

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1911 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 7401 of 2005**

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Umeshwar Rai Son of Late Raj Narayan Rai Resident of Village Morba Rai Tola,
P.S. Mushrighrari, District - Samastipur.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Commissioner, Darbhanga Division, Darbhanga.
3. The Collector, Samastipur, District - Samastipur.
4. The Additional Collector, Samastipur, District - Samastipur.
5. The Deputy Collector Land Reforms, Samastipur, District - Samastipur.
6. The Anchal Adhikari, Morwa, District - Morwa, District - Samastipur.
7. Bimal Kumar Sharma
8. Anil Kumar Sharma
9. Sunil Kumar Sharma
10. Sudesh Kumar Sharma Respondent Nos. 7 to 10 are sons of Bhubneshwar Rai
11. Tanuki Devi Wife of Late Kusheshwar Rai
12. Akhileshwar Rai Son of Late Ram Bahadur Rai Respondent Nos. 7 to 12 are residents of Village Morwa Rai Tola, Anchal Morwa, P.S. - Musrighrari, District - Samastipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mirtyunjay Kumar Mishra, Advocate
Mr. Ram Sandesh Roy, Advocate

For the Respondent/s : Md. Khurshid Alam-AAG-12
Md. Naseem Mukhtar, AC to AAG-12

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**CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE VIKASH JAIN**

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 07-12-2016

Re. I.A. No.9107 of 2016

The application is for condonation of delay of 9 days
in filing the Letters Patent Appeal.

2. For the reasons mentioned in the Interlocutory



Application, we are satisfied that the appellant has shown sufficient cause to seek condonation of delay of 9 days in filing the present Letters Patent Appeal.

3. Consequently, Interlocutory Application No. 9107 of 2016 is allowed and delay of 9 days in filing the Letters Patent Appeal is condoned.

Re.L.P.A. No.1911 of 2016

Heard learned counsel for the parties.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 20th of August, 2016 whereby, an application filed by the appellant for correction of the revenue record was dismissed with liberty to avail the alternative remedy, i.e. of the civil suit, after impleading all necessary parties.

3. The appellant sought correction in the mutation which was allowed by the Anchal Adhikari, but the appeal was accepted by the Collector. Revision filed by the appellant before the Divisional Commissioner remained unsuccessful on 8.11.2004. The Collector and the Divisional Commissioner have returned concurrent finding that there are disputed questions of right, title and interest which cannot be examined in the summary proceedings. The learned single Bench affirmed the said order.

4. The argument of learned counsel for the appellant is



that the question of title stands already decided when Title Suit No.91 of 1957/98 of 1958 and Title Appeal No.216/1/59-60 were decided. The appellant has pleaded in para-19 of the writ application that copy of the said judgment and decree shall be produced at the time of hearing of the case. Such judgment and order was not produced before the learned Single Bench at any stage of proceedings.

5. Learned counsel for the appellant points out that reference to such judgment finds mention in the order of the Collector; therefore, the appellant is not taking a new plea for the first time in the writ application.

6. It is the appellant who has sought correction in the revenue record. If he had already a judgment in his favour in the year 1958-59, it is not understandable as to why after more than 40 years, an application for correction of revenue record is filed.

7. The fact is that the authorities under the Act and the learned single Bench have recorded a finding that there are disputed questions of right, title and interest. If the issue has already been decided, as projected by the appellant, it shall be open to the appellant to rely upon such judgment and decree in appropriate proceedings, but this Court in Letters Patent Appeal cannot take into consideration a judgment which was never produced before the



learned single Bench, as averred in para-19 of the writ application.

8. We find no error in the judgment and order passed by the learned Single Bench which may warrant interference in the present Appeal.

9. The appeal is dismissed with liberty to the appellant to take recourse to such other remedies as may be available to the appellant in accordance with law.

(Hemant Gupta, J)

(Vikash Jain, J)

K.C.jha/-

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