

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.279 of 2016

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Ramjee Singh

.... Appellant/s

Versus

Ramdani Singh & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Manish Dhari Singh

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

9 16-02-2018 Heard Ms. Nivedita Nirvikar, learned counsel for the petitioner and the learned counsel for the respondent nos. 1, 3 to 11, 13 and 14.

The petitioner is aggrieved by the order dated 05.02.2016 passed in Partition Suit No. 29 of 2014, by which the learned Sub-Judge allowed the defendant to contest the suit.

Ms. Nivedita Nirvikar, learned counsel for the petitioner submits that the petitioner filed a partition suit on 16.01.2014. The suit was admitted on 28.01.2014. Notices were issued to the defendants, but the defendants did not appear. There was paper publication on 28.04.2014. Even then, the defendants did not appear. Consequently, the suit was fixed for *ex parte* hearing on 16.06.2014. The plaintiff examined two witnesses, but on 08.08.2014 the defendants appeared and filed W.S., but no petition to condone the delay in filing the W.S. was



filed. Thereafter, again the defendants stopped appearing in the Court and consequently, the limitation petition filed by the respondents was dismissed on 3.10.2015. The defendants again appeared on 10.12.2015 and filed a petition to recall the order dated 03.10.2015. Learned Sub-Judge, vide order dated 05.02.2016, without considering all these facts that the defendants, who are the members of the same family, knowingly and intentionally did not appear after institution of the suit, allowed the petition of the defendants. The defendants did not even pursue properly the limitation petition in condoning the delay for accepting the W.S., but the learned Sub-Judge allowed the petition filed by the defendants for recalling the dismissal of the limitation petition due to non-prosecution.

Of course, it appears that the defendants even after his appearance time and again absented themselves from the proceeding of the Court, but it appears that the suit is for partition and the defendants are necessary parties.

Learned counsel for the defendants submits that the defendants shall now appear on each and every date in Court.

Considering the facts aforesaid and in the interest of justice, I am not inclined to interfere with the order dated 05.02.2016, by which only the order dated 03.10.2015, by which



limitation petition was dismissed for default, has been recalled.

However, the respondents are directed to deposit the cost of Rs. 5,000/- to the petitioner.

The learned court below is directed to dispose of the partition suit, preferably within six month from the date of receipt of a copy of this order.

With the aforesaid observation, the Civil Misc. petition is dismissed.

(Prabhat Kumar Jha, J.)

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