

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.988 of 2018

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Ramwati Devi D/o Late Khardari Mandal W/o Shankar Mandal R/o Village
Farka, P.S. Sabour, Dist.-Bhagalpur

.... Petitioner

Versus

1.Jagdish Mandal S/o Surju Mandal

2.Subodh Kumar Mandal S/o Jagdish Mandal, both are R/o village
Bhuwalpur, P.S. Nathnagar, Dist.-Bhagalpur

.... Respondents

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Appearance :

For the Appellant/s : Mr. Anupa Nand Jha

For the Respondent/s : Mr.

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

ORAL ORDER

2 13-08-2018

Heard learned counsel for the petitioner.

The petitioner has filed this Civil Miscellaneous petition against the order dated 19.04.2018 passed by 3rd Additional District Judge, Bhagalpur in Misc. Case No.01 of 2016, by which, the petition of the petitioners in Misc. Case No. 1/2016 with regard to the question of limitation be framed as preliminary issue has been rejected.

The respondents filed Misc. Case No.1/2016 to set aside the dismissal of Title Appeal No.58/1999. The Misc. petition of the respondents was admitted. The petitioners being O.Ps in the Misc. Case No.1/2016 stated that the respondents had full knowledge about the pendency of the Title Appeal and intentionally they did not appear in the Title Appeal.



Consequently, Title Appeal was dismissed for non-prosecution. Therefore, in the Misc. case firstly the question of limitation be framed as preliminary issue and decide the Misc. case but the learned 3rd Additional District Judge, Bhagalpur erroneously rejected the petition holding that the Misc. petition is admitted for hearing against the order of dismissal of title appeal and in such case the preliminary issue cannot be framed to decide the miscellaneous case. I do not find any jurisdictional error or illegality in the order impugned. The learned 3rd Additional District Judge, Bhagalpur has rightly rejected the petition of the petitioners to frame preliminary issue under Order 14 Rule 2 of the C.P.C. in the Miscellaneous Case in order to decide the question of limitation.

Accordingly, I do not find any merit in this Civil Miscellaneous petition and this Civil Miscellaneous petition is dismissed.

(Prabhat Kumar Jha, J)

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