

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1276 of 2013
Arising out of
Civil Writ Jurisdiction Case No. 12571 of 2005
Along with
Interlocutory Application No. 7303 of 2013**

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Mahant Shiv Narayan Giri, Son of Late Ramanand Giri, Resident of Shri Baba
Burhanath Mahadeo Temple Campus, P.S.- Jogsar, District- Bhagalpur

Respondent No.3.... Appellant/s

Versus

1. Shivjee Pandey, Son Of Indradeo Pandey, Resident of Village- Bakherpur
Diara, P.S.- Pirpanti, District- Bhagalpur..... Petitioner Respondent I Set
2. The State Of Bihar
3. The Sub-Divisional Magistrate Cum President Of Burhanath Temple Trust,
SDM Officer Sadar, Bhagalpur

Respondents.... Respondent II Set

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Appearance :

For the Appellant/s : Mr. Sanjay Parasmani, Advocate

For the State : Mr. Vishwa Ranjan Choudhary, AC to SC 27

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 10-02-2017

Re: Interlocutory Application No. 7303 of 2013

The application is for condonation of delay of 1 year 28
days in filing of the present Letters Patent Appeal.

For the reasons mentioned in the application, we find
that sufficient cause is made out for condonation of delay.
Consequently, we condone the delay in filing of the present Letters
Patent Appeal.



Interlocutory Application No. 7303 of 2013 is allowed.

Letters Patent Appeal No. 1276 of 2013

The grievance of the appellant in the present Letters Patent Appeal is to the last paragraph of the order passed by the learned Single Bench of this Court on 22nd June, 2016 in CWJC No. 12571 of 2005 which reads as under:-

“It goes without saying that now an adjudication and declaration of law on the facts have been made by a competent court and if there is no other order passed in further proceeding against the order of the District Judge, then the natural corollary would be petitioner being restored possession prior to the order dated 10.6.2005 by the Sub Divisional Magistrate cum President of the Trust. If there is any impediment the petitioner will have to move the court of the District Judge, Bhagalpur for enforcement of the order.”

Learned counsel for the appellant submits that the writ applicant has already availed the remedy of Civil Suit claiming title over the property in question and that the parties would be bound by the decision of the Civil Court. Therefore, the findings recorded by the learned Single Bench, as if natural corollary of restoration of possession prior to the order dated 10th June, 2005, is not tenable as any order for restoration of possession can be passed by the Civil Court alone in a suit filed by the writ applicant.

We find merit in such argument. Therefore, we dispose of the present Letters Patent Appeal with the clarification that the



order of the learned Single Bench passed on 22nd June, 2012 in CWJC No. 12571 of 2005 shall be subject to the decision in the suit filed by the writ applicant claiming title over the land in question and the parties shall be bound by the decision of the civil court.

(Hemant Gupta, ACJ.)

S.Pandey/-

(Sudhir Singh, J.)

AFR/NAFR	NAFR
CAV DATE	NA
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