

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.173 of 2011

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Ramji Singh & Ors

.... Petitioner/s

Versus

Sri Phulchand Rai & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. ASHUTOSH RANJAN PANDEY

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

ORAL JUDGMENT

Date: 21-09-2017

1. Heard learned counsel for the petitioners. No one appears on behalf of the opposite parties in spite of proper service of notices upon them.

2. This revision petition has been preferred against the order dated 29.3.2011 passed by Addl. Munsif VII, Danapur, Patna in Misc. Case no 01/2007 by which and whereunder he dismissed the aforesaid Miscellaneous case and refused to restore Title suit no. 09/1991 to its original number.

3. Father of petitioner no.1 and grand father of petitioner no.2, namely, Brahamdeo Raut filed Title suit no. 09/1991 against opposite parties for declaration of his right, title and possession over the suit land as described in Schedule I of the plaint and also for declaration of deed of



cancellation executed by opposite party no.2 on 9.8.1983 as illegal and void.

4. In the aforesaid suit, notices were sent to opposite parties/defendants but only one defendant appeared whereas rest defendants did not appear in the aforesaid suit. However, the court directed the plaintiffs of that suit to do pairvi for substituted service but they failed to do as a result whereof the aforesaid suit was dismissed under Order 9 rules 2 and 3 of the CPC on 25.7.2006. It is pertinent to note here that prior to dismissal of the aforesaid suit, on 17.7.2006, a petition was filed before the court mentioning therein that original plaintiff no.1, namely, Brahamdeo Raut died on 18.4.2005 and after filing of the aforesaid petition on the very next date, court below passed the order dated 25.7.2006.

5. Petitioners filed Misc. Case no 01/2007 for setting aside dismissal order dated 25.7.2006 and for restoring Title suit no. 09/1991 to its original number but the learned court below dismissed the above stated petition passing the impugned order on the ground that the petitioners failed to put forward any satisfactory explanation for their non-appearance at the time of passing dismissal



order dated 25.7.2006.

6. Learned counsel appearing for the petitioners submits that being Karta of the family original plaintiff no.1,namely, Brahamdeo Raut was doing pairvi in the aforesaid Title suit no. 09/1991 but unfortunately, the aforesaid Brahamdeo Raut fell ill and subsequently, died on 18.4.2005. However, when the petitioners got knowledge about pendency of the aforesaid title suit, they immediately, informed the court about death of original plaintiff no.1,namely, Brahamdeo Raut by filing petition on 17.7.2006 but on the very next date i.e. 25.7.2006 without giving proper opportunity to the petitioners to make proper pairvi in the aforesaid Title suit no. 09/1991, court below dismissed the above stated title suit for want of prosecution. He, further, submits that the learned court below failed to appreciate the aforesaid fact while passing the impugned order dated 29.3.2011.

7. Learned counsel for the petitioners further submits that initially, petitioners filed CWJC no.11851/2011 against the impugned order but this court vide order dated 29.7.2011 permitted the petitioners to convert the aforesaid CWJC no.11851/2011 into revision and by the order of this



court, petitioners converted CWJC no.11851/2011 into civil revision. He, further, submits that at the time of making prayer for conversion of civil writ petition into civil revision, judgment of Division bench reported in 2010(2) PLJR 954 was brought to the notice of this court and it was argued that in view of the aforesaid judgment of Division bench, civil revision is maintainable against the impugned order and a coordinate bench of this court accepted the aforesaid contention of the petitioners and, therefore, in view of the aforesaid order of this court, civil revision petition is maintainable.

8. Although learned court below has given findings that the petitioners had not placed sufficient cause for non-appearance before the court below but it would appear from the pleadings of the present petition as well as submissions of learned counsel for the petitioners that sufficient explanation for non-appearance of the petitioners was given before the court below in Misc. Case no 01/2007. It is admitted position that original plaintiff no.1 died on 18.4.2005 and proper information regarding his death was given on 17.7.2006 but the concerned court, even without striking off name of the deceased person, passed dismissal



order dated 25.7.2006. In my view, petitioners had given sufficient explanation before the court below for their non-appearance and moreover, right and title of the parties should be decided on merit in stead of throwing claim of the person at a very threshold.

9. Considering the aforesaid facts as well as submissions of learned counsel for the petitioners, this revision petition is allowed and accordingly, impugned order dated 29.3.2011 passed by Addl. Munsif VII, Danapur, Patna in Misc. Case no 01/2007 is, hereby, set aside and in consequent thereto Title suit no. 09/1991 is restored to its original number setting aside dismissal order dated 25.7.2006.

shahid

(Hemant Kumar Srivastava,J)

AFR/NAFR	NAFR
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