

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.6248 of 2013

IN

Miscellaneous Jurisdiction Case No. 1430 of 2003

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Skh. Rukunuddin son of late S.K. Nanhak, R/o village-Mura, P.S. Gobindganj,
District-East Champaran.

.... Petitioner/s

Versus

1. Md. Ladam.
2. Md. Azam (Munna) both son of late Skh Yunus.
3. Jihu Khatun wife of late Skh Yunus.
4. Tabasum Khatun wife of Skh Munna, daughter of late Skh Yunus, resident of village Sami-Rohua, P.O. Sahatha, P.S. Bhagwanpur, District-Viashali.
5. Guria Khatun wife of Skh Badaruddin, late Skh Yunus, resident of village-Barmadia, P.O.+P.S. Chakiya, District-East Champaran.
6. Arjun Khatun wife of Akbar Abbas daughter of late Skh Yunus, resident of village-Sarea Histi, P.O.+P.S. District-Gopalganj.
7. Jeba Khatun Khatun wife of skh Amjad daughter of late Skh Yunus resident of village Murgia tola, P.O. Basjila, P.S. District-Gopalganj.
8. Skh Haidar.
9. Skh Ahamad Both son of S.R. Wahid, resident of village Semra, P.O.+P.S. Turkaulia, District-East Champaran.
10. Bibi Sahida wife of Syed Junaid, daughter of skh Wahid, resident of village Jogeulia, P.O. Rupam, P.S. Golwara, Madhuban, District-East Champaran.
11. Bibi Haida daughter of skh Wahid wife of ali Ahamad, resident of Semara, Balwatia, P.O.+P.S. Turkaulia, District-East Champaran.
12. Badrun Khatun wife of late skh Serajuddin.
13. Skh. Tasawar.
14. Skh. Masawar both son of late skh Serajuddin all are resident of village-Aura, P.O.Chandi Asthan, P.S. Govindganj, District-East Champaran.
15. Kalamuni Khatun wife of Skh. Irshad daughter of late Serajuddin, resident of Semara. P.O. Belwatia, P.S. Turkwalia, District-East Champaran.
16. Saiyed Salauddin sn of late skh Khalid.
17. Saiyed Ali.
18. Saiyad Tuntun Both are son of late skh Khalid.



19. Harira Khatun wife of Mir Jugnu daughter of late skh Khalid, all are resident of village Sanwal, P.O. Sanwal, P.S. Pharpur District-East Champaran.
20. Mustatri Khatun wife of Mir Kalam daughter of late skh Khalid, resident of village+P.O. Bhatanha, P.S. Harsidi, District-East Champaran.
21. Samula Khatun wife of late skh. Manjur.
22. Skh. Gulamrasul.
23. Skh. Maksud.
24. Skh. Anjar, all are son of late skh. Manjur son of late skh Zahur all are resident of village Mura. P.O. Chandi Asthan, P.S. Govindganj, District-East Champaran.
25. Bibi Khatun wife of skh Najmullah daughter of late skh. Manjur, resident of village-Sugawli, P.O.+ P.S. Gugauli, District-East Champaran.
26. Ghogha Khatun wife of skh Nekmohamad daughter of late skh Manjur resident of village+P.O. Mathwa, P.S. Turkawalia, District-East Champaran.
27. Anjum Khatun wife of skh Mustak daughter of late skh Manjur resident of village Jalaha, P.O. Manglapur, P.S. Sangrampur, District-East Champaran.
28. Skh Amin son of late skh Zahur.
29. Skh Ali Aassan, both are son of late Skh. Zahur.
30. Skh Eklakh.
31. Skh Nowlakh.
32. Skh. Rejwan all are son of late Skh. Jahangir son of late Skh Zahur all are resident of village- Mura. P.O. Chandi Asthan, P.S. Govindganj, District-East Champaran.
33. Munni Khatun wife of skh. Manjar daughter of late skh Jahangir resident of village Jagwalia, P.O. Rupani, P.S. Govindganj, District-East Champaran.
34. Sitara Khatun wife of skh Manjar daughter of late skh Jahangir, resident of village Jharawa, Po Dariyapur, P.S. Harsidi, District-East Champaran.
35. Arju Khatun wife of skh Munna daughter of late skh. Jahangir, resident of village-Jalaha, P.O. Mangalapur, P.S. Sangrampur, District-East Champaran.
36. Chand Khatun wife of skh Ezaj daughter of late skh. Jahangir, resident of village+P.O. Sanwal, P.S. Paharpur, District-East Champaran.
37. Sarwari Khatun wife of skh Soukat daughter of late skh. Jahangir, resident of village-Chitawanpur, P.O. Sirni, P.S. Mahali, District-East Champaran.
38. Skh. Babujan son of late skh. Jahangir.
39. Skh Israil son of late skh. Jahangir, both resident of village-Mura, P.O. Chandi



