

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.85 of 2019

1. Umesh Sharma
2. Ramesh Sharma.
3. Sudhir Sharma

All sons of Late Jainandan Singh.

4. Sampat Singh @ Sampat Kumar, son of Late Janardan Singh.
 5. Amit @ Golu @ Amit Kumar, son of late Yogendra Singh
- All residents of village-Sheikhpura, P.O.+P.S.-Naubatpur, District-Patna

... .. Appellants/Petitioner

Versus

1. Sadhu Sharan Sharma, son of late Raghunandan Prasad Singh
 2. Smt. Khushbu Kumari, wife of Jai Prakash Rai, daughter of Sadhu Sharan Sharma
- Both residents of Village-Sheikhpura, P.O.-Khajuri, P.S.-Naubatpur, District-Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Kumar Kaushik, Advocate
For the Respondent/s	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 24-01-2019

This application under Article 227 of the Constitution of India has been filed by the petitioners for quashing the order dated 06.07.2017 passed in Civil Misc. Appeal No. 76 of 2016 by learned District Judge, Patna whereby the miscellaneous appeal preferred against the order dated 16.08.2016 passed by the learned Sub-Judge-1, Danapur in Title Suit No. 82 of 2015 refusing to grant injunction under Order 39 Rule 1 and 2 of the Code of Civil Procedure has been dismissed, as barred by limitation as well as for non-prosecution.

2. Mr. Kumar Kaushik, learned counsel for the



petitioners submitted that the petitioners inadvertently did not file a limitation application along with civil miscellaneous appeal. The delay of 71 days was caused due to illness of petitioner no. 2, who is the *Karta* of the family. He submitted that impugned order is patently illegal inasmuch as no application could have been dismissed on merit due to non-prosecution. According to him, the court below had option to dismiss the case for non-prosecution, but it has erroneously proceeded to dismiss the appeal itself. In support of his submission he has placed reliance on the decisions of the Supreme Court in **Rafiq and Anr. vs. Munshilal and Anr. [1981(2) SCC 788]** and **Secretary, Department of Horticulture, Chandigarh and Anr. vs. Raghu Raj [(2008) 13 SCC 395]**. He further contended that the respondents-defendants are alienating the property and thereby creating third party rights and, thus, in the interest of justice the injunction so prayed for under Order 39 Rule 1 and 2 should have been granted. He pleaded that the petitioners had no knowledge of dismissal of the civil miscellaneous appeal until October, 2018. They were not informed by their counsel owing to which the delay has been caused in filing the present application, which is not attributable to the petitioners.



3. I have heard learned counsel for the petitioners and carefully perused the record.

4. The petitioners-plaintiffs filed Title Suit No. 82 of 2015 praying *inter alia* for declaration of exclusive title over Schedule-I and II of suit land.

5. The Code of Civil Procedure confers a right of appeal, but does not prescribe a period of limitation for filing an appeal. The Limitation Act, 1963, provides the period for filing appeals. It provides that appeals against a decree or order can be filed in a High Court within ninety days and in any other court within thirty days from the date of decree or order.

6. When an appeal is filed after expiry of the period of limitation, it is required to be accompanied with an application for condonation of delay supported by affidavit setting forth the facts on which the appellant relies to satisfy the court that he had sufficient cause for not preferring the appeal within the specified time in terms of the provisions prescribed under Order XLI, Rule 3A of the Code of Civil Procedure, which has been inserted by the Amendment Act, 1976 with effect from 01.02.1977.

7. Order XLI, sub rule (1) and (2) of Rule 3-A of the Code of Civil Procedure deals with requirement of filing of



an application for condonation of delay. An appeal barred by time cannot be entertained by a court without an application for condonation of delay.

8. In the instant case, the petitioners had not only filed a time barred appeal before the court below, without any application for condonation of delay, but they had also failed to appear before the court on several dates, which would be manifest from the order impugned.

9. Under such circumstance, if the court below has dismissed the appeal, no illegality can be found with the impugned order.

10. As far as the reliance placed by the petitioners on the decision of Supreme Court in cases of **Rafiq and Anr.** (supra) and **Secretary, Department of Horticulture, Chandigarh and Another** (supra) are concerned, the facts of those cases are distinguishable from the facts of the present case. Hence, the ratio laid down in those cases are not applicable to the facts of the present case.

11. In view of the discussions made above, I am not inclined to interfere with the order impugned in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.



12. The application is rejected.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.02.2019
Transmission Date	NA

