

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.423 of 2008

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1. Awadh Bihari Bhagat
2. Hira Bhagat
3. Hari Bhagat
All sons of late Ram Dayal Bhagat
4. Jagdish Bhagat, son of late Ganesh Bhagat
5. Kesar Devi, daughter of late Ram Dayal Bhagat
All resident of village-Saidpur, P.O.-Parsa, P.S.-Dariyapur, District-Saran at Chapra

.... Appellant/s

Versus

1. Kameshwar Mahto
2. Chandrama Mahto
Both sons of late Dila Mahto
3. Sampati Devi, wife of Kameshwar Mahto
4. Sita Devi, wife of Chandrama Mahto
All are resident of village-Saidpur, P.O.-Parsa, P.S.-Dariyapur, District-Saran at Chapra
5. Radha Rai, son of late Bala Rai
6. Wakil Rai, son of late Bala Rai
Both resident of village-Mahamadpur-Pokhara, P.S.-Dariyapur, P.O.-Parsa, District-Saran.
7. Ram Chandra Rai, son of Bali Rai
8. Bali Rai, son of Dawaleshwar Rai
Both resident of village-Saray Muzaffar, P.S.-Dariyapur, P.O.-Parsa, District-Saran
9. Sunita Devi, wife of late Rama Rai
10. Pintoo Prasad, Rai (Minor), son of late Rama Rai
11. Munna Rai (Minor) son of late Rama Rai
Both respondent nos.10 and 11 represented through their mother and natural guardian Sunita Devi
All are resident of village-Saray Muzaffar, P.S.-Dariyapur, P.O.-Parsa, District-Saran.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

10 10-11-2016

Despite repeated calls, none appears on behalf of the appellants in support of the present Miscellaneous Appeal, though the name of the learned counsel appearing on their behalf is printed in the daily cause list.



From perusal of the office note dated 14.09.2016 as also on examination of the order-sheet of the present Miscellaneous Appeal, this Court finds that the appeal stood rejected on 21.12.2015 against respondent nos.2, 3, 4, 7, 9 , 10 and 11 on account of non-compliance of the Court's peremptory order dated 30.11.2015. However, when the matter was listed with the aforesaid office note, then by an order dated 28.07.2016 the learned counsel appearing on behalf of the appellants was granted four weeks time for taking steps for restoration of this appeal against the aforesaid respondents.

Despite aforesaid indulgence granted by this Court, restoration application was not filed and the matter was once again listed on 30.08.2016. On that date, none had appeared on behalf of the appellants. However, a Bench of this Court, for the ends of justice, granted two weeks further time for taking steps for restoration of this appeal against the aforesaid respondents. Despite all these indulgences granted by this Court, restoration application has not been filed on behalf of the appellants till date for restoration of the instant Miscellaneous Appeal against the respondent nos.2, 3, 4, 7, 9, 10 and 11, which has been pointed out by the office note dated 14.09.2016.

The instant Miscellaneous Appeal has been filed against the judgment and order dated 31st May, 2008 passed by the learned Additional District Judge, Fast Track Court No.-II, Saran at Chapra in Title Appeal No.23 of 2006, whereby the matter was remitted to the trial court with a direction to decide the suit afresh after substituting the heirs of deceased respondents.

From the facts noticed above, it is apparent that in absence of respondent nos. 2, 3, 4, 7, 9, 10 and 11, the issues

raised herein cannot be appropriately decided, as against them the present Miscellaneous Appeal stood dismissed on account of non-compliance of the Court's order dated 30.11.2015. Since then, almost one year has already elapsed and despite indulgences granted by this Court on several occasions, steps have not been taken by the appellants for restoration of this Miscellaneous Appeal as against the aforesaid respondents. Apparently, the present Miscellaneous Appeal has become incompetent and cannot proceed further.

In above view of the matter, the present Miscellaneous Appeal, as a whole, has to fail and is accordingly dismissed as having become incompetent, but there shall be no order as to costs.

(Birendra Prasad Verma, J)

Arvind/-

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