter the appeal has been filed.

Heard Sri Amrendra Nath Vishawas, learned counsel for the appellants and Sri Abbas Haider, learned SC-16 for the respondents.

The delay is 9 years and 94 days. Even with the best possible explanations, any court would find difficult to condone such a delay. Further, the appellants are not the direct legal descendants of late Sahodari Devi. The record discloses that the 6th respondent herein, i.e Shiv Prasad Singh, acted as power of attorney of Sahodari Devi, and he did not take any steps to inform this Court about the date of death of Sahodari Devi. Added to that, Shiv Prasad Singh himself filed a Letters Patent Appeal against the order passed in the writ petition and the same was dismissed.

Once emerges that a notice, as required under Rule 10A of Order XXII of the Code of Civil Procedure has not been served, the alleged legal representatives of the deceased party cannot take plea of nullity of an order or decree.

We do not find any basis to condone such an enormous delay. The application is rejected.

As a result, the Letters Patent Appeal shall also stand rejected.

Interlocutory application, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

(Vikash Jain, J)

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