- Asthan,, P.S. Govindganj, District-East Champaran.
40. Skh Noorul Hoda son of skh Shohrab @ Shoharaw, daughter of Anwarul Haque.
41. Sk. Jamil son of sk Wakil, resident of village-Mura, P.O. Chandi Asthan,, P.S. Govindganj, District-East Champaran.
42. Bhul Bibi wife of Rahmatulla daughter of late sk Mahamdeen resident of village-Jalaha, P.O. Mangalpur,, P.S. Sangrampur, District-East Champaran.
43. Bibi Nazma Khatun wife of sk. Ali daughter of late sk Mahamdeen.
44. Asnesha Khatun wife of sk Reajul daughter of late sk Mahmdeen both are resident of village Balahi, P.O. and P.S. Turkwalia, District-East Champaran.
45. Sabrun Nesa wife of late sk Dular.
46. Sk. Asgar.
47. Sk. Asgir.
48. Sk. Mustak, all are son of late sk. Dular all are resident of village- Mura, P.O. Chandi Asthan,, P.S. Govindganj, District-East Champaran.
49. Munni Khatun wife of sk Sabbu resident of village-Hathura, P.O. Hathura, P.S. Hathura, District-East Champaran.
50. Sk. Tabrez.
51. Sk. Parbez both son of late sk peryaar both are resident of village Balahi, P.O.+ P.S. Turkawalia, District-East Champaran.
52. Akbari Nesa wife of Sk Anwar resident of village Kawalpur, P.O.+ P.S. Turkawalia, District-East Champaran.
53. Sk. Neyeem.
54. Sk. Akhtar.
55. Sk. Samsul both are son of late sk Raheem all are resident of village- Mura, P.O. Chandi Asthan,, P.S. Govindganj, District-East Champaran.
56. Sk. Ahmad son of late sk Hafajat resident of village- Mura, P.O. Chandi Asthan,, P.S. Govindganj, District-East Champaran.
57. Atimun Khatun wife of sk Naolakh, resident of village- Jharwa, P.O. Dariyapur,, P.S. Harsidi, District-East Champaran.
58. Sakal Khatun wife of Nurul Emam, resident of village- Jalaha, P.O. Manglapur, P.S. Sangrampur, District-East Champaran.
59. Jalekha Khatun, wife of sk Jamal resident of village- Mura, P.O. Chandi Asthan,, P.S. Govindganj, District-East Champaran.
60. Raisa Khatun wife of late Nizamuddin.



61. Sk. Babul.

62. Sk. Afsar, both are son of late sk. Nizamuddin both are resident of village- Mura, P.O. Chandi Asthan,, P.S. Govindganj, District-East Champaran.

63. Bismila Khatun wife of Mir Hassam, resident of village- + P.O. Sanwal,, P.S. Paharpu, District-East Champaran.

64. Tanjila Khatun wife of sk Sager, resident of village- Jalaha, P.O. Mangalpur, P.S. Sangrampur, District-East Champaran.

65. Farida Khatun wife of sk Shamuddin resident of village- Mura, P.O. Chandi Asthan,, P.S. Govindganj, District-East Champaran.

