

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.22480 of 2014

IN

C.R. 1207 of 2009

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Karunesh Kumar Tiwary @ Prakash Tiwary & Ors.

.... Petitioner/s

Versus

Mosmat Deoraji Kuwar & Ors.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bashishtha Narayan Mishra, Advocate
Mr. B.K. Mishra, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 27-06-2018

Heard learned counsels for the petitioners and the respondents.

2. This writ application has been filed by the petitioners for setting aside the order dated 24.06.2009 passed by Munsif, Bagaha, West Champaran in Title Suit No.17 of 1980 whereby and whereunder petition of the petitioners to recall the order dated 14.05.2009 and 16.06.2009 was rejected.

3. It appears that one Ramchandra Tiwary filed the aforesaid suit for declaration of his right and title on the basis of three registered sale deeds. During pendency of the suit, the plaintiff Ramchandra Tiwary died and his widow and daughter were substituted. These petitioners claiming to be adopted sons of



Ramchandra Tiwary intervened and they were impleaded as party to the suit under Order 1 Rule 10 of C.P.C. In course of trial, the petitioners in order to prove their case of adoption filed a petition to call for register relating to matriculation certificate and admit card. The prayer of the petitioners was allowed as per order dated 14.05.2009 subject to payment of cost of Rs.5,000/-. The petitioners were directed to produce certificate within one month. The petitioners got 'Dasti' summon served on the Bihar School Examination Board on 05.06.2009. According to notice, the Bihar School Examination Board had to produce the register on 06.06.2009. Thereafter the petitioners deposited special messenger cost to the tune of Rs.600/- to get another summon served on the Bihar School Examination Board. After some formalities, the Bihar School Examination Board sent the said documents on 19.06.2009 but it was returned back as case was adjourned to another date. In consequence of non-receipt of said documents on fixed date, the evidence of petitioners was closed.

4. The contention of learned counsel for the petitioners is that the petitioners have not committed any laches deliberately. It was on account of procedural laches on the part of the Bihar School Examination Board, the document could not be produced in court by the date fixed by court. The petitioners got Dasti summon served and thereafter also deposited the cost of Rs.600/- for expeditious service



of summon on the Bihar School Examination Board for production of documents. The court below without considering the above facts and circumstance, has passed the impugned order in a routine manner observing that in spite of sufficient opportunity the petitioners did not produce the documents.

5. The learned counsel for the respondents, on the other hand, has supported the impugned order and prayed to dismiss this writ application.

6. From perusal of the impugned order and the documents annexed with this writ application, it appears that on the prayer of the petitioners, one month time was allowed subject to payment of cost of Rs.5,000/-. The petitioners took step immediately and got the 'Dasti summons' served on the Bihar School Examination Board. The petitioners subsequently deposited the cost of special messenger and got the notice served on the Bihar School Examination Board. The documents sought to be produced are public documents. By the impugned order, the court below rejected the petition without considering the stand taken by petitioners to recall of the impugned order.

7. In view of above facts the impugned order refusing to recall the order dated 14.05.2009 and 16.06.2009 is set aside. The court below is directed to give an opportunity to the petitioners to get



the documents produced/exhibited in accordance with law.

8. Accordingly, this writ application is allowed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	04.07.2018
Transmission Date	

