

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5109 of 2014**

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Birendra Singh @ Bijendra Singh & Anr

.... .... Petitioner/s

Versus

Chandrika Singh & Anr

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Shivendra Kumar Sinha

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR**  
**SAHOO**

**ORAL ORDER**

2 22-01-2016

Heard learned counsel Mr. Shivendra Kumar Sinha for  
the defendants-petitioners.

It appears that the plaintiffs-respondents' Title Suit No.29 of 1996 was dismissed on 15.03.1999. On 13.04.1999 application under Order 9 Rule 9 CPC was filed by the plaintiffs for setting aside that dismissal order, which was registered as Miscellaneous Case No.02 of 1999. Both the parties adduced evidences and then the learned Subordinate Judge-I by the impugned order dated 26.04.2012 allowed the said miscellaneous case and restored Title Suit No.29 of 1996.

It further appears that two applications were filed by the defendants in the aforesaid suit and on 17.09.1998 and 23.12.1998 the court below directed the plaintiffs to be present before the Court and receive the application filed by the defendants otherwise the suit shall be dismissed. On 15.03.1999 the plaintiffs did not

appear and the court below dismissed the suit. After evidences of both the parties the learned court below considered that the application under Order 9 Rule 9 CPC is not time barred as it is filed within 30 days and, therefore, allowed the said miscellaneous case. It may be mentioned here that the order dated 15.03.1999 whereby the suit was dismissed itself was misconceived because the plaintiffs did not receive the application filed by the defendants. Therefore, the court below could have heard the defendants on the application filed by the defendants but because of non-receiving the application by the plaintiffs, the plaintiffs' suit could not have been dismissed.

In such view of the matter the impugned order needs no interference in supervisory jurisdiction and accordingly, this writ application is dismissed.

**(Mungeshwar Sahoo, J)**

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