

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.565 of 2019

1. Kundan Kumar Yadav Son of Kapildev Prasad Yadav R/o Village and P.O.-Mouzi, P.S.-Hasanpur, District-Samastipur, at present residing at Ward No. 23, Missan Road, Kanti Factory Campus, Bhirkhi, District-Madhepura
2. Chandan Kumar Son of Late Kapildev Yadav R/o Village and P.O.-Mouzi, P.S.-Hasanpur, District-Samastipur, at present residing at Ward No. 23, Missan Road, Kanti Factory Campus, Bhirkhi, District-Madhepura

... .. Opposite Parties-Petitioners

Versus

1. Lalit Kumar Yadav Son of Indradev Yadav R/o Village and P.O.-Mouzi, P.S. Hasanpur, District-Samastipur
2. Bulu Yadav Son of Gyani Yadav R/o Village and P.O.-Mouzi, P.S. Hasanpur, District-Samastipur
3. Chandradev Yadav @ Raja Yadav Son of Bulu Yadav R/o Village and P.O.-Mouzi, P.S. Hasanpur, District-Samastipur

... .. Petitioner-Respondent

... .. Defendants 1st set-Respondents

4. Pankaj Kumar Son of Kapildev Prasad R/o Village and P.O.-Mouzi, P.S. Hasanpur, District-Samastipur

... .. Opposite Party- Respondent

Appearance :

For the Petitioners : Mr. Sharda Nand Mishra, Adv.
For the Respondents : Mr. Ajay Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 19-09-2019

Heard Mr. Sharda Nand Mishra, learned advocate for the petitioners and Mr. Ajay Kumar Singh, learned advocate for the respondent no.1.

2. This application under Article 227 of the Constitution of India has been filed by the petitioners for quashing the order



dated 26.09.2018 passed by the learned Additional District Judge 2nd, Samastipur in Probate Case No. 10 of 2005 by which he has rejected the application dated 19.09.2018 filed by the petitioners.

3. The facts of the case, in brief, are that during pendency of the probate case filed by the respondent no.1, the petitioners filed an intervention application, which was allowed vide order dated 08.03.2016. They were impleaded as defendant nos. 4 and 5 in the said probate case.

4. After being impleaded as defendants, the petitioners did not file written statement within the statutory period of 30 days in terms of Order VIII, Rule 1 of the Code of Civil Procedure (for short 'CPC'). Even after expiry of the statutory period, they did not file their written statement within the extended period of 120 days as provided under proviso to Order VIII, Rule 1 of the CPC. Thus, the plaintiff-respondent no.1 filed an application for debarring the petitioners from filing their written statement.

5. The application filed by the respondent no.1 was allowed and the petitioners were debarred from filing written statement vide order dated 10.10.2017.

6. Thereafter, the petitioners filed an application on 08.01.2018 for recall of the order dated 10.10.2017. The said application filed by the petitioners was rejected by the trial court



vide order dated 25.04.2018. Thereafter, another application was filed by the petitioners on 19.09.2018 for recall of the order dated 10.10.2017 passed by the court below. The said application was rejected vide impugned order dated 26.09.2018.

7. Mr. Sharda Nand Mishra, learned advocate appearing for the petitioners submitted that the petitioners would suffer irreparable injury in case they are not allowed to file their written statement. He contended that since one of the petitioners had fallen ill during the relevant period, written statement could not be filed before the court within the stipulated time prescribed under Order VIII, Rule 1 of the CPC. He has further contended that if the order impugned is not set aside, it would amount to failure of justice.

8. Contesting the application filed by the petitioners, Mr. Ajay Kumar Singh, learned advocate appearing for the respondent no.1 submitted that the order impugned passed by the court below is neither perverse nor without jurisdiction. The conduct of the petitioners in the court below was just to delay the disposal of the probate case and defeat the ends of justice. The court below has also noticed the fact that the medical certificate filed by the petitioners would certify the fact that one of the petitioners had fallen ill on 31.03.2018. The medical certificate annexed by the petitioners did not show that the petitioners were



bed-ridden or they continued to be indisposed for a long period. Fever on a day cannot be made a ground for condoning the abnormal delay of about one year.

9. Having heard learned advocates for the parties, I find substance in the submission of the learned advocate for the respondent no.1. It would be evident from the conduct of the petitioners that they are casual in pursuing the matter before the court below. They did not file their written statement within the statutory period or within the extended statutory period as provided under Order VIII, Rule 1 of the CPC. They were debarred from filing the written statement after more than a year and seven months from the date of their impleadment in the suit. When their application for recall of the order by which they were debarred from filing written statement was rejected by the court below vide order dated 25.04.2018, they did not chose to challenge the same before any court. They once again filed another application before the same court on 19.09.2018, which has been rejected by the impugned order dated 26.09.2018. The order impugned is neither perverse nor without jurisdiction.

10. In that view of the matter, I am not inclined to interfere with the impugned order dated 26.09.2018 in exercise of



supervisory jurisdiction under Article 227 of the Constitution of India.

11. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24-09-2019
Transmission Date	

