

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.589 of 2010

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1. Manoj Kumar Vyas, Son of Late Dalsukh Lal, at present residing at 103, Atit Co-operative Housing Society, Aopallav Complex, Charwada Road, Vapi, Gujrat.
 2. Sameen Kumar, Son of Late Dalsukh Lal , at present residing at 541, A.T.S. Village-Sector-93A, Noida, U.P.
 3. Utpal Vyas, Son of Late Chandu Lal Sharma.
 4. Abhijit Vyas, Son of Late Navin Chandra Sharma @ Vyas.
 5. Satyajit Vyas, Son of Late Navin Chandra Sharma @ Vyas.

... Petitioners.

Versus

1. State of Bihar.
2. The Additional Collector, Purnia.
3. The Circle Officer, Purnia East Block, Purnia, Police Station-Sadar, District-Purnia.
4. Reeta Devi, Widow of Late Jiwachh Sah.
5. Bina Devi daughter of late Jiwachh Sah.
6. Shri Sahdeo Prasad Sah, Son of Late Sudes Lal Sah.
7. Shri Santosh Kumar Sah.
8. Shri Pankaj Kumar Sah.
9. Shri Deepak Kumar Sah.
10. Shri Suman Kumar Sah.

Sl.No. 7 to 10 are sons of Shri Sahdeo Prasad Sah and Late Mina Devi.

All residents of Baseti Bazar, Post Office-Baseti, Via-Araria, District-Araria (Bihar).

11. Manju Devi, daughter of late Jiwachh Sah.
12. Sunita Devi, daughter of Late Jiwachh Sah.
13. Punam Devi, daughter of Late Jiwachh Sah.
14. Khusbu Devi, daughter of Late Jiwachh Sah.
15. Mahendra Sah, Son of Late Dukhit Sah.
16. Satya Narayan Sah, Son of Late Dukhit Sah.

All residents of Belouri, P.S.-Sadar, District-Purnia.

17. Gobardhan Roy, Son of Jhapsi Roy.

18. Madan Roy, Son of Jhapsi Roy.

Both resident of Kalighat, Balouri, P.S.-Sadar, District-Purnia.

19. Parmeshwar Mahto, Son of Bhikhari Mahto.

20. Jadunandan Roy, Son of Bishuni Roy.

21. Shanti Devi, Wife of not known to the petitioners.

Sl.No.19 to 21 resident of Gulabagh, P.S.-Sadar, District-Purnia.

22. Sri Ramnandan Roy, Son of Late Ram Bulan Roy.

23. Sri Harinandan Roy, So of Late Ram Bulan Roy.

24. Sri Bikram Bahadur Roy, Son of Late Ram Gulam Roy.

25. Sri Praveen Kumar Roy @ Raju Ravi Roy, Son of Late Ram Gulam Roy.

All residents of Sardar Tola, Gulabbagh, P.S.-Sadar, District-Purnia.

26. Kaushalya Devi, Wife of Ram Bilas Mahto.

27. Ganjari Devi, Wife of Madhusudan Roy.

28. Hari Yadav, Son of not known to the petitioners.

Sl.No.26 to 28 are resident of Gulabbagh , P.S.-Sadar, District-Purnia.

29. Gudri Yadav, Son of Bhagirath Yadav.

30. Hari Lal Yadav, Son of Jamun Yadav.

Sl.Nos.29 and 30 are the residents of Chauhan Tola, P.S.-Sadar, District-Purnia.

31. Ranjit Kumar Patel, Son of Lakshmi Bhai Patel, Resident of Banmankhi, Post and P.S.-Banmankhi, District-Purnia.

32. Dinesh Kumar Patel, Son of Lakhi Patel, resident of Banmankhi, P.O.and P.S.-Banmankhi, District-Purnia.

33. Jhapsi Rai, Son of Shanti Roy, Residetn of Kalighat Belouri, P.S.-Sadar, District-Purnia.

34. Bishun Rai, son of late Naidhar Rai, Resident of Gulabbagh, P.S.-Sadar, District-Purnia.

35. Ram Chandra Mahto, Son of Late Bihari Mahto.

36. Lakhan Mahto, Son of Tondar Mahto.

Both resident of Gulabbagh, P.S.-Sadar, District-Purnia.

.....Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Manojeshwar Prasad Sinha, Sr.Adv.
Mr.Vaidehi Raman Prasad Singh, Adv.
Mr. Rajendra Kishore Prasad, Adv.
Mr.Bireshwar Prasad Sinha, Adv.
Mr.Madhukar Pandey, Adv.

