

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.850 of 2016

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1. Pappu Kumar
2. Pintu Kumar
3. Mantu Kumar All sons of Late Birendra Singh Resident of Village+P.O.-
Sheikhpura, P.S.- Rampur Chauram, Distt- Arwal.

.... Appellant/s

Versus

1. Mosmat Basanti Devi W/o Late Ram Prasad Singh
2. Braj Bhushan Singh S/o Shyam Narayan Singh
3. Smt. Kauleshwari Devi W/o Braj Bhushan Singh All resident of Village+P.o.-
Sheikhpura, P.S.- Rampur Chauram, Distt- Arwal.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Birendra Nath Mishra
For the Respondent/s : Mr. Sanjiv Sharan
Mr. Sanjay Kumar Mishra

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL JUDGMENT

Date: 31-08-2018

Heard both sides.

The petitioners filed this Civil Misc. petition against the order dated 28.06.2016 passed in Title Suit No. 186 of 2011 by which the petition of the petitioners dated 12.04.2016 for recalling the order dated 23.01.2016 by which the evidence of the plaintiff/petitioners has been closed is dismissed.

The learned counsel for the petitioners submits that the plaintiffs filed the suit for declaration of title and recovery of possession. Issues were settled on 23.01.2014 but after sometime the Presiding Officer was transferred. The petitioners could not make Pairvi on account of some unavoidable circumstances but again the case was transferred from the Court of learned Sub Judge-I, Jehanabad to the Court of learned Sub Judge, Arwal in the year 2015. The petitioners did not get any notice about the transfer of the case



from the Court of learned Sub Judge-I, Jehanabad to the court of learned Sub Judge, Arwal and consequently the petitioners failed to appear in the suit. The case of the plaintiffs/petitioners was closed on 23.01.2016. When the petitioners filed petition for recalling the order dated 23.01.2016 and allowing them to adduce evidence, the same was dismissed.

The learned counsel for the petitioners submits that if the order closing the case of the petitioners is not recalled the same would cause irreparable loss and injustice to the petitioners. The petitioners had no knowledge about the transfer of the case from learned Sub Judge-I, Jehanabad to the court of learned Sub Judge, Arwal but the learned counsel for the respondents submits that the petitioners never appeared in the Court after settlement of issues and ultimately the case of the petitioners was closed.

On perusal of the records, it appears that the issues were settled on 23.01.2014. Thereafter, the order shows that on many dates the Presiding Officer remained on leave or the Court remained vacant on account of transfer of the Presiding Officer. The Presiding Officer joined only in the year 2015 but the petitioners did not attend the Court on some dates and thereafter, the case was transferred to the Court of learned Sub Judge Arwal. The petitioners did not get any notice about the transfer of the case from the Court of learned Sub Judge-I, Jehanabad to the court of learned Sub Judge, Arwal and, therefore, they were prevented from appearing in the Court but consequently due to none appearance of the petitioners, evidence of the petitioners was closed. If the order is not recalled, the same would occasion irreparable loss and injustice to the petitioners. Therefore, in the interest of justice, I set aside the order 28.06.2016 and allow the petitioners to examine their witnesses within six months from the date



of receipt of this order.

The petitioners shall deposit a cost of Rs. 3,000/- for their laches. The cost shall be paid to the defendants.

This Civil Misc. petition is, accordingly, allowed.

(Prabhat Kumar Jha, J)

BKS/Rajan

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07.09.2018
Transmission Date	N/A

