

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16593 of 2014

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Md. Noorul Islam & Ors.

.... Petitioner/s

Versus

Md. Kalam & Anr.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukund Mohan Jha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 03-02-2016

Heard learned counsel for the petitioners.

This application under Article 227 of the Constitution of India has been filed by the plaintiffs-petitioners for setting aside the order dated 30.06.2014 passed in Miscellaneous Appeal No. 16 of 2008 by Ad-hoc Additional District Judge-I, Muzaffarpur, whereby the lower appellate court reversed the order passed by the trial court dated 29.08.2008 passed in Miscellaneous Case No. 02 of 2008.

It appears that the plaintiffs filed partition suit. The suit was decreed *ex-parte*. Thereafter, the defendants filed an application under Order 9 Rule 13 C.P.C. for setting aside the *ex-parte* decree. The trial court recorded finding that the defendants had knowledge about the *ex-parte* decree and, therefore, the application filed under Section 5 of the Limitation Act is not applicable. Against the said order, the defendants filed

Miscellaneous Appeal No. 16 of 2008. The lower appellate court has held that the question of limitation is mixed question of law or fact and it cannot be rejected at the threshold without giving liberty to the parties to adduce evidence in support of the case pleaded in the application. Accordingly, the matter has been remanded to the court below.

In view of the facts and circumstances of the case, since the matter has been remanded to the court below granting liberty to the respondents to adduce evidence in support of their case, no case for supervisory jurisdiction under Article 227 of the Constitution of India is made out. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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