

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.137 of 2012

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Sunita Devi, Wife of late Suresh Prasad @ Surendra Prasad, Resident of Village and Post Powari, P.S. Harnaut, District Nalanda, at present residing at Station Road, Gulzarbagh, Patnacity, District- Patna (Defendant No.7 in the court below).

.... Appellant.

Versus

1. Kedar Prasad Singh, son of Late Sita Mahto.
2. Bachaspati Sinha.
3. Chandra Vikash.

Sl. No. 2 and 3 both minor sons of Kedar Prasad Singh under the guardianship of their father Kedar Prasad Singh.

All of them resident of village Powari, P.O. Powari P.S. Harnaut, District Nalanda, at present residing at Taranagar Chas, near Shiv Mandir Post, Chas, District Bokaro.

4. Gendhari Prasad, son of Late Sita Mahto.
5. Chandan Kumar, minor son of Gendhari Prasad, under guardianship of his father Gandhari Prasad.
Both of them resident of village Powari, P.O. Powari P.S. Harnaut, District Nalanda, at present residing at Mohalla- Nichali Kila, Gardhpar, Town, P.S. and Post- Biharsharif, District- Nalanda.
6. Bacchi Devi, Daughter of Late Sita Mahto, Wife of Ayodhya Prasad, Teacher, Resident of Village- Lakshmipur, P.S. Shaksu hara, District- Patna, at present resident at Jainmore, the side of High School, Post Jain More, District- Bokaro.
7. Girja Devi, wife of Gandhari Prasad, Resident of village- Powari, Post Powari, P.S. Harnaut, District- Nalanda.
8. Sushila Devi, wife of Kedar Prasad Singh, Resident of village- Powari, Post Powari, P.S. Harnaut, District- Nalanda.
9. Ram Pravesh Singh, son of late Narsingh Narain Singh, Resident of village- Powari, Post Powari, P.S. Harnaut, District- Nalanda. (Defendant Nos.1 to 6 and 8 to 10 in the court below).

.... Respondents.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL ORDER

11 11-01-2016

I.A. No.5297 of 2012:

Heard learned counsel for the appellant and the learned
counsel for the respondent nos.3 to 6 and 9.

This Interlocutory Application has been filed on behalf of the appellant under Section 5 of the Limitation Act to condone the delay of about 5 years and 8 months in filing the present First Appeal.

Learned counsel appearing on behalf of the appellant submits that the appellant, who was defendant no.7 in Partition Suit No.59 of 1998, after closing of evidence of the plaintiff, due to unavoidable situation and threatening by the other defendants, left the house and went to Gujarat at the residential place of her brother instructing the counsel to conduct the case but due to quarrel in the family of her brother, the appellant shifted at Dhanbad and came at Patna from there in the month of October, 2011. Thereafter, she came to know about the impugned Judgment and preliminary decree on 18.07.2012 and obtained the certified copies of the same on 27.07.2012 and the memo of the appeal was presented to this Court on 16.08.2012.

Learned counsel appearing on behalf of the respondent nos.3 to 6 and 9 submits that, in fact, the appellant was at her village home-Powari till the year 2011 and she sold out the land through three sale deeds dated 13.03.2010, 25.10.2011 and 11.11.2011. The sale deed dated 13.03.2010 executed by the appellant in favour of Sri Bimal Singh is Annexure-‘A’ to the

counter affidavit to I.A. No.5297 of 2012 filed on behalf of the respondent nos.3 to 6 and 9. As such, the plea of the appellant that she was in Gujarat and Dhanbad till October, 2011 is false and baseless .

Annexure-‘A’ to the counter affidavit to I.A. No.5297 of 2012 filed on behalf of the respondent nos.3 to 6 and 9 shows that the appellant has executed the sale deed on 13.03.2010 in favour of Sri Bimal Singh appearing before the District Registrar Office, Nalanda. As such, the plea taken by the appellant to condone the delay in filing the present appeal that she was in Gujarat and Dhanbad till October, 2011 appears to be false.

I find no justified reason to condone the delay in filing the present appeal.

Accordingly, I.A. No.5297 of 2012 is dismissed. Consequent thereof, this First Appeal is also dismissed.

(Rajendra Kumar Mishra, J)

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