IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.132 of 2013

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1. Sachchida Nand Tiwary.
2. Anil Kumar Tiwary @ Anil Tiwary.
3. Sunil Tiwary @ Sunil Kumar Tiwary. All are sons of Jay Govind Tiwary. Resident of Village- Kori, P.O. Khaira, Police Station- Bhabua District- Kaimur (Bhabua) at Present Village and Post Office Ghataon Tola Fakarabad, Police Station- Kudara, District- Kaimur (Bhabua).

.... Petitioner/s

Versus

1. Bhuneshwar Yadav Son of Late Ram Nath Yadav.
2. Satyendra Kumar Yadav Son of Bhuneshwar Yadav.
3. Smt. Panchari Devi, Wife of Bhuneshwar Yadav. All are resident of Ghataon Tola, Saraiya Post Office- Phakarabad, Police Station- Kudara, District Kaimur, Bhabua.
4. Rajendra Pandey Son of Ram Janam Pandey.
5. Rameshwar Pandey Son of Rajendra Pandey. Both Resident of Village- Dhakahari, Police Station- Bhagwanpur, District- Kaimur, Bhabua.
6. Smt. Manju Devi Wife of Sri Om Prakash Tiwary, Resident of Village- Akhlaspur, Police Station- Bhabua District-Kaimur.
7. Smt. Shanti Devi, wife of Sri Sheo Pujan Shukla, Resident of Village- Sonebarasa, Post Office- Khujura, Police Station- Balawan, District- Kaimur, Bhabua.
8. Smt. Lila Devi, Wife of Sri Agand Mishra, Resident of Village- Gobhamkha, Police Station- Bhagwanpur, District- Kaimur, Bhabua.
9. Jay Govind Tiwary.
10. Ram Govind Tiwary.
11. Hari Govind Tiwary Opposite Party No. 9 to 11 son of Late Yamuna Tiwary.
12. Ashu Tiwary Son of Ram Gobind Tiwary.
13. Mathura Tiwary.
14. Abhay Tiwary.
15. Bachan Tiwary. Opposite Party No. 13 to 15 sons of Sri Hari Govind Tiwary.
16. Thari Tiwary.
17. Rabi Tiwary Both Minor son of Sri Sachidanand Tiwary under guardian at Sri

Sachidanand Tiwary. All are Opposite Party No. 9 to 17 are resident of Village- Kori, Police Station- Bhabua, District- Kaimur (Bhabua).

18. Sri Niwas Choubey @ Dubul Choubey
19. Sri Prem Chand Choubey.
20. Sri Lakshman Choubey All are Opposite Party No. 18 to 20 son of Late Ram Sakal Choubey.
21. Sri Ashok Choubey.
22. Sri Komal Choubey.
23. Sri Komal Choubey.
24. Pintu Choubey all are Opposite Party no. 21 to 24 son of Sri Niwas Choubey @ Dudul Choubey.
25. Ayodhya Choubey Son of Lakshman Choubey All are Opposite Party no. 18 to 25 resident of Village- Phakarabad, Police Station- Kudra, District- Kaimur.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Ranjeet Choubey, Adv.
Mr. Kamala Kant Tiwary, Adv.
For the Respondent/s : Smt. Arti Kumari, Adv.
Mr. Jay Prakash Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT
Date: 16-05-2016

Heard learned counsel for the parties in the limitation petition (I.A. No. 6014 of 2013) which has been filed for condonation of delay of merely 4 years in filing this revision application.

This revision application has been filed against the order dated 19.05.2009 by which the learned court below has allowed the prayer on behalf of the plaintiffs for withdrawal of the suit. From the perusal of the impugned order, it transpires that when the title suit was taken up, the petition dated 04.02.2004 (Annexure-1) filed on behalf

of the plaintiff-petitioners was pressed with prayer to allow the said petition and permit the plaintiffs to withdraw the said suit. It further transpires from the impugned order dated 19.05.2009 that the specific query was made by the court from the learned counsel for the petitioners as to whether the plaintiff-petitioners intended to withdraw the suit and in reply learned counsel for the plaintiff-petitioners in the learned court below repeated his prayer for withdrawal of the suit. In the facts and circumstances, the learned court below has allowed the prayer of the plaintiff-petitioners to withdraw the suit precluding the plaintiff-petitioners for instituting the fresh suit on the said cause a action.

It has not been stated anywhere in the interlocutory application that the plaintiff-petitioners had no knowledge of the aforesaid order and only fact which has been stated that earlier a civil revision application no. 2110 of 2009 against the order dated 21.10.2009 has been filed by the plaintiff-petitioners. From the perusal of the revision application also it does not appear that any averment has been made regarding the error of jurisdiction or material irregularity committed by the learned court below in passing the impugned order or the absence of knowledge of the plaintiff-petitioners.

In the backdrop of the aforesaid facts, this Court does not find that the plaintiff-petitioners have established sufficient cause for

condonation of delay in filing this revision application.

The interlocutory application (I.A. No. 6014 of 2015) is accordingly dismissed. The revision application is consequently dismissed as barred by limitation.

Devendra/- **(V. Nath, J)**

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