

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7012 of 2013

Mathura Prasad, Son of Jagdeo Singh, Resident of Village - Ankorha, P.S. - Obra,
District - Aurangabad

.... Petitioner

Versus

1. Tannu Singh, Son of Bisheshwar Gope, Resident Of Village - Rasulchak Bigan Bigha, P.S. - Daudnagar, District - Aurangabad
2. Jai Goyind Singh Son Of Tannu Singh Yadav Resident Of Village - Rasulchak Bigan Bigha, P.S. - Daudnagar, District - Aurangabad
3. Sheogovind Singh Son Of Tannu Singh Yadav Resident Of Village - Rasulchak Bigan Bigha, P.S. - Daudnagar, District - Aurangabad
4. Ranvijai Singh Yadav Son Of Tannu Singh Yadav Resident Of Village - Rasulchak Bigan Bigha, P.S. - Daudnagar, District - Aurangabad
5. Dadan Singh Yadav Son Of Sheogovind Singh Yadav Resident Of Village - Rasulchak Bigan Bigha, P.S. - Daudnagar, District - Aurangabad
6. Malti Singh Yadav Son Of Sheogovind Singh Yadav Resident Of Village - Rasulchak Bigan Bigha, P.S. - Daudnagar, District - Aurangabad
7. Butai Yadav Son Of Dasrathi Yadav Resident Of Village - Bhagwan Bigha, P.S. - Daudnagar, District - Aurangabad
8. Harihar Singh Son Of Etwar Gope Resident Of Village - Rasulchak Bigan Bigha, P.S. - Daudnagar, District - Aurangabad
9. Lakhan Singh Son Of Etwar Gope Resident Of Village - Rasulchak Bigan Bigha, P.S. - Daudnagar, District - Aurangabad
10. Ratan Singh Yadav Son Of Etwar Gope Resident Of Village - Rasulchak Bigan Bigha, P.S. - Daudnagar, District - Aurangabad
11. Lakhan Yadav Son Of Bipat Yadav Resident Of Village - Rasulchak Bigan Bigha, P.S. - Daudnagar, District - Aurangabad
12. Bhondu Yadav Son Of Bipat Yadav Resident Of Village - Rasulchak Bigan Bigha, P.S. - Daudnagar, District - Aurangabad
13. Charitar Yadav Son Of Bipat Yadav Resident Of Village - Rasulchak Bigan Bigha, P.S. - Daudnagar, District - Aurangabad
14. Sivanandan Singh Yadav Son Of Lakha Singh Resident Of Village - Rasulchak Bigan Bigha, P.S. - Daudnagar, District - Aurangabad
15. Sampat Yadav Son Of Name Not Known To The Petitioner Resident Of Village - Rasulchak Bigan Bigha, P.S. - Daudnagar, District - Aurangabad
16. Kailash Bhagat Son Of Prayag Bhagat Resident Of Village - Purani Sahar, Daudnagar, District - Aurangabad
17. Sobha Nath Singh Son Of Name Not Known To The Petitioner Assistant Teacher, Ashoka M.A.H. School, Daudnagar At Rasulchak Bigan Bigha, P.S. - Daudnagar, District - Aurangabad

.... Respondents

Appearance :

For the Petitioner/s : Mr. Phulendra Kumar

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

ORAL JUDGMENT

Date: 11-02-2016



Challenge in the present writ application is an order passed on 21.01.2013 by the learned Munsif, Aurangabad in Title Suit No. 261 of 1964 whereby an application filed by the petitioner for grant of mesne profit was declined.

Petitioner filed a suit for possession claiming the following three reliefs :-

I. That it be decreed and declared that the plaintiff is owner of the lands in suit.

II. That possession of the lands in suit be confirmed or restored to the plaintiffs.

III. That in case plaintiff be found to have been dispossessed a decree for mesne profit from the date of the suit be passed. “

The said suit was dismissed in the first instance by the trial court and in appeal by the lower appellate court. Subsequently, in second appeal the matter was remanded back to the lower appellate court. On remand, the lower appellate court decreed the suit on 16.10.1985. Relevant extract from the decree passed by the lower appellate court reads as follows:-

“It is ordered that judgment and the dismissal order passed by the learned Munsif is not sustainable in law, as well as in fact as such appeal is allowed. The judgment of the concerned Munsif is set aside on contest and suit is decreed with costs.”

Thereafter the petitioner filed an application for

grant of mesne profit before the trial court which was earlier declined but still again an application was filed which was declined by the order impugned in the present writ application.

After a suit stands decided by the lower appellate court, no application for grant of mesne profit could be made before the trial court. The decree passed by the trial court stands merged with the decree passed by the lower appellate court. The decree executable is that of the lower appellate court which has not granted *mesne profit*. Therefore, the petitioner could not seek mesne profit from the trial court after the decision by the lower appellate court.

In view thereof, I find no merit in this writ application. It is dismissed accordingly.

(Hemant Gupta, J)

Amin/-

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