

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.26 of 2019

1. Malti Devi, aged about 55 years, Female, daughter of late Ramavtar Sah, Wife of Deenanath Sah
2. Saroj Devi, aged about 40 years, Female, daughter of Late Ramavtar Sah, Wife of Saroj Kumar
Both 1 & 2 R/o Vill- Barahaj, P.O. and P.S.- Barahaj, District- Deoria Uttar Pradesh
3. Ramakant Kanu @ Ramkant Sah, aged about 70 years, Male
4. Chhote Sah @ Chhote Lal Sah @ Madhesia @ Chhotelal Madhesia, aged about 50 years, Male
Both 3 & 4 sons of Late Ramavtar Sah @ Ravavtar Madhesia Resident of Village- Pagra Tola Sahdigri, P.O. Sahdigri, P.S. Vijaipur, District- Gopalganj.
5. Most. Prabhawati Kuer, aged about 60 years, Female wife of Late Jawahar Sah
6. Rajesh Sah, aged about 38 years, Male
7. Suresh Sah, aged about 35 years, Male
8. Ashok Sah, aged about 30 years, Male
9. Guddu Sah, aged about 26 years, Male,
All 6 to 9 sons of Late Jawahar Sah
10. Manju Sah, aged about 22 years, Female, daughter of Late Jawahar Sah
All 5 to 10 R/o Vill- Pagra Tola Sahdigri, P.O.- Sahdigri, P.S. Vijaipur, District- Gopalganj.

Defendant/ Appellants/ Petitioners/ Appellant/s
Versus

1. kashi sah, aged about 70 years, Male
2. Brijvasi Sah aged about 65 years, Male
3. Radheshyam Sah aged about 60 years, Male
4. Baijnath Sah aged about 50 years, Male
5. Munna Sah aged about 45 years, Male
All 1 to 5 sons of Late Sudama Sah R/o Vill- Pagra Tola Sahdigri, P.O.- Sahdigri, P.S. Vijaipur, District- Gopalganj.
6. Ramprit Sah aged about 80 years, Male
7. Ramchandra Sah aged about 60 years, Male
8. Nagendra Sah aged about 55 years, Male
9. Upendra Sah aged about 50 years, Male
10. Harendra Sah aged about 45 years, Male
All 7 to 10 sons of Ramprit Sah
All 6 to 10 resident of village + PO+PS- Kateya, District- Gopalganj
11. Smt. Ratna Devi, aged about 40 years, Female, wife of Kedar Gupta



Resident of Village and P.O.- Bishunpura Bazar, P.S. Baghouch Ghat,
District- Deoria, Uttarpradesh

12. Smt. Usha Devi, aged about 35 years, Female, Wife of Hira Gupta Resident of Village and P.O. Khajuri and P.S. and District- Kushinagar, Uttar Pradesh.
13. Kiran Kumari, aged about 30 years, Female, daughter of Ramprit Sah R/o Vill- Kateya , P.O. Kateya, P.S. Kateya, District- Gopalganj.
14. Bibi Salma, aged about 60 years, Female, wife of late Mashin Mian
15. Hasmuddin Mian, aged about 45 years
16. Alam Mian , aged about 38 years, Male
17. Rahim Mian, aged about 22 years, Male
18. Nargis, aged about 26 years, Female, daughter of late Mashin Mian, Wife of Kundan Mian
All 15 to 17 sons of late Mashin Mian
All 14 to 18 resident of Village- Etar, P.O. and P.S., District, -Siwan,
Presently residing at Village- Pagra Tola- Sahdigri, P.O.- Sahdigri, P.S. Vijaipur, District- Gopalganj.

... Defendants/Respondents /Opposite parties/ Respondent/s

Appearance :

For the Appellant/s : Mr. Sanjay Kumar Pandey
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 17-06-2019

Heard parties.

This miscellaneous appeal has been filed for setting aside the order dated 6.11.2018 passed in Miscellaneous Case No.128 of 2018 (arising out of Title Appeal No.31/2001) passed by learned Additional District Judge, I Gopalganj by which he has rejected the miscellaneous case filed for readmission of title appeal no.31 /2001 under order 41 Rule 19 of CPC.

Briefly stated the facts of the case is that a title suit no.196 of 1991 was filed by plaintiffs / respondent nos.1 to



13 against the appellants/defendants for a declaration that the constructions made by appellant/defendants over the suit land were illegal with a further prayer for recovery of possession of the suit land after demolishing the unauthorized construction made over the suit land and same was decreed by judgment and decree dated 27.1.2001 passed by learned Additional Munsif II, Gopalganj.

Against the said judgment dated 27.1.2001, the appellants/defendants filed title appeal no.31/2001 before the learned District Judge, Gopalganj on 21.03.2001 which stood dismissed for default on 19.11.2008 for non-prosecution and, thereafter, no steps were taken for readmission of the appeal.

It has been contended on behalf of appellant no.5, widow of late Jawahar Sah that she got notice through registered post in execution case no.2 of 2001 and, thereafter, she came to know about the execution case and, thereafter, filed a miscellaneous case no.85/2018 under Section 47 of CPC for measurement and demarcation of the property in dispute and they also came to know that title appeal no.31/2001 stood dismissed for non -prosecution on 19.11.2008 and, thereafter, present miscellaneous case no.128/2018 was filed on 22.5.2018 for readmission of title appeal no.31 / 2001 filed under Order 41



Rule 19 of CPC along with a petition for condonation of delay which was rejected by the impugned order.

The defendants/appellants had contested the title suit which was decreed in favour of plaintiff against which they had filed title appeal and same was dismissed for non-prosecution on 19.11.2008 for which application for readmission of appeal could have been filed within 30 days from the date of order of dismissal but same was filed after 10 years of order of dismissal and no valid and plausible reasons have been assigned in their application for condonation of delay of more than 10 years in filing miscellaneous case for readmission of appeal, although they had contested the title suit and aggrieved by the judgment and decree, they had filed the appeal as such, they cannot take a plea that they were ignorant about the dismissal of their title appeal. Moreover, they had filed an objection under Section 47 of CPC in execution case No.2/2001 giving rise to miscellaneous case no.85/2018 and filing of subsequent miscellaneous case under Order 41 Rule 19 of CPC for readmission of title appeal which was dismissed for non -prosecution on 19.11.2008 is only an attempt to frustrate and delay to enjoy the fruits of decree passed in favour of plaintiffs/respondents by filing one petition after another only to



deprive plaintiffs in getting the possession of the suit land as decreed in their favour way back in the year 2001.

There is no merit in this miscellaneous appeal and same is, accordingly, dismissed.

(S. Kumar, J)

Sanjay/-

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

