

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.863 of 2012

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1. Ajaz Ahmad Siddiqui @ Ejaj Ahmad, Son of Late Md. Yahiya
 2. Md. Imteyaz Ahmad, Son of Late Md. Yahiya
 3. Md. Habibur Rahman, Son of Md. Halim
 4. Md. Mohibuddin, Son of Md. Halim
 5. Md. Zahirul Haque, Son of Late Md. Mohsin
- All are resident of Village-Rajaura, P.S.-Raiyam, District-Darbhangha.

.....(Defendants-Appellants-Petitioners).....Appellants

Versus

1. Shakil Ahmad, Son of Late Md. Ali Sassan
Resident of Village-Rajaura, P.S.-Raiyam, District-Darbhangha
At present Bibi Pakar, P.S.-Laheriasarai, District-Darbhangha
2. Shajda Khatoon, Wife of Md. Shahabuddin
Resident of Village-Gorhia, P.S.-Rampatti, District-Madhubani
3. Shama Perween, Wife of Jaki Ahmad
Resident of Village-Tajpur Baghauni, P.S.-Tajpir, District-Samastipur
4. Pinki, Daughter of Late Md. Ali Hassan
Resident of Village-Rajaura, P.S.-Raiyam, District-Darbhangha
At present Bibi Pakar, P.S.-Laheriasarai, District-Darbhangha

.....(Plaintiffs-Respondents-O.Ps. 1st Party).....Respondents 1st Set

5. Md. Fazlur Rahman, Son of Late Md. Halim
Resident of Village-Rajaura, P.S.-Raiyam, District-Darbhangha

.....(O.P. 2nd Party).....Respondent 2nd Set

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Appearance :

For the Appellant/s : Mr. Subhash Kumar Mishra, Advocate
For the Respondent/s : Md. Kamran, Advocate
Mr. Bishwa Nath Chaudhary, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA

ORAL JUDGMENT

Date: 09-02-2015

This file is brought under the heading **“For Hearing Under Order XLI Rule 11 CPC”**.

2. Heard the parties.

3. This is an appeal preferred against the order dated 5th October, 2012, passed in Miscellaneous Case No. 06 of 2010 passed by learned Adhoc Additional District Judge - IV, Darbhanga, dismissing the said miscellaneous case preferred under Order XLI Rule 19 of the Code of Civil Procedure seeking restoration of Partition Appeal No. 19 of 2005 which was dismissed for non-prosecution on 30th October, 2009.

4. At this stage, this appeal is being disposed of on undisputed submission that a petition of compromise duly signed by parties was filed on 24th March, 2006 in Partition Appeal No. 19 of 2005 but, anyhow, the same neither could be pressed nor there is any order thereon, consequently, it is still pending. But the said appeal appears dismissed for default and an application seeking restoration is also dismissed by the impugned order but in the event, a petition of compromise is before the court below in the appeal, it

ought to have been disposed of in either way before further proceeding for hearing, if at all required, but since nothing could be done and petition of compromise is still pending, the court was not competent enough to dismiss the appeal for non-prosecution.

5. In that view of the matter, the impugner order is not at all sustainable. The Partition Appeal No. 19 of 2005 is ordered to be restored to its original file and parties are directed to do all the needful with respect to petition of compromise and court below or its successor only after passing necessary orders on said compromise petition, if required, may proceed further. The parties are directed to appear before the court below on 9th day of March, 2015.

6. With the above observation, the appeal stands disposed of.

7. Meanwhile, the Registry is directed to get the copy of the judgment transmitted to the court below for needful.

(Akhilesh Chandra, J)

Praveen-II/-

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