

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.403 of 2018

1. Nawal Kishore Singh
2. Kamal Kishore Singh
3. Bharat Bhushan Prasad Singh
Sl 1 to 3 Sons of late Bindeshwari Prasad Singh
4. Smt. Kadambari Devi wife of Late Sohan Prasad Singh
5. Sudarshan Kumar son of Late Sohan Prasad Singh
6. Jitendra Kumar son of Late Sohan Prasad Singh
Sl. 1 to 6 residents of village - Chintamanichak, P.S. - Mokama,
District - Patna.
7. Dharmendra Kumar son of Ramendra Prasad Narayan Singh
8. Ramendra Prasad Narayan Singh son of Late Raghvendra Prasad
Singh Both resident of E-74, Amama Block, Krishna Apartment,
Boring Road, Patna.
9. Ramesh Prasad Singh
10. Mahesh Prasad Singh
11. Chandra Bhushan Prasad Singh
12. Mani Bhushan @ Santosh Kumar
Sl. 9 to 12 sons of late Baidyanath Prasad Singh Residents of
Village & Post-Mohammadpur Panta, P.S. Sonaki, District :
Darbhanga.
13. Smt. Manjula Devi wife of Madhu Prasad Singh resident of
Village & Post Rampur, P.S. Hasanpur, District Samastipur.
14. Smt. Kumkum Singh wife of Suman Kumar Singh Village & Post
Rasalpur, P.S. Parsauni, District : Sitamarhi.

... .. Petitioners

Versus

1. Ram Krishna Prasad Singh
2. Ram Sumiran Prasad Singh
3. Ram Bhushan Prasad Singh
All sons of late Ramchandra Prasad Singh, residents of Village : Bihat, Tola :
Ibrahimpur, P.S. Barauni, District : Begusarai.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Vikash Kumar Sharma, Advocate
For the Respondents	:	Mr. Ram Sumiran Singh, In person

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 24-09-2018

Heard Mr. Vikash Kumar Sharma, the learned
counsel appearing on behalf of the petitioners and Mr. Ram Sumiran



Singh, the opposite party no.2, who appears in person.

2. The petitioners have filed this civil miscellaneous petition for setting aside the order dated 13.02.2018, passed in Civil Misc. (Transfer) Case No.186 of 2017 by the learned District Judge, Patna (Annexure-P/3) by which the learned District Judge dismissed the petition of the petitioners on the ground that the Hon'ble High Court, Patna vide Confidential Letter No.08, dated 06.01.2018 directed for early disposal of Misc. Case No.2 of 2016 (Restitution).

3. The learned counsel for the petitioners submits that Title Suit No.46 of 1969 / 9 of 1975 was filed for realization of Rs.93,016/- alleged to have been advanced by the petitioners. The suit was dismissed on contest on 18.09.1975 with cost by the then Additional Sub-Judge, Barh. Against this order, the petitioners filed First Appeal No.39 of 1976 before the Hon'ble High Court of Patna. The First Appeal No.39 of 1976 was heard and allowed on contest but without cost and accordingly, preliminary and final decree were set aside. Respondents filed Civil Review No.82 and 83 of 2016 before the Hon'ble High Court, Patna but it was also dismissed as being devoid of any merit on 03.05.2016. The respondents filed Special Leave to Appeal (C) No.8762-8765 of 2017 and the Hon'ble Apex Court vide order dated 31.03.2017 dismissed the Special Leave Petition. Civil Review No.1595-1598 of 2017 was also dismissed on 09.08.2017. It is further submitted that after dismissal of the suit, at



the instance of the respondents, final decree was prepared against which the petitioners also filed First Appeal No.771 of 1976 which was heard along with First Appeal No.39 of 1976 and allowed but in the meantime, the respondents filed Execution Case No.7 of 1976. More than 88 Bighas land of the petitioners was auction sold and the possession over the auctioned land was delivered to the respondents on 06.12.1981. Since then the respondents are enjoying the usufruct of the said land illegally. The petitioners filed petition under Section 144 of the Code of Civil Procedure before Sub-Judge-I, Barh on 10.05.2016 for restitution of their possession over 88 Bighas of land, which was delivered to the respondents in the year 1981 in pursuance of the order passed in Execution Case No.7 of 1976. Now, the judgment and decree passed by the trial court has been set aside and the petitioners are entitled to get restitution of the property delivered in pursuance of the judgment and decree passed by the trial court. It is submitted that Additional Sub-Judge, Barh passed the judgment and decree in Title Suit No.46 of 1969 / 9 of 1975 but the petitioners due to mistake filed Civil Miscellaneous (Restitution) Case before Sub-Judge-I, Barh on 10.05.2016. The restitution petition should be heard by the court or successor of the court who passed the judgment and decree in the title suit. The Additional Sub-Judge is the original court and now Additional Sub-Judge is designated as Sub-Judge-III. In this view of the fact the Civil Miscellaneous Case be transferred to



the court of Sub-Judge-III, Barh. The learned counsel for the petitioners referring Annexure-4 and 5 to the supplementary affidavit showed that the Additional Sub-Judge or Additional Sub-Judge-I was designated as Sub-Judge-III, Barh. Whenever two Additional Sub-Judges are posted, Additional Sub-Judge was designated as the Additional Sub-Judge-I and another court of Additional Sub-Judge was designated as Additional Sub-Judge-II. Accordingly, in view of the Letter No.10842-72, dated 26.08.1986, the District Judge, Patna designated the court of Sub-Judge as Sub-Judge-I, Additional Sub-Judge-I as Sub-Judge-III and Additional Sub-Judge-II as Sub-Judge-II, therefore, the Misc. Case No.2 of 2016 (Restitution) should be heard by the same court, i.e., Additional Sub-Judge-III, Barh.

4. The learned counsel appearing on behalf of the respondents submitted that the petitioners themselves filed the petition before the Sub-Judge-I and thereafter in order to linger the proceeding the petitioners filed transfer petition.

5. The petitioners are the plaintiffs. The suit was dismissed by the learned Additional Sub-Judge. The First Appeal preferred against the preliminary and final decree being First Appeal No.39 of 1976. Accordingly, the judgment and decree was modified but at the instance of the respondents the decree was executed and 88 Bighas land of the petitioners was auction sold but after judgment passed in appeal, the petitioners have filed Misc. Case No.2 of 2016



(Restitution) but the same was wrongly and under wrong notion was presented before the Sub-Judge-I. In fact Sub-Judge-III has got jurisdiction to hear the Misc. Case No.2 of 2016 (Restitution). It was the court of Additional Sub-Judge who is now designated as Sub-Judge-III, the original court and he is legally authorized to hear the restitution case. Accordingly, Misc. Case No.2 of 2016 (Restitution) is ordered to be transferred to the court of the learned Sub-Judge-III, Barh from the court of the learned Sub-Judge-I, Barh and this civil miscellaneous petition is allowed accordingly after setting aside the order dated 13.02.2018, passed by the learned District Judge, Patna in Civil Misc. (Transfer) Case No.186 of 2017.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.09.2017
Transmission Date	NA

