

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22643 of 2013

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Md. Salim & Ors

.... Petitioner/s

Versus

Md. Haroon & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shashi Nath Jha, Advocate

For the Respondent/s : Mr. Prabhas Ranjan, Advocate

Mr. Ashok Kumar Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

5 29-11-2017 This writ application has been filed for quashing the order dated 26.07.2013 passed by learned Additional District Judge-I, Madhubani in Miscellaneous Case No.01 of 2003 whereby and whereunder the petition filed on 01.03.2013 on behalf of these petitioners for recalling the order dated 14.12.2012 was rejected.

2. The respondents 1st party had filed Title Suit No.49 of 1981/25 of 1991 against the family members of the present petitioners, which was decreed on contest as per judgment dated 09.02.1998. The mother of the petitioners filed Title Appeal No.20 of 1998 which was dismissed in default on 18.08.2001. Thereafter the mother of these petitioners filed Miscellaneous Case No.01 of 2003 for restoration and readmission of said title appeal. The said miscellaneous case after hearing was allowed as per the order dated 06.07.2004 and Title Appeal No.20 of 1998



was readmitted subject to payment of cost of Rs.1,000/-. The petitioners of miscellaneous case filed an application for modifying the said order dated 06.07.2004 praying therein to exonerate them from paying the cost. The matter relating to hearing on payment of cost remained pending and during pendency of the said petition, the mother of these petitioners died on 21.01.2006. The petitioners being sons and legal heirs filed a petition on 01.04.2006 for their substitution in place of their mother Jannat Hussain. The said petition was dismissed in default on 14.12.2012. Thereafter the heirs of Jannat Hussain filed a petition on 01.03.2013 to recall the said order and implead them as party to the miscellaneous case. The court below rejected the said petition as per impugned order.

3. After hearing both the parties and perusing the record, I find that the court below has rejected the petition of these petitioners on technical ground. The court below while rejecting the petition has observed that the affidavit sworn in support of petition does not contain correct and accurate statement. The petitioners have not mentioned as to what portion of the petition is true based on their personal knowledge and what portion of the petition is true on their information derived from other sources. The court below rejected the said petition as not maintainable. The court below further observed that the said



petition was filed after one month from the date of rejection order.

4. The learned counsel for the respondents has filed counter affidavit and annexed up-to-date order sheet of Miscellaneous Case No.01 of 2003. It appears that the said miscellaneous case is still pending for hearing on interlocutory matter. It is not in dispute that the miscellaneous case was filed for restoration and readmission of Title Appeal No.20 of 1998 which was dismissed for default. The said miscellaneous case has been allowed and the appeal of the petitioners has been readmitted as per the order dated 06.07.2004. The petitioners have already taken steps for substitution in the miscellaneous case. The court below has rejected the petition of the petitioners on the sole ground that the affidavit does not disclose the source of information. The respondents do not dispute the facts asserted by the petitioners in substitution petition. Thus, I find that the court below has committed error in rejecting the petition of the petitioners on technical ground.

5. In view of the above facts and circumstances, the order refusing to substitute these petitioners as legal heirs is hereby set aside and this writ application is allowed.

(Sanjay Kumar, J)

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