

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.497 of 2016
Arising out of
Civil Writ Jurisdiction Case No. 3328 of 2014**

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Mr. Deomani D/o Late Vidyawati of Village and P.O. - Hasanpur Pipra, District - Arwal, Presently R/s of Chitrkut Nagar, Road No. 3, Patna-800012.

.... Appellant/s

Versus

1. Nathuni Chaudhary, Son of Late Tribeni Chaudhary,
 2. Mithilesh Chaudhary
 3. Sikandar Chaudhary,
 4. Jaichand Chaudhary,
 5. Jai Prakash Chaudhary, All are sons of Nathuni Chaudhary.
 6. Jayendra Chaudhary, Son of Nathuni Chaudhary, Minor under the Guardianship of His Father Next Friend and Well Wisher.
 7. Most Parano Kuar, widow of Late Ramchandra Chaudhary.
 8. Vijay Kumar Chaudhary, Son of Late Ramchandra Chaudhary,
 9. Rajeev Raushan Chaudhary
 10. Wicky Chaudhary, All are sons of Vijay Kumar Chaudhary
 11. Most. Sudama Devi @ Tileshwary Devi, Widow of Late Radhika Chaudhary
 12. Rintu Chaudhary, Son of Late Radhika Chaudhary
- All Residents of Village - Hasanpur Pipra, P.S. and District - Arwal (Jehanabad) Bihar by Religion Hindu, By Profession Cultivator House Wife and Dependents Respectively.

Respondent 1st Set

13. Ashok Chaudhary, Son of Late Ramchandrika Chaudhary
14. Late Mundrika Chaudhary, Son of Late Sarwan Chaudhary by LR
15. Binay Chaudhary
16. Bala Chaudhary
17. Nandu Chaudhary All Sons o Late Mundrika Chaudhary,
18. Raushan Chaudhary, Son of Binay Chaudhary Minor Under Guardianship of his father well Wisher and Next Friends Binay Chaudhary
19. Late Ram Ishwar Chaudhary, Son of Late Sarwan Chaudhary, All residents of village - Hasanpur Pipra, P.S. and District - Arwal (Jehanabad) (Bihar) by Religion Hindu, by Profession Cultivator House Wife and Dependents Respectively.

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Sheopujan Singh, Advocate.
For the Respondent/s : Mr.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 21-02-2017



The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 11th of January, 2016 in CWJC No. 3328 of 2014 whereby, the writ application filed under Article 226 and 227 of the Constitution of India was not found to be maintainable since the order passed by the District Judge, Jehanabad in Title Appeal No. 17 of 2013 was found to be a decree, even though the Title appeal was dismissed as barred by limitation.

2. The appellant challenged the decree passed by the learned Sub-Judge-III, Jehanabad by way of a Title appeal. The learned District Judge dismissed the appeal as barred by limitation having been preferred after 13 years, though as per the learned counsel for the appellant, the delay is of 9 years, 9 months and 18 days.

3. The fact remains that an order passed by the learned District Judge was challenged before this Court in a writ proceeding under Article 226 and 227 of the Constitution of India.

4. The learned Single Bench has held that dismissal of an application by District Judge for condonation of delay amounts to decree, therefore, such order cannot be challenged under Article 226 of the Constitution of India in a writ proceeding. The order is thus an appealable order and only second appeal could be filed.

5. Even, if the supervisory jurisdiction of this Court is



invoked, then the intra court appeal is not maintainable as such order is passed in exercise of jurisdiction conferred under Article Article 227 of Constitution of India in view of the Supreme Court Judgment reported as Jogendrasinhji Vijaysinghji v. State of Gujarat, (2015) 9 SCC 1).

6. In view thereof, we do not find that the present Letters Patent Appeal is maintainable. The same is dismissed. It is open to the appellant to avail such other remedy as may be available to the appellant in accordance with law.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

Mishra

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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