

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.483 of 2013

In
MA 428 of 2012
With
I.A. No. 9474 of 2014

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1. Sri Mati Tara Wife of Rajendra Shukla and Daughter of Lat Rajnath Mishra Resident of Village - Niniapati, P.S.- Baghauch Ghat, District- Deoria (U.P) at present resident of Pashidh Nath, P.S.- Kateya, District Gopalganj

.... Petitioner/s

Versus

1. Kamalapati Mishra Son of Late Raghubir Mishra Resident of Village - Prashidh Nath, P.S.- Kateya, District - Gopalganj
2. Rabindra Mishra Son of Late Kedar Nath Mishra Resident of Village - Prashidh Nath, P.S.- Kateya, District - Gopalganj
3. Daya Shankar Mishra Son of Late Kedar Nath Mishra Resident of Village - Prashidh Nath, P.S.- Kateya, District - Gopalganj
4. Bhola Shankar Mishra Son of Late Kedar Nath Mishra Resident of Village - Prashidh Nath, P.S.- Kateya, District - Gopalganj
5. State Bank of India, Branch Kateya through the Manager, P.S.- Kateya, District - Gopalganj
6. Kshetriya Gramin Bank, Branch Gaura, through Branch Manager Gaura, P.S- Kateya, District - Gopalganj
7. Sahara India Branch, Kateya through the Manager Branch Kateya, P.S.- Kateya, District - Gopalganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Aditya Narayan Singh, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

7 14-01-2015

Re: I.A. No. 9474 of 2014

This application has been filed for condonation of delay of 54 days in filing the civil review application.

Having heard learned counsel for the petitioner and considering the grounds mentioned the application, the delay is condoned. This interlocutory application is allowed.

Re: C. Rev. No. 483 of 2013

Heard Mr. Aditya Narayan Singh, learned counsel for the petitioner.

This application has been filed seeking review of the order dated 17.9.2013 passed in Misc. Appeal No.428 of 2012. The appeal was directed against the order dated 22.5.2012 passed in Succession Case No. 3 of 2005 by Sub-Judge 1st, Gopalganj whereby the Court below disposed of the succession case giving liberty to the applicant who was the appellant in the miscellaneous appeal, to get her right, title and interest declared in respect of property in question by a competent civil court.

This Court while considering the miscellaneous appeal and taking into consideration the provisions underlying Section 373(3) of the Indian Succession Act, 1925 (hereinafter referred to as 'the Act') and the backdrop in which the order was passed by the court below was not persuaded to interfere with the same and while expressing its opinion on that aspect, this Court relied upon a statement made by the petitioner herself in the application present at Annexure-1 of the appeal more particularly in paragraph 15 wherein it reflected that a suit bearing Title Suit No.573 of 2002 was pending in the court below in which one of the issues also was regarding the legal heirs of Raj Nath Mishra whom the petitioner



claims to be her father. This review has been filed enclosing the copy of the plaint in Title Suit No. 573 of 2002 to submit that no such issue is in question in the said title suit and thus the observation of this Court that the issue of legal heirs of Raj Nath Singh is also one of the issue in Title Suit No. 573 of 2002 is not a correct position and an error apparent on the face of record.

It is contention of the petitioner that since the copy of the plaint was not available at the relevant time hence the correct position could not be intimated to the Court either by the counsel appearing on behalf of the appellant or the respondent. It is submitted by Mr. Singh that the father of this petitioner was a party to the Title Suit which was preferred along with other brothers but the same has been dismissed for non prosecution and in any view of the matter since it was not filed for determination of the legal heirs of Raj Nath Mishra and since one of the grounds for the order passed in the Misc. Appeal is with reference to the Title Suit No. 573 of 2002 hence the order requires a review.

I have heard learned counsel for the petitioner and I have perused the records.

The plaint of the suit does reflect that the suit was not filed for determination of the legal heirs of Raj Nath Mishra whom the petitioner claims to be her father and thus the observation made by

this Court to that extent is not a correct reflection of the issue pending in T.S. No. 573 of 2002.

In such circumstances, this Court while modifying/clarifying the part of the order dated 17.9.2013 passed in Misc. Appeal No. 428 of 2012 to the extent wherein a reference to Title Suit No. 573 of 2002 has been made, is yet not persuaded for review of the order passed in Misc. Appeal and finds no reason to interfere with the opinion of the Court below as expressed in its order dated 22.5.2012 passed in Succession Case No. 3 of 2005 whereby liberty has been granted by the Court below to the petitioner to get her right, title and interest to the property in question determined by a competent civil Court. The liberty having been reserved to the petitioner for adjudication of her rights in an appropriate proceedings by a competent civil Court and there being no other cause for review of the order passed in the miscellaneous appeal, this Court with the limited modification/clarification in the order passed in the miscellaneous appeal to the extent referred to above, disposes of this civil review application.

Bibhash/-

(Jyoti Saran, J)

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