For the Opp.Party Nos.11,18 to 21:Mr.Aditya Nath Pandey, Adv.
Mr.Uday Shankar Singh, Adv.
For the State(Opp.Party Nos.1 to 3):Mr.Kundan Bahadur Singh, S.C.22.
For the Opp.Party Nos.18 to 22 :Mr.Sushanta Kumar Das, Adv.
Dr.Bidhu Rajak, Adv.
For the Opp.Party Nos.28 & 29 :Shivendra Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

Date: 10-05-2016

V.Nath, J.

Heard Mr.Manojeshwar Prasad Sinha, learned senior counsel appearing for the petitioners as well as the learned counsel appearing for the different sets of opposite parties including the opposite party-State of Bihar.

This revision application has been filed against the order dated 30.03.2010 passed in Miscellaneous Case No.20/2003 by which the learned court below has dismissed the miscellaneous case mainly on the ground of bar of limitation and also giving findings on the merits as well.

The facts relevant in the present context are that a T.S.No.12/1989 was filed by the petitioners for declaration of their right, title, interest and possession over the suit land alongwith consequential reliefs. However, this suit was dismissed for default on 18.01.1996 for non-compliance of the order for filing the requisites for registered notice. From the order dated 18.01.1996 (Annexure-1) it transpires that on the said date neither the plaintiffs nor the defendants were present when the suit was called out. Thereafter the plaintiffs



filed Miscellaneous Case No.09/1996 for restoration of the suit under Order 9 Rule 4 C.P.C. However, this Miscellaneous Case No.09/1996 was also dismissed for default for non-appearance of the plaintiff-petitioner on 12.09.2003 (Annexure-2). Thereafter the plaintiffs filed Miscellaneous Case No.20/2003 praying for restoration of the Miscellaneous Case No.09/1996. This miscellaneous Case was filed on 14.11.2003 under the provision of Section 151 C.P.C. A petition for condonation of delay was also filed under Section 5 of the Limitation Act. By the impugned order the learned court below has held that the Miscellaneous Case has been filed beyond the prescribed period of 30 days and no sufficient cause has been established by the plaintiff-petitioners for condonation of delay. The learned court below has also made observations expressing doubts over the case of the plaintiffs for restoration as pleaded. Accordingly, the miscellaneous case has been dismissed by the impugned order.

After considering the materials on record and the submissions on behalf of the parties, it is manifest that the Miscellaneous Case No.20/2003 was filed on 14.11.2003 praying for restoration of the Miscellaneous Case No.09/1196 which was filed under Order 9 Rule 4 C.P.C. for restoration of the T.S.No.12/1989. It is also apparent that the Miscellaneous Case No. 09/1996 was dismissed for default on 12.09.2003 and thereafter the Miscellaneous



Case No.20/2003 was filed on 14.11.2003 within a period of two months. This Miscellaneous Case No.20/2003 has been filed under Section 151 C.P.C. and therefore the learned court below has wrongly held that the period of limitation for filing this miscellaneous case would be 30 days from the date of dismissal. From bare perusal of the provision as contained in Article 122 of the Limitation Act, it is evident that the said provision is not attracted in a case where the petition under Section 151 C.P.C. has been filed for restoration of a restoration application. This view finds support from the decision of this Court in *Siban Mahto Vs. Ramdhani Singh, A.I.R. 1972 Patna 217* where under similar circumstances it has been held that such petition under Section 151 C.P.C. for restoration of a restoration application would be governed by the residuary Article 137 of the Limitation Act providing for a period of three years from the date when the right to apply accrues. In the present case the fact has not been disputed on behalf of the opposite parties that the Miscellaneous Case No.20/2003 has been filed within three years of the date of dismissal of the Miscellaneous Case No.09/1996 praying for restoration of the Miscellaneous Case No.09/1996.

It is thus held that the learned court below has committed error of jurisdiction and material irregularity in dismissing the miscellaneous case as barred by limitation. From the impugned

order it further appears that though the order has been passed mainly on the ground of bar of limitation but nonetheless the observations have been made touching upon the merits of the case of the petitioners as made out in the Miscellaneous Case No.20/2003. It is well settled by now that once after the main petition has been found to be not maintainable because of some defects or bar of limitation, any finding on the merits of the case would be of no consequence.

The revision application is, accordingly, allowed and the impugned order is set aside. The matter is remitted back to the learned court below for hearing the Miscellaneous Case No.20/2003 on merits after granting opportunity of hearing to the parties including adducing evidence, and dispose it of afresh in accordance with law. It is however observed that this Court has not gone into the merits of the case of either of the parties and any observation made in this order shall not prejudice the case of either of the parties.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2016
Transmission Date	NA