

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.17 of 2016

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1. Suresh Kumar @ Suresh Prasad Kumar Son of Late Siya Ram Kumar
2. Janardan Kumar @ Janardan Prasad Kumar Son of Late Siya Ram Kumar
3. Parmanand Kumar @ Pramod Kumar Son of Late Siya Ram Kumar
4. Ramesh Kumar Son of Late Siya Ram Kumar
5. Mina Devi @ Mina Shankar Daughter of Late Udit Narayan Kumar All are resident of village and P.O. Jhandapur, P.S. Bihpur, District - Bhagalpur

.... Petitioners

Versus

1. Bechan Singh Son of Late Bale Singh
2. Amit Raj Suman Son of Late Giro Mandal @ Singh Both are resident of village and P.O. Jhandapur, P.S. Bihpur, District - BHagalpur
3. Sunita Devi D/o Late Siya Ram Kumar
4. Chandrama Devi Wife of Late Udit Narayan Kumar
5. Mithilesh Kumar Son of Late Udit Narayan Kumar
6. Pallawi Devi D/o Late Udit Narayan Kumar
7. Dinesh Chandra Jha Son of Late Achamit Jha @ Jaiambhi Jha
8. Padmakar Jha Son of Late Jagdish Jha
9. Sudhanand Jha Son of Late Jagdish Jha
10. Vina Devi Wife of Late Bedanand Jha
11. Dipak Jha Son of Late Bedanand Jha
12. Chandan Jha Son of Late Bedanand Jha
13. Nanhi Kumari D/o Late Bedanand Jha
14. Bijali Kumari D/o Late Bedanand Jha
15. Vivakanand Jha S/o Late Raghunandan Jha
16. Sachidanand Jha S/o Late Raghunandan Jha
17. Laddu @ Parmanand Jha Son of Late Damodar Jha
18. Tarakant Jha Son of Late Raghunandan Jha
19. Rani Devi D/o Late Damodar Jha
20. Jhaliya Devi D/o Late Damodar Jha
21. Renu Devi D/o Late Damodar Jha
22. Munna Devi D/o Late Damodar Jha
23. Guriya Devi D/o Late Damodar Jha All are resident of village and P.O. Jhandapur, P.S. Bihpur, District - Bhagalpur
24. Bhawani Devi Wife of Late Devanand Jha
25. Rajiv Ranjan Jha S/o Late Devanand Jha
26. Ravi Ranjan Jha Son of Late Devanand Jha
27. Abha Kumari D/o Late Devanand Jha
28. Madhu Kumari D/o Late Devanand Jha All are resident of village and P.O. Jhandapur, P.S. Bihpur, District - Bhagalpur
29. Ramji Singh Son of Late Fodi Singh
30. Gaya Devi Wife of Late Parmeshwar Singh
31. Bhushi Singh Son of Late Rameshwar Singh
32. Upendra Singh S/o Late Rameshwar Singh
33. Binod Singh Son of Late Rameshwar Singh
34. Bimla Devi D/o Late Rameshwar Singh All are resident of village and P.O. Jhandapur, P.S. Bihpur, District - Bhagalpur
35. Sukhiya Devi daughter of Late Bale Singh resident of village - Dahgana, P.O.



& P.O. Gogri, District - Khagaria
36. Laddu Mandal Son of Late Bhujangi Singh
37. Halkhori Mandal S/o Late Bhujangi Singh
38. Parvati @ Pariya Devi D/o Late Bhujangi Singh All are resident of village -
Paraiya, P.S. Bariyarpur, District - Munger
39. Rajesh Mandal Son of Sri Sahdeo Mandal
40. Vijay Mandal Son of Sri Sahdeo Mandal
41. Bilash Mandal Son of Sri Sahdeo Mandal All are resident of village & P.O.
Kala Son, P.S. Chouse, District - Madhepura
42. Lakho Devi D/o Late Bhujangi Singh resident of village - Pansala, P.O. Alam
Nagar, District - Madhepura
43. The State of Bihar through Collector, Bhagalpur
44. Mukhiya Gram Panchayat, Jhandapur Paschim, P.O. Jhandapur, P.S. Bihpur,
District - Bhagalpur

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar alias Sharma
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 28-04-2017

Heard Mr. Sunil Kumar @ Sharma, learned
counsel appearing for the petitioners and the learned counsel
appearing for the opposite parties.

