

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.627 of 2015
Arising out of
Civil Writ Jurisdiction Case No. 13931 of 2011
Along with
Interlocutory Application No.2732 of 2015

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Ram Deo Singh, son of Late Surendra Singh, resident of Village - Behari Mukund Sinuara, P.O.- Mohammadpur Sinuara, P.S.- Bahadurpur, District- Darbhanga.

.... Appellant/s

Versus

Amrendra Prasad Singh, son of Late Upendra Narayan Singh, resident of Village - Mohammadpur Sinuara, P.O.- Mohammadpur Sinuara, P.S.- Bahadurpur, District - Darbhanga.

.... Respondent/s

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Appearance :

For the Appellant : Mr. Praveen Kumar, Advocate
Mr. Saptashwa Singh, Advocate

For the Respondents : None

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

And

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 13-07-2016

Re.: Interlocutory Application No.2732 of 2015

The application is for condonation of delay of 255 days in filing of the present Letters Patent Appeal.

2. For the reasons mentioned in the application, we find that sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

3. Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.627 of 2015



The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 22nd April, 2014 against an order whereby an application filed by the appellant under Order XLI Rule 27 of the Code of Civil Procedure was rejected. The said order was passed in a petition under Article 227 of the Constitution of India as the impugned order was passed in appeal arising out of a Title Suit filed by the appellant challenging the sale deed dated 25.01.1973. The Title Suit was dismissed by the trial Court on 24th November, 1984. It was in appeal the appellant filed an application under Order XLI Rule 27 of the Code of Civil Procedure which was dismissed.

2. The Hon'ble Supreme Court in the case of Jogendrasinhji Vijaysinghji v. State of Gujarat & Ors. reported as (2015) 9 SCC 1 has held that an order passed by the learned Single Judge in a proceeding arising out of an order passed by the Civil Court is not amenable to intra court appeal as such order was passed under Article 227 of the Constitution of India and that Letters Patent Appeal against such order is not maintainable. It was held to the following effect:-

“18. The aforesaid authoritative pronouncement makes it clear as day that an order passed by a civil court can only be assailed

under Article 227 of the Constitution of India and the parameters of challenge have been clearly laid down by this Court in series of decisions which have been referred to by a three-Judge Bench in Radhey Shyam; (2015) 5 SCC 423, which is a binding precedent. Needless to emphasise that once it is exclusively assailable under Article 227 of the Constitution of India, no intra-court appeal is maintainable.”

3. In view of such order, we find that the present Letters Patent Appeal is not maintainable and is dismissed.

(Hemant Gupta, J.)

(Ahsanuddin Amanullah, J.)

Sunil/-

AFR/NAFR	
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