

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8425 of 2014

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1. Satya Narayan Pandey
2. Jagdish Pandey @ Kameshwar Pandey
3. Rajeshwar Pandey All Son of Late Gowardhan Pandey Resident of village - Chakbnikhan @ Sahi Khan, Nawada, Tola - Bari Nawada, P.S. Dalsingsarai, District - Samastipur

.... Petitioners

Versus

1. Shankar Sah
2. Manoj Kumar Sah @ Manoj Kumar
3. Sharudhan Sah
4. Anil Kumar Sah
5. Ranjeet Kumar Sah All sons of Late Gowardhan Pandey Resident of village - Chakbnikhan @ Sahi Khan, Nawada, Tola - Bari Nawada, P.S. Dalsingsarai, District - Samastipur
6. Ram Pari Devi W/o Late Satnarayan Sah Village - Chakbnikhan @ Sahi Khan, Nawada, Tola - Bari Nawada, P.S. Dalsingsarai, District - Samastipur
7. Sunita Devi W/o Ramjee Sah Vill. - Gnatho Barharda, P.S. Gratho, Distt. - Samastipur
8. Nirmala Devi W/o Suresh Sah Resident of Village - Mansurchak, P.S. Mansurchak, Distt. - Begusarai

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Ranjeet Kumar Thakur, Adv.
Mr.Devendra Kumar, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

5 31-03-2016

Heard the learned counsel for the petitioners.

The petitioners are the defendants in the suit which was decreed by judgment and decree dated 03.01.2009 and thereafter the petitioners have filed T.A.No.20/2009. During the pendency of the appeal, the petitioners filed petition on 11.02.2014 under Order 41 Rule 27 C.P.C. for adducing a sale deed dated 18.06.1906 by way of additional evidence. The same



prayer has been turned down by the appellate court below also on the ground of delay and further on the ground that there had already been a direction by this Court by order dated 22.11.2013 passed in CWJC No.6795/2010 for disposal of the appeal within a period of four months. The present application under Article 227 of the Constitution of India has been filed against this order.

The learned counsel for the petitioners has not been able to explain the delay and laches on the part of the petitioners in not filing the petition promptly before the appellate court below. However, it has been prayed that this Court has ample power to allow such prayer by imposing even cost.

After considering the submissions and perusal of the impugned order, the fact is manifest and has also been accepted by the petitioners that the petitioners who were defendants in the suit had filed the petition in the suit itself for adducing the sale deed in evidence but the said prayer was rejected by the learned court below by order dated 27.08.2008. After the decree passed in the suit, the present petitioners filed the appeal in the year 2009. It further transpires that an order on 22.11.2013 has been passed by this Court in CWJC No.6795/2010 directing for disposal of the appeal within a period of four months. Till then also it does not appear that the petitioners had filed any petition in

the learned court below for adducing this sale deed as additional evidence. It was only on 11.02.2014 when the argument was going on in the appeal that the petition was filed on behalf of the petitioners for adducing the sale deed by way of additional evidence. Such a course at the late stage of the appeal is apparently to circumvent the early disposal of the appeal by producing a new evidence at the argument stage which may involve granting opportunity to the other side for rebuttal evidence. From the materials on record as well as from the impugned order, it does not appear that the petitioners have furnished any cogent reason for the delay and or have established the due diligence. The learned court below therefore has rightly exercised its discretion in not entertaining the said petition. This Court is not inclined to interfere with the discretion exercised by the learned court below in exercise of the jurisdiction under Article 227 of the Constitution of India.

The application is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

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