66. Fultara Khatun wife of sk Saiyad Nabiullah, resident of village+ P.O. Sanwal, P.S. Paharpu, District-East Champaran.

67. Laltana Khatun wife of sk. Naolakh resident of village-Jharwa, P.O. Dariyapur, P.S. Harsidi, District-East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Chandra Kant, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 15-03-2017

Heard Mr. Chandra Kant, learned counsel for the petitioner in this restoration application.

The matrix of facts would undrape that the Second Appeal No. 279 of 1993 was filed by the present petitioner along with another appellants against the judgment and decree of affirmance dismissing the suit filed by the present petitioner. The said appeal was dismissed on 06.01.1998 for non-prosecution. Thereafter M.J.C. No. 1808 of 1998 was filed on behalf of the petitioner along with another person as petitioners praying for restoration of the S.A. No. 279 of 1993.



However, this restoration application (M.J.C. No. 1808 of 1998) came to be dismissed for default on 23.04.1999 for non-compliance of the peremptory order. The matter did not end there but followed by M.J.C. No. 1430 of 2003 filed by the present petitioner along with another person praying for restoration of S.A. No. 279 of 1993 but this M.J.C. No. 1430 of 2003 also came to be dismissed on 22.07.2005 for default.

Nothing was done on behalf of the petitioner till 16.12.2013 which was nearly 10 years after the dismissal of the M.J.C. No. 1430 of 2003. However, on 16.12.2013, the M.J.C. No. 6248 of 2013 has been filed by the petitioner praying for restoration of the M.J.C. No. 1430 of 2003.

Mr. Chandra Kant, learned counsel for the petitioner in the present restoration application (M.J.C. No. 6248 of 2013), at the outset, has propounded that the technicality of law must not stand in the way of advancing justice to the parties. It has been submitted that the present petitioner who is an old person had no knowledge of the dismissal of the S.A. No. 279 of 1993 for all those years till 16.12.2013 when the present restoration application has been filed and it has been contended that the previous two restoration applications i.e. M.J.C. No. 1808 of 1998 and M.J.C. No. 1430 of 2003 were not filed at the instance of the present petitioner which is apparent from



the affidavit sworn in respect of the said two restoration application. It has also been submitted that the present petitioner has his residential house in the suit plot and his substantial interest in the suit property is involved in the second appeal. Learned counsel for the petitioner, however, could not point out any explanation in the restoration application showing that since after the filing of the S.A. No. 279 of 1993 till the filing of the present restoration application (M.J.C. No. 6248 of 2013) which comes to about 20 years, the petitioner took any step to gather information regarding the status of the appeal filed by him before this Court which involved his substantial interest as claimed. Noticeably, it is nowhere the case of the petitioner that there was misinformation and the petitioner has been carrying the impression throughout that his Second Appeal No. 279 of 1993 is still pending. Lastly, learned counsel for the petitioner has also submitted that the prayer for restoration may be allowed after imposition of cost upon the petitioner.

After considering the submissions and the averments made in the present restoration application as well as records of the previous cases, it is transparent that there is no statement by the petitioner that after filing of the Second Appeal No. 279 of 1993, the petitioner has made any attempt for long 20 years to seek information regarding the status of his appeal. The submission that the filing of the two



restoration applications and their dismissal for default were not in the knowledge of the petitioner loses its substance in absence of any averment showing bonafide attempt for long 20 years by the petitioner to enquire about the status of the second appeal. The submission that the technicality should not stand in the way of advancing justice is also not attracted in the facts and circumstances of this case where the petitioner had demonstrably been not at all vigilant and had slept over his rights. Moreover, the dismissal of the second appeal or the two restoration applications for non-appearance and non-compliance cannot dilute the right which has accrued to the other side. This Court, therefore, is not satisfied that sufficient cause for restoration of S.A. No. 279 of 1993 has been made by the petitioner.

Accordingly, the present M.J.C. application is dismissed.

(V. Nath, J)

Devendra/-

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