

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.12 of 2012

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1. Sunaina Devi @ Barli, wife of Shri Kameshwar Thakur.
 2. Nirmal Kumar Thakur, Son of Kameshwar Thakur, Both are residents of village – Basopatti, Tola-Bhaluahi, P.O. and P.S.-Basopatti, District-Madhubani.
 3. Neelam Devi, Wife of Awadhesh Thakur, Resident of Village – Sakhbasi, P.O and P.S.-Harlakhi, District-Madhubani.

.... Appellant/s

Versus

1. Nagendra Pd. Suman, Son of Ram Narain Thakur.
2. Ram Chandra Thakur, Son of Late Saryug Thakur. Both are residents of Mauza-Basopatti, Tole Bhaluahi, P.O. and P.S.-Basopatti, District-Madhubani.

Respondent 1st Set

3. Smt. Sitali Devi, Wife of Sri Turant Pandey, Residents of Mouza, Ghorbanki, P.O. and P.S.-Basopatti, District-Madhubani.

Respondent 2nd Set

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Ashok Kumar Prasad, Advocate.

For the Respondent/s : None.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

Date: 31-08-2017

Re.: I.A. No. 5238 of 2009

None turned up to press the aforesaid interlocutory application filed by Parashu Ram Thakur and Balram Thakur, sons of



Late Ram Sewak Thakur for their substitution as proposed respondents in this appeal. Accordingly, the aforesaid petition is hereby dismissed as not pressed.

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Learned counsel for the appellants is present, but none turned up on behalf of the respondents to advance the argument in this appeal despite service of notice.

2. Heard learned counsel for the appellants and perused the record.

3. This appeal has been filed against the order dated 17.12.2008 passed by the 1st Additional District Judge, Madhubani in Title Appeal No. 21 of 1999 whereby learned lower court rejected the substitution petition, delay condonation petition and petition for setting aside the abatement filed by the appellants as the appellant did not turn up to press the said petitions.

4. Factual matrix of the case is that the appellants have filed a Title Suit No. 13 of 1988 for declaration of the gift deed dated 30.07.1986 and sale deeds dated 12.11.1987 and 21.10.1987 as forged, fabricated and void *ab initio*. The aforesaid Title Suit was dismissed by the learned Munsif-II, Madhubani vide judgment dated 24.04.1999 and decree dated 15.05.1999. The appellant filed the Title Appeal No. 21 of 1999 against the said dismissal order. During the



pendency of the said appeal, Respondent no.1-Ram Sevak Thakur passed away on 09.04.2005 and the information regarding death of the respondent no.1 was given to the appellants by other respondents by filing a petition on 18.06.2005. Thereafter, the appellants filed substitution petition on 21.07.2005 and also filed a delay condonation petition and a petition for setting aside the abatement on 20.08.2005. But as the appellant did not turn up to press the aforesaid three petitions, learned lower court rejected the said petitions as not pressed without entering into the merit of the petitions on 17.12.2008.

5. Being aggrieved and dissatisfied with the aforesaid order, the appellants have preferred the present appeal.

6. It is submitted by learned counsel for the appellants that on learning the date of death of respondent no.1 on the basis of the petition filed by the other respondents on 18.06.2005, they filed a substitution petition on 21.07.2005 and immediately, thereafter, filed a delay of condonation petition and a petition for setting aside the abatement on 20.08.2005. But without hearing the appellants on the aforesaid three petitions, learned lower court rejected the aforesaid three petitions.

7. From perusal of the record, it appears that during the pendency of the Title Appeal No. 21 of 1999, respondent no.1-Ram



Sevak Thakur had died on 09.04.2005. The information of death of the aforesaid respondent was given to the appellant vide petition dated 18.06.2005 by the other respondents. Then the appellants filed a petition for substitution of the heirs of the deceased respondent no.1, namely, Ram Sevak Thakur on 21.07.2005 and also filed a petition for condonation of delay and a petition for setting aside the abatement both dated 20.08.2005. As the appellants did not turn up before the learned lower court to press their aforesaid petitions, it was rejected by him on 17.12.2008 as not pressed without entering into the merit of the aforesaid petitions. It is settled principle of law that justice should be done after hearing the parties and injustice should not be done shutting down the opportunity of hearing to the parties merely on technical ground.

8. In the facts and circumstances of the case, the impugned order passed by the learned lower court is set aside and the matter is remitted back to the court below to dispose of the aforesaid petitions on merit after hearing the parties. Accordingly, this appeal stands disposed of.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	12.09.2017
Transmission Date	

