

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1022 of 2016

=====

1. Smt. Klawati Devi W/o Late Bacha Bajpai Resident of village - Sikokha
Kardiya, P.S. Kitwa Chowk, District East Champaran Petitioner

Versus

1. Jagdeo Pathak S/o Late Raghunath Pathak
2. Devanand Pathak S/o Jagdeo Pathak
3. Dhruv Kumar Pathak S/o Jagdeo Pathak
4. Shrikant Pathak S/o Jagdeo Pathak All residents of village and P.O.
Dumariya, P.S. Dumariya Chat, District - East Champaran
5. Kamla Kant Pathak S/o Late Raghunath Pathak
6. Urmila Devi W/o Sri Kamla Kant Pathak
7. Shashi Ranjan Pathak S/o Sri Kamla Kant Pathak
8. Raju Pathak S/o Kamla Kant Pathak
9. Sona Devi W/o Sri Bindeshwari Pathak
10. Umesh Pathak S/o Bindeshwari Pathak
11. Ramesh Pathak S/o Bindeshwari Pathak
12. Shail Kumari W/o Late Ram Lochan Bajpai
13. Jhulan Sharma W/o Saryug Sharma null
14. Lalan Prasad Singh S/o Ram Jinit Singh
15. Satyadeo Sharma S/o Mahavir Sharma
16. Brij Kishore Dubey S/o Shiv Narayan Dubey
17. Jitendra Pathak Son of Late Ramjee Pathak All residents of village -
Dumariya, P.S. Dumariya, District East Champaran
18. Smt. Radhika Devi W/o Harendra Mishra resident of village - Areraj,
P.S. Govindganj, Salha, District East Champaran
19. Smt. Rita Devi W/o Keshav Kumar Pandey resident of village + P.O.
Machharganwa Bazar, P.S. Jogapatti, District - East Champaran
20. Smt. Mira Devi W/o Manoj Mishra resident of village + P.O. Rampur
Rudra, Via - Taraiya, P.S. Pannapur, District - Chhapra

.... Respondents

=====

Appearance :

For the Petitioner : M/S Uma Kant Shukla & Shakti Suman
Kumar, Advs.
For the Respondent : Mr. Anil Kumar Jha, Sr. Adv. with Mr. Pramod
Mishra, Adv.

=====

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA**
ORAL ORDER

4 06-12-2017 Heard Mr. Uma Kant Shukla, the learned counsel,
appearing for the petitioner, and Mr. Anil Kumar Jha, the learned
senior counsel appearing on behalf of the respondents.

The petitioner was defendant no. 9ka in Title Suit
No. 51 of 1985, which was decreed ex parte. The defendants filed



Title Suit No. 116/31 of 1992/1993. The title appeal vide order, dated 03.12.1994, was remanded to the Court of Sub Judge for allowing defendant no. 9 to adduce evidence and for her examination. But, defendant no. 9 died on 27.11.1996. Plaintiff substituted the legal heir of defendant no. 9 only in the year 2003 as defendant no. 9ka. The petitioner-defendant no. 9ka filed petition on 07.05.2016 to allow her to give evidence, but, the learned Sub Judge, vide order, dated 07.05.2016, dismissed the petition of defendant no. 9ka, the petitioner, on the ground that defendant no. 9ka wanted to linger the case. Defendant no. 10 had filed petition for evidence, but, the learned Sub Judge dismissed the petition of defendant no. 10. Defendant no. 10 filed C.W.J.C. No. 12060 of 2014 against the order disallowing him to give evidence and writ petition was dismissed on 18.02.2016. The petitioner- defendant no. 9ka, again, filed petition on 07.06.2016 to allow him to give evidence in view of the order of the appellate Court, but, the learned Sub Judge vide order, dated 13.07.2016, dismissed the petition. Being aggrieved, the petitioner filed this civil miscellaneous petition.

The learned counsel for the petitioner submits that there is no laches on the part of the petitioner. The Title Partition Suit No. 51 of 1985 was decreed ex parte against which defendant no. 9 preferred Title Appeal No. 116/31 of 1992/1993 and the same was remanded on 03.02.1994 with a direction to the Sub Judge to examine defendant no. 9, but, unfortunately, defendant no. 9 died on 27.11.1996. The petitioner took seven years to substitute the legal heirs of defendant no. 9 and the petitioner was substituted only in the year 2003 as defendant no. 9ka in place of defendant no. 9. Thereafter, the plaintiff took adjournment on the



ground of preferring second appeal and defendant no. 9ka would not have been examined although the affidavit of defendant no. 9ka is on record and he is only to be cross examined by the plaintiff.

Mr. Anil Kumar Jha, the learned senior counsel, submits that the petitioner filed petition only to linger the suit.

Having considered the submissions, I find that the appeal was remanded to the Sub Judge to examine defendant no. 9, but, immediately after remand the defendant no. 9 died and her legal heirs was substituted only in the year 2003 as defendant no. 9ka. The petitioner filed her affidavit for her examination, but, the learned Sub Judge on the ground of delay did not allow defendant no. 9ka to be examined and, thus, I find that the learned Sub Judge has committed illegality in dismissing the petition of the petitioner for her evidence.

Accordingly, the orders, dated 07.05.2016 and 13.07.2016, are set aside with a direction to the Sub Judge to allow defendant no. 9ka to be cross examined, as her affidavit is already on record, within a period of three months.

This civil miscellaneous petition stands allowed, accordingly.

(Prabhat Kumar Jha, J)

SA/-

U	√		
---	---	--	--

