

## IN THE HIGH COURT OF JUDICATURE AT PATNA

### Second Appeal No.196 of 2014

- =====
1. Abdul Rab Akhtar son of late Ali Haidar, Resident of village-Shah Takiya, Pargana Bara, P.O. and P.S.-Pachrukhi, District-Siwan.
  2. Maimun Nesa, wife of late Ali Haidar, Resident of village-Shah Takiya, Pargana Bara, P.O. and P.S.-Pachrukhi, District-Siwan.
  3. Ali Akabar, son of late Izhar Hussain, Resident of village-Shah Takiya, Pargana Bara, P.O. and P.S.-Pachrukhi, District-Siwan.
  4. Shahnaz Perveen @ Dulli Khatoon, wife of Anwar Hussain, Resident of village-Shah Takiya, Pargana Bara, P.O. and P.S.-Pachrukhi, District-Siwan.
  5. Jarina Khatoon, wife of Mubarak Hussain, Resident of village-Shah Takiya, Pargana Bara, P.O. and P.S.-Pachrukhi, District-Siwan.
  6. Noor Saba Khatoon wife of Nasruddin, Resident of village-Shah Takiya, Pargana Bara, P.O. and P.S.-Pachrukhi, District-Siwan.
  7. Sanjeri Khatoon wife of Neshar Ahmad, Resident of village-Shah Takiya, Pargana Bara, P.O. and P.S.-Pachrukhi, District-Siwan.
  8. Ajmeri Khatoon wife of Ashgar Ali, Resident of village-Shah Takiya, Pargana Bara, P.O. and P.S.-Pachrukhi, District-Siwan.

.... .... Appellant/s

Versus

1. Jiny Singh @ Rajendra Singh son of Phuleshwar Singh, resident of village-Pagurkothi, P.O.&P.S.-Pachrukhi, District-Siwan.
2. Bhagwatia Devi daughter of Phuleshwar Singh, resident of village-Pagurkothi, P.O.&P.S.-Pachrukhi, District-Siwan.
3. Maya Devi daughter of late Babu Lal Singh, resident of village-Pagurkothi, P.O.&P.S.-Pachrukhi, District-Siwan.
4. Rina Devi daughter of late Babu Lal Singh, resident of village-Pagurkothi, P.O.&P.S.-Pachrukhi, District-Siwan.
5. Md. Qualeem, son of late Habibul Hassan, resident of village-Shah Takiya, Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.
6. Nasrin daughter of late Habibul Hassan, resident of village-Shah Takiya, Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.
7. Seema daughter of late Habibul Hassan, resident of village-Shah Takiya, Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.
8. Alimul Hassan son of late Noor Hasan Miyan, resident of village-Shah Takiya,



Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.

9. Kaisar abbass, son of late Mujubul Hasan, resident of village-Shah Takiya, Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.
10. Jaffar Abbass son of late Mujubul Hasan, resident of village-Shah Takiya, Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.
11. Munna Begum wife of late Mujubul Hasan, resident of village-Shah Takiya, Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.
12. Wakil Ahmad, son of (name of father not known to appellants), resident of village-Shah Takiya, Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.
13. Samsul Hoda son of Wakil Ahmad, resident of village-Shah Takiya, Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.
14. Noorul Hoda, son of Wakil Ahmad, resident of village-Shah Takiya, Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.
15. Ainul Haque son of Wakil Ahmad, resident of village-Shah Takiya, Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.
16. Samsul Haque son of Wakil Ahmad, resident of village-Shah Takiya, Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.
17. Husan Arrah daughter of Wakil Ahmad, resident of village-Shah Takiya, Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.
18. Arjun Arrah, daughter of Wakil Ahmad, resident of village-Shah Takiya, Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.
19. P Nesum Arrah, daughter of Wakil Ahmad, resident of village-Shah Takiya, Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.
20. Alam Arrah daughter of Wakil Ahmad Miyan, resident of village-Shah Takiya, Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.
21. Gulshan Khatoon daughter of Noor Hasan Miyan, resident of village-Shah Takiya, Pargana Bara, P.O.&P.S.-Pachrukhi, District-Siwan.

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Sanjeet Kumar, Adv.

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE V. NATH**

**ORAL JUDGMENT**

**Date: 18-04-2017**



Heard Mr. Sanjeet Kumar, learned counsel for the appellants in I.A. No. 7177 of 2014 which has been filed for condonation of delay of 8 years, 9 months and 10 days in filing this appeal.

