

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.134 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 18853 of 2010
Along with
Interlocutory Application No.488 of 2016**

- =====
1. Kiran Devi Bhimsaria wife of late Janardan Prasad Bhimsaria@Late Janardan Bhimsaria.
 2. Vaibhav Bhimsarai Son of late Janardan Prasad Bhimsaria@Late Janardan Bhimsaria
 3. Deepak Bhimsria Son of late Janardan Prasad Bhimsaria@Late Janardan Bhimsaria All Resident of Mohalla- Saharsa, Municipal Area, Ward no. 2, P.s Saharsa, District Saharsa.

.... Appellant/s

Versus

1. Bhimsaria Dharmshala through Trustee (Custodian) Narayan Prasad Bhimsaria, son of late Madan Lal Bhimsaria.
2. Narayan Prasad@Narayan Prasad Bhimsaria.
3. Mahadev Prasad
4. Brahmanand Prasad Both are Son of late Madan lal Bhimsaria
5. Shankar Prasad Bhimsaria Adopted son of Ramdeo Bhimsaria
6. Kailash Bhimsaria.
7. Madhav Bhimsaria Both are Sons of late Radhey Shyam Bhimsaria
8. Leela Devi Wife of late Radhey Shyam Bhimsaria. All Residents of Mohalla- saharsa, Municipal Area, ward no. 2, P.s Saharsa, District Saharsa.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arjun Pd. Keshri, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 02-12-2016

Re.: Interlocutory Application No.488 of 2016

The application is for condonation of delay of 41 days in filing of the present Letters Patent Appeal.

For the reasons mentioned in the application, we find that



sufficient cause is made out for condonation of delay. Consequently, we condone the delay in filing of the present Letters Patent Appeal.

Interlocutory Application stands allowed accordingly.

Re.: Letters Patent Appeal No.134 of 2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench of this Court on 3rd August, 2015 whereby, the order passed by the Civil Court on 25th September, 2007 in Title Suit No.25 of 1993 was not interfered with. By the said order, an application for permission to produce additional documents remained unsuccessful.

The Hon'ble Supreme Court in the case of Jogendrasinhji Vijaysinghji v. State of Gujarat & Ors. reported as (2015) 9 SCC 1 has held that an order passed by the learned Single Judge in a proceeding arising out of an order passed by the Civil Court is not amenable to intra court appeal as such order was passed under Article 227 of the Constitution of India and no Letters Patent Appeal against such order is contemplated. It was held to the following effect:-

“18. The aforesaid authoritative pronouncement makes it clear as day that an order passed by a civil court can only be assailed under Article 227 of the Constitution of India and the parameters of challenge have been clearly laid down by this Court in series of decisions which have been referred to by a three-Judge Bench in Radhey Shyam; (2015) 5 SCC 423, which is a binding precedent. Needless to emphasise that once it is exclusively assailable under Article 227 of the Constitution of India, no



intra-court appeal is maintainable.”

In view of such order, we find that the present Letters
Patent Appeal is not maintainable and is dismissed.

(Hemant Gupta, ACJ)

(Vikash Jain, J)

Sunil

AFR/NAFR	N. A. F. R.
CAV DATE	N. A.
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