The assail in the present application is to the order
passed by the learned court below rejecting the petition dated
13.09.2011 filed by the defendant-petitioner under Order 7 Rule 11
C.P.C. praying for rejection of the plaint. It has been reported that this
application is barred by limitation of 82 days.

The interlocutory application (I.A.No.1523/2016
has been filed on behalf of the petitioners praying for condonation of
delay.



The counter affidavit has been filed to the main revision application as well as to the interlocutory application (I.A.No.1523/2016).

By earlier order, the limitation petition has been directed to be considered at the time of admission.

The learned counsel for the petitioners has made his submissions on the point of limitation as well as on merits of the revision application in order to persuade this Court that this revision application has got merits and therefore the prayer for condonation of delay deserves to be allowed. The learned counsel for the opposite parties, however, has contended that the petitioners have not approached this Court with clean hand in praying for condonation of delay and have made false statements for the said purpose. It has been further submitted that in the facts and circumstances of the case there is no error of jurisdiction or material irregularity committed by the learned court below while passing the impugned order.

The plaintiff-opposite parties have filed T.S.No.96/2007 praying for declaration of title over the suit land described in Schedule B & C of the plaint and the consequential relief for injunction against the defendants. From the impugned order, however, it transpires that the defendant-petitioners have been debarred from filing written statement by order dated 28.09.2010.



This fact has not been disputed by the learned counsel for the petitioners. The petitioners however filed the petition dated 13.09.2011 (Annexure-3) later on praying for rejection of the plaint which has been rejected by the impugned order.

It has been averred in the interlocutory (I.A.No.1523/2016), filed for condonation of delay of 82 days in filing this revision application that the learned counsel for the petitioners in the court below did not inform the petitioners regarding the impugned order till 22.07.2015, and thus the petitioners after getting knowledge could obtain the certified copy of the impugned order only on 30.07.2015. It has been further averred that the petitioner no.1 Suresh Kumar went to Mumbai for treatment of his wife and remained there till the second week of December 2015. It has been further stated that in this fact-situation, the revision application could be presented on 22.12.2015.

In the counter affidavit , however, the plaintiff-opposite parties have categorically denied the statement made on behalf of the petitioners that the petitioner no.1 remained in Mumbai till second week of December 2015 for the treatment of his wife and it has been asserted that the said statement is categorically false because the petitioner no.1 was physically present in the office of Sub Registrar, Bihpur, Bhagalpur on 23.11.2015 on which date he has



executed the two sale deeds (Annexure-A & B to the counter affidavit). It has also been stated that the other petitioners are also well educated persons and the statement that the petitioner no.1 is the guardian of the family is clearly misleading. It has also been asserted that no material document relating to the long treatment of the wife of the petitioner no.1 has been furnished to substantiate the said claim.

Though a reply has been filed to the aforesaid counter affidavit but the fact of execution of the two sale deeds on 23.11.2015 has not been denied and the explanation has been given that the two sale deeds were executed for the purpose of raising funds for the treatment of the wife of the petitioner no.1.

The learned counsel for the petitioners has made his submissions on the merits of this revision application to the effect that the plaintiffs in fact have intended to assail the sale deed dated 28.09.1964 executed by their predecessor-in-interest in favour of the predecessor of the defendants but have deliberately omitted to seek relief in that regard in view of the bar of limitation. It has been contended that the plaint has been drafted in a claver manner seeking relief for declaration of title alone which is only a camouflage for the real relief. It has been propounded that according to the well settled principles of law, the plaint is to be read in meaningful manner in order to find out the substance of the relief prayed by the plaintiffs



and the claver drafting would not preclude the court from delving into the real facts of the case. The reliance in support of the submission has been placed on the decision of the apex court in the case of *Saleem Bhai Vs. State of Maharashtra, (2003)1 SCC 557* and in the case of *Liverpool & London S.P. & I Association Ltd. Vs. M.V. Sea Success, (2004) 9 SCC 512*.

