

IN THE HIGH COURT OF JUDICATURE AT PATNA
First Appeal No.134 of 2011

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Birendra Prasad, Son of Late Harihar Prasad, R/O Kharkhura, Anchal-Chandauti, P.O.- Delha, District- Gaya.

.... Appellant/Plaintiff

Versus

1. Om Prakash
2. Suresh Prasad
3. Babloo Prasad, All sons of Late Hrihar Prasad.
4. Pappu Prasad (minor), son of Om Prakash under the guardianship of his natural father Om Prakash well wishers and next friend., All are resident of village Kharkhua, Post- R.S. Gaya, Anchal-Chandauti, District Gaya.
5. Sumitra Devi, W/O Raj Kishore Singh of village Imamanj, P.O. Pali, P.S. Paliganj, District Patna.

.... Respondents/Defendants.

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Appearance :

For the Appellant/s : Mr. Rakesh Kumar, Advocate.

For the Respondent/s : Mr. Surendra Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL ORDER

8 29-03-2016

I.A. No. 4753 of 2011

Heard learned counsel for the appellant and the learned counsel for the respondent no. 2.

This Interlocutory Application, under Section 5 of the Limitation Act, has been filed on behalf of the appellant to condone the delay of 1 year 11 months and 27 days in filing this appeal.

The ground as detailed in Interlocutory Application is that in course of argument in Partition Suit No. 173 of 2000/41 of 2000 the plaintiff/appellant suffered from Tuberculosis and he was under treatment of Dr. M. Hidayatullah, in Gaya in between 18.03.2009 to 12.12.2009. The plaintiff-appellant while got some



relief to tuberculosis but he was diagnosed with Hernia then he went to Calcutta and he was operated by Dr. R.K. Saha and discharged on 12.01.2010. While the appellant regained his health after operation but he was under treatment for Tuberculosis from 15.01.2010 to 15.07.2011. Thus, the appellant was under treatment since 18.03.2009 to 15.07.2011. In the meantime, the court of Sub-Judge-II, Gaya, pronounced the judgment on 22.04.2009 in Partition Suit No. 173 of 2000 and the plaintiff-appellant could not appear to this Court and file the appeal till 15.07.2011 and the plaintiff-appellant filed the appeal on 18.07.2011.

Learned counsel for the defendant-respondent no.2 submits that it is not true that the plaintiff-appellant was seriously ill and he was not able to move anywhere. In fact, after passing the judgment in Partition Suit No. 173 of 2000 the plaintiff-appellant appeared before the District Sub-Registrar, Gaya and executed the sale deeds on 29.12.2010, 25.02.2011, 01.03.2011, 29.03.2011 and 31.03.2011 and he appeared in Complaint Case No. 1765 of 2015 before the court of Judicial Magistrate Ist class, on 27.07.2010 and examined as complainant witness no. 2. The plaintiff-appellant also sworn an affidavit on 03.11.2010 in Mutation Appeal No. 106 of 2010 in the court of Collector, Gaya. As such, the plea of illness in between 18.03.2009 to 15.07.2011 taken by the plaintiff-appellant to condone the delay of about 1 year 11 month and 27

days in filing the present appeal is against the truth and false.

Learned counsel for the plaintiff/appellant has not disputed the contention of execution of the five sale deeds as detailed in paragraph 5 of the rejoinder to the I.A. No. 4753 of 2011 in between 29.12.2010 to 31.03.2011 and appearance before the Judicial Magistrate Ist class, Gaya on 27.07.2010 for giving his evidence and also on 03.11.2010 before the court of Collector swearing an affidavit in connection with Mutation Appeal No. 106 of 2011.

Thus the ground of illness as taken by the plaintiff/appellant to condone the delay of one year eleven month and twenty seven days in filing the appeal appears to be not true and sufficient. Accordingly, Interlocutory Application No. 4753 of 2011 to condone the delay in filing the appeal is dismissed and thus the appeal is also dismissed.

(Rajendra Kumar Mishra, J)

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