

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.47 of 2014

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1. Purnendu Kumar Oha Son Of Late Ram Bilas Ojha Resident Of Vill. & P.O. Kolhua P.S. Baniapur Distt. Saran Presently Residing At B - 21 Mohalla - Patrakar Nagar Kankarbag P.O. Kankarbag P.S. Patrakar Nagar, Distt. Patna

2. Smt. Namita Ojha Wife Of Dr. Purnendu Ojha Resident Of Vill. & P.O. Kolhua P.S. Baniapur Distt. Saran Presently Residing At B - 21 Mohalla - Patrakar Nagar Kankarbag P.O. Kankarbag P.S. Patrakar Nagar, Distt. Patna

.... Petitioner/s

Versus

1. Sanjay Ojha Son Of Late Dhrubnath Ojha At Vill. & P.O. Kolhua P.S. Baniapur Distt. Saran Presently Residing At Delhi Police Socoeity, Safdarjung New Delhi 110092

2. Dheeraj Ojha Son Of Late Dhrub Ojha At Vill. & P.O. Kolhua P.S. Baniapur Distt. Saran Presently Residing At 162 A / 116 Lake Gardens P.S. Lake Garden Distt./ 24 Pargana Kolkata 700045

3. Smt. Madhuri Ojha Wife Of Late Dhrubnath Ojha At Vill. & P.O. Kolhua P.S. Baniapur Distt. Saran Presently Residing At 162 A / 116 Lake Gardens P.S. Lake Garden Distt./ 24 Pargana Kolkata 700045

4. Kanhaiya Ojha Son Of Ram Bilas Ojha

5. Ajay Ojha Son Of Kanhaiya Ojha

6. Shailendra Ojha Son Of Kanhaiya Ojha

7. Jitendra Ojha Son Of Kanhaiya Ojha All Residents At Village & P.O. Kolhua P.S. Baniapur Distt. Saran Presently Residing At Pandui Compound Boring Road P.S. Budha Colony, Distt. - Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kumar, Adv and Mr. Nand Kishore Singh, Adv

For the Respondent/s : Mr. Udai Shankar Singh, Adv

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 23-11-2016



Heard learned counsel for the petitioners and learned counsel for the Opposite Parties.

This revision application has been filed challenging the legal sustainability of the order by which the learned court below has restored the suit for partition to its original file.

The plaintiff-Opposite Party filed partition suit no. 223 of 1985 seeking partition of the suit property. It transpires from the order dated 03.06.2002 (Annexure-1) that the plaintiff did not comply the earlier direction of the court for payment of court fee and did not remain present on 03.06.2002 which led the court to dismiss the suit for default. It, however, also transpires that the defendants were also not present on 03.06.2002. The petition for restoration was filed on 13.01.2006 praying for restoration of the suit. On the said petition a Miscellaneous Case No. 01 of 2006 was instituted. The parties led their evidence and advanced their submissions. The learned court below by impugned order after holding that the plaintiff was prevented by sufficient cause in not prosecuting the suit earlier has restored the suit to its original file after imposing the cost of Rs. 4000/- on the plaintiff.

Learned counsel for the petitioners has submitted that though there is no error of jurisdiction committed by the court below in passing the impugned order but the court below has committed material irregularity leading to the failure of justice.



Elaborating his submissions it has been contended that the plaintiff-opposite parties had acted negligently in not pursuing the matter and approaching the court for restoration after committing inordinate delay when the suit was dismissed for default on 03.06.2002. It has been propounded that a recalcitrant litigant should not be given undue benefit but the court below in doing so has acted in irregular manner. No other submission on behalf of the petitioners has been made.

Learned counsel for the plaintiff-opposite parties however has submitted that the plaintiffs have established sufficient cause for non-appearance by adducing cogent evidence.

After considering the submissions and perusal of the impugned order it is evident that the suit was dismissed on 03.06.2002 for default as the plaintiff did not appear nor did complied the direction of the court for payment of court fee. The petition for restoration was filed after inordinate delay of 4 years. The learned court below after considering the evidence led on behalf of the parties has upheld the sufficient cause as pleaded by the plaintiff and restored the suit to its original file after imposing the cost of Rs. 4000/- upon the plaintiff. In this regard, it would also be relevant here to take into notice the submission on behalf of the petitioners that the amount of cost is also insufficient.

This Court finds that it was the suit for partition which



was dismissed for default. However the filing of a fresh suit for partition by the same plaintiff is not precluded in law. Though the learned counsel for the petitioner has submitted that if a fresh suit is filed and the earlier suit is not restored, there may be lot of difference as many of the coparceners might have died. This Court does not align with the said submission as in a suit for partition of ancestral property, the partition is done per stir pes and therefore the death of one coparcener would not make any substantial impact on the ultimate decision. The finding of fact by the learned court below on the issue of sufficiency of cause has been recorded after scrutiny of evidence and this Court does not find the same to be perverse or unreasonable. This Court also does not find substance in the submission on behalf of the petitioners that the jurisdiction has been exercised by the court below in an irregular manner leading to failure of justice.

The revision application, therefore, has no merit and is, accordingly, dismissed.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	06.01.17
Transmission Date	N.A

