

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.64 of 2016

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Keshaw Prasad Sharma son of late Ramnath Sharma, resident of village-Got
Kharik, P.S. Kharik, Naugachhia, District-Bhagalpur. Petitioner/s

Versus

1. Smt. Manju Devi wife of Shri Harendra Prasad @ Harendra Mandal.
2. Smt. Sulekha Devi wife of Umesh Prasad.
3. Smt. Mantu Devi wife of Sri Brahmdeo Prasad.
4. Smt. Karuna Devi, wife of late Upendra Modi.
5. Smt. Sudha Devi wife of Sri Arjun Mandal, all daughters of Rameshwar Modi
and late Girija Devi, resident of village-Maheshpur, (Gerawari), P.S. Korha,
P.O. Gerawari, District-Katihar.
6. Smt. Deoki Devi wife of Bhagwan Modi daughter of late Dhanushdhari
Sharma, resident of village Pakkisaria, P.S. Kahalgaon, District-Bhagalpur.
7. Nageshwar Prasad Sharma, son of Gobardhan Sharma.
8. Chakradhar Sharma, Son of Prayag Sharma.
9. Smt. Manorama Devi wife of Chakradhar Sharma, all residents of village-Got
Kharik, P.S. Kharik Bazar, District-Bhagalpur. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Upendra Prasad, Adv.
Mrs. Veena Kumari Jaiswal, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-03-2017

Heard learned counsel for the petitioner.

Earlier, the petitioner had filed C.W.J.C. No. 21167 of
2012 against the impugned order dated 09.08.2012 by which the
learned court below has dismissed the Misc. Case No. 22 of 2009
filed for restoration of Title Suit No. 31 of 1994 which was dismissed
for default on 04.05.2001.

By order dated 13.01.2016, the prayer on behalf of the



petitioner for converting the said civil writ jurisdiction case into a civil revision application was allowed.

The matrix of facts discloses that the T.S. No. 31 of 1994 was filed by the present petitioner as plaintiff. In the said suit, the defendants appeared and filed their written statement. By order dated 04.05.2001 (Annexure-2), the above said suit was dismissed for default holding that no pairvi was being done by the plaintiff since 06.06.2000. The plaintiff-petitioner thereafter filed Misc. Case No. 22 of 2009 on 30.10.2009 praying for restoration of T.S. No. 31 of 1994 on the ground that he was suffering from tuberculosis and for that reason he could not appear in the suit. The learned court below, after considering the evidence including the certificate of the doctor as produced by the plaintiff, has come to the conclusion that the plaintiff has failed to establish sufficient cause for restoration of the T.S. No. 31 of 1994 which was dismissed for default on 04.05.2001.

Learned counsel for the petitioner, at the outset, has submitted that there is no error of jurisdiction committed by the learned court below in passing the impugned order and has also propounded that it would be rarest of rare case that the error of jurisdiction would be established while pursuing a revision application. It has been further submitted that the learned court below has not considered the medical evidence as adduced on behalf of the



plaintiff and in any view of the matter, the evidence adduced on behalf of the plaintiff have not been properly considered. The prayer has also been made on behalf of the petitioner for adjournment in order to file supplementary affidavit explaining lapse of nearly 8 years in filing of the restoration application on 30.10.2009 when the suit was dismissed for default by order dated 04.05.2001.

After considering the submissions and the materials on record, it is evident that the learned court below while passing the impugned order has taken into consideration the medical certificate as produced by the plaintiff in support of his illness. It has also been further found that the medical certificate only supports the illness of the plaintiff from 18.04.2000 to 30.05.2001 but there is no explanation for filing the restoration on 30.10.2009. The findings recorded by the appellate court below are clearly on the basis of the evidence on record which are acceptable. The plaintiff-petitioner has evidently failed to furnish any explanation nor there is evidence aliunde for filing the restoration application 30.10.2009, and this Court now declines the prayer for adjournment on behalf of the petitioner for filing the supplementary affidavit in order to furnish the explanation for the period between 04.05.2001 and 30.10.2009 in face of the fact that no such explanation was furnished in the learned court below. This Court in exercise of its revisional jurisdiction



cannot embark upon recording a finding of fact on appreciation of evidence.

This Court, accordingly, holds that the learned court below has committed no error of jurisdiction or material irregularity in passing the impugned order.

The revision application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	03.05.2017
Transmission Date	