The learned counsel for the opposite parties however, has submitted that the plaintiff opposite parties in their plaint have accepted the fact of sale of land by their predecessor in favour of the defendant petitioners and they have not challenged the said transfer through the said sale deed and the cause of action for filing the suit, in fact, has arisen when the defendant-petitioners amalgamated more land with their purchased land and got the same recorded in the revisional survey in their names. The learned counsel for the petitioners has also put emphasis on the description of the suit land as made in the plaint (Annexure-1) to show that in fact the total area of C.S.Plot No.129 of C.S.Khata No.403 is only 0.02 decimals out of which the plaintiffs have claimed only 0.01 decimal as mentioned in Schedule C of the plaint. It has thus been contended that the entire plea raised by the defendant-petitioners for rejection of the plaint is unfounded and far away from the real fact.

After considering the submissions on behalf of



the parties and the materials on record, it is apparent that the plaintiff-opposite parties in their plaint have accepted the transfer of land by their predecessor in favour of the predecessor of the defendant-petitioners by sale deed dated 28.09.1964 and have not assailed the validity of the same. From the averments in the plaint, it also transpires that the cause of action for the suit has been mentioned to be the alleged wrong survey entry. Therefore, it is demonstrably clear that the actual dispute between the defendant- petitioners and the plaintiff-opposite parties in the suit relates to the lands of the plaintiffs as recorded in the survey khatian in the name of the defendant 1st set which has been claimed to be in excess of the purchased land of the defendant from the predecessor of the plaintiffs. This Court, therefore, does find substance in the submissions on behalf of the petitioners that the suit has been filed by the plaintiffs claiming relief against the sale deed dated 28.09.1964 in favour of the predecessor of the defendant-petitioners and therefore barred by limitation and the plaint could have been rejected on that score. This aspect is also fortified by the categorical averments made in this regard by the plaintiff-opposite parties in their counter affidavit dated 18.08.2016 filed in this revision application.

The apex court in the case of ***R.K.Roza Vs.U.S.Rayudu*** , (2016) 14 SCC 275 while considering the ambit and



scope of Order 7 Rule 11 C.P.C has also observed as follows:

6. ...However, We may hasten to add that the liberty to file an application for rejection under Order 7 Rule 11 C.P.C cannot be made as a ruse for retrieving the lost opportunity to file the written statement...”

The learned counsel for the petitioners has not denied the fact that the defendant-petitioners have been debarred from filing the written statement but has submitted that the written statement has been filed by the defendant-petitioners in the suit with prayer for accepting the same which is still pending. In view of the dictum of the apex court as above mentioned, the filing of the petition under Order 7 Rule 11 C.P.C. by the defendant-petitioners is clearly an attempt to retrieve the opportunity of filing the written statement. Even otherwise also, this Court is of the opinion that the plea raised by the defendant-petitioners in their petition dated 30.09.2011 is not substantiated by the averments made in the plaint as well as also in view of the statement made on behalf of the plaintiff-opposite parties in their counter affidavit accepting the validity of the sale deed dated 28.09.1964.

It is made clear that this Court has gone into the merit of the revision application only to find out the substance in the



contention on behalf of the petitioners that the revision application has got merit and the delay in filing the same deserves to be condoned. After considering the facts and circumstances as well as the averments made in the interlocutory application (I.A.No.1523/2016) and the counter affidavit thereto, this Court does not find that the petitioners have succeeded to make out sufficient cause for condonation of delay in filing this revision application. The interlocutory application (I.A.No.1523/2016) is accordingly rejected.

In the ultimate eventuate, this revision application is dismissed as barred by limitation. However, dismissal of this revision application shall not prejudice the case of either parties on merits in the suit.

(V. Nath, J)

Nitesh/-

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