The matrix of facts discloses that the plaintiffs (now deceased through L.R.) filed T.S. No. 213 of 1967 for declaration of title and confirmation of possession and in the alternative for recovery of possession over the suit property. The said suit was decreed by the judgment and decree dated 17.06.1992. The T.A. No. 22 of 1992 was filed thereafter by the defendants assailing the judgment and decree passed in the said suit. This appeal was allowed in part by judgment and decree dated 28.07.2005 declaring the plaintiffs' title and possession over 1/4<sup>th</sup> share in the suit property on the basis of the gift deed dated 13.09.1934 executed in favour of the plaintiffs by the widow of Samtalli Miyan. This judgment and decree has been impugned in the present second appeal which has been filed on 05.08.2014.

It was the case of the plaintiffs in the suit that originally Jan Miyan was the exclusive owner of the suit property but he made an oral Hibba in favour of Samtalli Miyan (his brothers son). Samtalli Miyan, in turn, orally gifted all his property including the suit property in favour of his wife Nabutan in lieu of dower debt. The



plaintiffs claimed their exclusive right and title over the suit property on the basis of a registered gift deed in his favour by Bibi Nabutan for the suit property. On the other hand, the defendants denied the oral gift by Jan Miyan in favour of Samtalli Miyan and the oral gift by Samtalli Miyan to his wife Bibi Nabutan. It was the case of the defendants that Jan Miyan died during the life time of his brother Kurban Miyan who inherited the property of Jan Miyan after his death. It was further case of the defendants that after the death of Kurban Miyan his three sons i.e. Samtalli Miyan and his two brothers (predecessor of the defendants) inherited the property in equal share. It was also the case of the defendants that the wife of Samtalli Miyan died during his life time and Samtalli Miyan also died during the life time of his two brothers, and on this basis the defendants claimed title over the suit property.

At this juncture, it would be fruitful to mention that by the impugned judgment and decree, the appellate court below has come to the conclusion that the gift deed as propounded by the plaintiffs as the basis of his title over the suit property, is valid upto four anna share of the donor (widow of Samtalli Miyan) and the rest  $\frac{3}{4}$ <sup>th</sup> share in the property would go to the other legal heirs of Samtalli Miyan according to Mohamddan Law. The averments made in the interlocutory application further disclose that the plaintiffs did not file



appeal against the impugned judgment and decree but filed a petition under Sections 151, 152 and 153 C.P.C. on 23.09.2005 before the appellate court below praying for modification/clarification of the issue as to who would be the legal heir (s) of Samtalli Miyan. After the rejection of the said petition, the plaintiffs filed C.W.J.C. No. 13252 of 2014 before this Court assailing the order of rejection of the said petition. During the pendency of the said writ application, the plaintiffs have filed the present second appeal on 05.08.2014. On the basis of these facts, the plaintiffs have prayed for condonation of delay on the ground that the matter was bonafidely being pursued before the appellate court below with due diligence and the time taken therein be excluded.

During the course of submission, however, it has been accepted that C.W.J.C. No. 13252 of 2014 has been dismissed by this Court by order dated 09.11.2016 and further that there was no relief prayed in the suit by the plaintiffs pertaining to the question as to who was the legal heir(s) of the deceased Samtalli Miyan and only relief was for declaration of right, title and possession of the plaintiff over the suit property on the basis of gift. Evincibly, therefore, the determination of the issue regarding the heirship of the deceased Samtali Miyan was out side the scope of the suit or appeal.

The provision of Section 14 of the Limitation Act



stipulating exclusion of the time in certain circumstances is attracted only in a case where the plaintiff has been prosecuting with due diligence another civil proceeding in a court of first instance or of appeal or revision against the defendants with due diligence and the said proceeding relates to the same matter in issue. The present second appeal has evidently arisen out of the suit filed by the plaintiff-appellants for declaration of their right, title and interest over the suit land and the issue as to who would be the heirs of the deceased Samtalli Miyan was clearly not the issue arising in the suit or appeal thereafter. Even otherwise also, it is apparent that by filing the petition under Section 151, 152 and 153 C.P.C. before the appellate court below, the plaintiff-appellants has accepted the judgment and decree passed by the appellate court below. In this fact situation, this Court is not persuaded to hold that the plaintiff-appellants are entitled to the benefit of exclusion of time as envisaged under section 14 of the Limitation Act. No other ground for condonation of delay has been advanced on behalf of the appellants.

This Court, therefore, comes to the conclusion that there is no sufficient cause established by the plaintiff-appellants for condonation of delay of 8 years, 9 months and 10 days in filing this second appeal. The interlocutory application is accordingly, dismissed.



Consequently, the Second Appeal No. 196 of 2014 is  
dismissed as barred by limitation.

**(V. Nath, J)**

Devendra/-

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