

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.141 of 2014

=====

1. Bahadur Singh
2. Surendra Singh
3. Mahendra Singh all sons of Late Nirmal Singh
4. Sri Ram Singh son of Late Subedar Singh
5. Dhanesh Singh
6. Keshaw Singh
7. Awadhesh Singh all sons of Late Birbal Singh All residents of village -
Samausar, P.O. Bahuwara, P.S. Nawanagar, District - Buxar
..... Defendant 1st Set Appellant 1st set
..... Appellants

Versus

1. Kamta Singh
2. Brij Kishore Singh both sons of Shambhu Nath Singh
3. Janki Singh son of Late Gobardhan Singh Yadav
4. Ram Balak Singh
5. Pradeep Singh both sons of Tega Singh
6. Hare Krishna Singh son of Late Gobardhan Singh All residents of village -
Samausar, P.O. Bahuwara, P.S. Nawanagar, District – Buxar Plaintiffs
Respondents
7. Jainath Singh
8. Raghunath Singh both sons of Ramnath Singh Both residents of village -
Kirani, P.O. Katiknar, P.S. Nawanagar, District – Buxar Defendant 2nd
party Appellant 2nd set
..... Respondents

=====

Appearance :

For the Appellant/s : Mr. Sukumar Sinha, Sr. Advocate
Mr. Abinash Kumar
For the Respondent/s : Mr. K.N.Choubey, Sr. Advocate
Mr. Ambuj Nayan Choubey, Mr Ashok Kumar
Mr. Garg. & Mr. Dineshwar Pandey

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 01-08-2016

Heard Mr. Sukumar Sinha, learned Counsel appearing for the appellants.

2. The defendants are the appellants in this appeal against the judgment and decree, by which the learned court below has dismissed the appeal as barred by limitation.



3. The facts have not been disputed by the learned Senior Counsel for the appellants that the suit was filed for declaration of title and possession of the plaintiffs and the relief for restoration of possession had also been sought in case the plaintiffs were found to be out of possession. In the said suit there were two sets of defendants i.e. defendant 1st set and defendant 2nd set. The 1st set of defendants appeared in the suit and filed written statement contesting the prayer of the plaintiffs. The judgment of the trial court demonstrates that the suit was decreed on contest by the defendant 1st set and exparte against defendant 2nd set. The judgment and decree of the trial court was passed on 9.8.2011. The defendant 1st set filed the appeal before the appellate court below on 10.7.2012 along with a petition for condonation of delay of 305 days in filing the said appeal. The appellate court below issued notice in the limitation matter to the respondents and after hearing the parties the appellate court has come to the conclusion that the appellants have failed to establish sufficient cause and have also failed to establish that they had acted with due diligence in pursuing the appeal. The appeal was dismissed as barred by limitation by the impugned judgment and decree.

4. Mr. Sinha, learned Senior Counsel appearing for the appellants, has submitted that the appellate court below has committed material irregularity in not granting one more opportunity to the appellants to establish the sufficient cause by explaining the delay in filing the appeal. It has been propounded that the appellate court below could not have acted in a perfunctory manner in adjudicating the matter of limitation and should have given a thoughtful consideration. No other

submission has been made on behalf of the appellants.

5. After considering the submission and perusal of the judgments of both the courts below it is manifest that the suit was decreed on contest against the defendant 1st set on 9.8.2011. The appeal thereafter was filed by the appellants after a delay of 305 days. It appears from the judgment of the appellate court below that in the petition for condonation of delay, though it had been stated that the appellant got the knowledge of the judgment and decree of the trial court only on 1.7.2012 but there was no disclosure as to how they got the said knowledge only on 1.7.2012, in view of the finding by the appellate court below that the appellants had made pairvi in the suit till 2008. There has been no pleading on behalf of the appellants regarding the source of knowledge of the judgment and decree of the trial court on 1.7.2012. The submission on behalf of the appellants that the appellate court below should have granted one more opportunity to the appellants to establish sufficient cause by submitting additional explanation is not supported by any law or precedent. The appellate court below has come to the finding that the appellants' conduct has been negligent from the beginning.

6. In view of the principles laid down by the Supreme Court in the case of ***Esha Bhattacharjee v. Raghunathpur Nafar Academy, (2013) 12 SCC 649***, emphasizing distinction between inordinate delay and delay of few days, this Court does not find that the finding of the learned court below is perverse or unreasonable in any manner. Even otherwise also, the finding has been recorded by appellate court below on the basis of materials on record.

7. Ex consequenti, this Court does not find any substantial

question of law arising in this appeal for consideration, which is, accordingly, dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	07.09.2016
Transmission Date	N/A