

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1968 of 2015
IN
Civil Writ Jurisdiction Case No. 1853 of 2004**

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1. Butai Bhagat Son Of Late Ram Nandan Bhagat.
2. Mohan Bhagat Son Of Late Ram Nandan Bhagat. Both Resident Of Village-
Purani Sahar, P.S.- Daudagar, District- Aurangabad (Bihar).

.... Appellant/s

Versus

1. The State Of Bihar.
2. The Sub Divisional Magistrate, Daudnagar, Aurangabad.
3. Krishna Malakar Son Of Late Hari Prasad Malakar.
4. Tripurary Malakar Son Of Late Hari Prasad Malakar.
5. Murary Malakar Son Of Late Hari Prasad Malakar. Serial No. 3 To 5 Are
Resident Of Village- Purani Sahar, P.S.- Daudnagar, District- Aurangabad (Bihar),
Prresently Residing At Village- Amatoli, Sitapur, P.S.- Sitapur, District- Surgaja (Chhatisgarh).
6. Malti Devi Wife Of Shashi Kumar Singh. Resident Of Mohallah-Ward No.10,
Daudnagar, P.S.- Daudnagar, District- Aurngabad (Bihar).

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prabhat Kumar Dipak

For the Respondent/s : Mr. Syed Hussain Majeed, AC to SC 6

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 30-01-2017

Delay of 97 days is condoned for the reasons indicated. I.A.

No.8755 of 2015 is allowed. The matter is thereafter heard on
merits.

The order dated 6.4.2015 passed in CWJC No.1853 of
2004 by the learned Single Judge dismissing the writ application,
holding that the writ petition in the given facts did not survive,
therefore, no relief could be extended. The appellants, who were



also petitioners before the writ Court, therefore, have chosen to file the appeal under Letters Patent.

From a reading of the order passed by the learned Single Judge it emerges that the appellants have fought battles for the property in question starting with a suit, then a first appeal, second appeal and finally even an SLP, which has all gone against them. When it came down to enjoying the fruits of the decree and the judgment, an effort was made to derail by filing a petition before a Sub divisional Magistrate trying to create it to be a law and order issue. After considering all these aspects of the matter and clearly holding that the findings emerging from second appeal as res judicata against the appellants, the learned Single Judge rightly in the interest of justice as also to prevent dishonest act of these appellants in frustrating the fruit of the decree, had dismissed the writ application.

The order does not suffer from any vice. The appeal lacks merit. In fact, it is one of those cases where the Court should impose exemplary cost upon the appellants for unnecessarily litigating on a cause which has no basis.

The plea of the counsel for the appellants that they are poor people does not appeal to the Court because if they have capacity to litigate up till Hon'ble Supreme Court, they can surely make



payment of a sum of Rs.10,000/- to the Patna High Court Legal Services Committee to be utilized for poor litigant, who may be in need.

The appeal is dismissed with a cost of Rs.10,000/- The cost will be paid within a period of eight weeks from today or else it will be recoverable as a decree.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

sk

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

