

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.369 of 2013

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1. Bhatu Pandit @ Shaligram Pandit Son Of Late Huro Pandit Resident Of Village- Lorhiya (Dhana Dih), P.S.- Kharagpur, District-Munger
 2. Mina Pandit @ Munna @ Muneshwar Pandit Son Of Late Huro Pandit Resident Of Village- Lorhiya (Dhana Dih), P.S.- Kharagpur, District-Munger
- Defendants Appellants

.... Appellants

Versus

1. Chhedi Pandit Son Of Late Faudi Pandit Resident Of Vilage Lorhiya, P.S. Kharagpur, District- Munger
 2. Rajendra Pandit Son Of Chhedi Pandit Resident Of Vilage Lorhiya, P.S. Kharagpur, District- Munger
 3. Sikandar Pandit (Minor) Son Of Chhedi Pandit, Guardianship Of Chhedi Pandit And Next Friend Resident Of Vilage Lorhiya, P.S. Kharagpur, District- Munger
 4. Mukesh Pandit (Minor) Son Of Chhedi Pandit, Guardianship Of Chhedi Pandit And Next Friend Resident Of Vilage Lorhiya, P.S. Kharagpur, District- Munger
- Ploaintiffs Respondents
5. Julia Devi Daughter Of Late Jitan Pandit Wife Of Gulab Pandit Resident Of Vilage Lorhiya, P.S. Kharagpur, District- Munger
 6. Rina Devi Wife Of Late Bhullu Pandit Resident Of Vilage Lorhiya, P.S. Kharagpur, District- Munger
 7. Nanku Pandit Minor Son Of Bhullu Pandit, Under The Guardianship Of Grand Son Of Jitan Pandit, And Under The Guardianship Of Mother Julia Devi Resident Of Vilage Lorhiya, P.S. Kharagpur, District- Munger
 8. Tanku Pandit Minor Son Of Bhullu Pandit, Under The Guardianship Of Grand Son Of Jitan Pandit, And Under The Guardianship Of Mother Julia Devi Resident Of Vilage Lorhiya, P.S. Kharagpur, District- Munger
 9. Anil Pandit, son of Late Huro Pandit, resident of Village Lorhiya Uhna Dih, P.S. Kharagpur, District Munger

..... Defendants Respondent 2nd party

.... Respondents

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Appearance :

For the Appellant/s : Mr. KAMAL KISHORE JHA

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 26-04-2016

Heard Mr. Pankaj Kumar Sinha, learned Counsel appearing for the appellants.

2. The defendants are the appellants in this appeal and are aggrieved by the judgment and order passed by the appellate court

below dismissing the appeal filed by them as barred by limitation.

3. Learned Counsel for the appellants has submitted that the appellate court below while considering the prayer for condonation of delay in filing the appeal has not considered the averments made by the appellants in the petition for condonation of delay and in particular the averments wherein it has been stated that the pairvi in the suit was being looked after by the **Karpardaj**, who did not inform the appellants in time regarding the decree passed in the suit. It has also been pointed out by the learned Counsel for the appellants that other defendants went in collusion with the plaintiffs in the suit and therefore they did not file any appeal against the decree passed in the suit and therefore these circumstances were pleaded by the appellants in the limitation petition to substantiate that they had been deliberately kept out of the information regarding the decree passed in the suit. In substance, the learned Counsel has submitted that the judgment and order passed by the learned court below suffers from non-consideration of the material facts.

4. After perusal of the judgments of both the courts below and considering the submission, it is manifest that the present appellants were defendants in the suit and they had participated in the proceeding of the suit. The appellate court below has also taken into notice that the defendant No. 3 and defendant No. 2 were also examined as witness in the suit as DW 6 and DW 5 respectively. This fact has not been denied by the learned Counsel for the appellants. The appellate court below, however, has refused to accept the explanation submitted by the appellants on the ground that all the defendants were own brothers and they had contested the suit to the end, and has also refused to believe

their case that they had been deliberately kept out of the information regarding decree of the suit. On query by this Court, learned Counsel has not pointed out any averment in the limitation petition to show that the appellants had made any effort on their part to gather the information regarding the outcome of the suit. This court, therefore, does not find any perversity or unreasonableness in the findings of the court below refusing to accept the case as put forward by the appellants for condonation of delay on the basis of lack of due diligence on their part.

5. It is well settled that even if the finding of fact is wrong, but is based upon some materials which are acceptable, the same cannot be taken to be perverse even if another view is also possible. It is apparent that this Court, in order to grant relief to the appellant, will have to reappreciate the findings and materials to reach to a different conclusion on the issue of sufficiency of case which course is not beyond the scope of second appellate jurisdiction.

6. 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.)

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