

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.285 of 2010

Jai Prakash Yadav & Ors.

... .. Appellant/s

Versus

Babni Devi & Ors.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Irdeshwari Pd. Mandal, Advocate
For the Respondent/s	:	Mr. Ashutosh Jha, Advocate
		Mr. Neeraj Kumar Singh, Advocate
		Mr. Abhinav Kumar, Advocate
		Mr. Vijay Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date : 07-01-2019

Heard learned counsel for the parties.

2. This miscellaneous appeal has been preferred, under Order XLIII Rule 1(t) of the Code of Civil Procedure, against the order dated 04.03.2010 passed by learned 3rd Additional District Judge, Bhagalpur, in Miscellaneous Case No.1 of 2006/23 of 2007 whereby the application filed, under Order XLI Rule-19 of the Code of Civil Procedure, by the appellants, for restoration of Title Appeal No.48 of 1986 has been dismissed.

3. The appellants had brought Title Appeal No.48 of 1986 against the judgment and decree passed in partition suit bearing Title (Partition) Suit No.67 of 1978/17 of 1982. The said title appeal was dismissed on 20.06.1997 for non-



appearance of the appellants on the date of hearing. Thereafter, the appellants filed Miscellaneous Case No.1 of 2006/23 of 2007 of the Code of Civil Procedure before the learned lower Appellate Court praying therein for restoration of the appeal after setting aside the dismissal.

4. The ground of the appellants was that murder of the father of the appellant, who was also party to the partition suit was committed in the year 1988. Thereafter, due to fear on their life, the appellants left the village and were hiding somewhere in fear of losing their life. Thus, the appellants were prevented by sufficient cause for not taking proper step in the aforesaid appeal which led to dismissal of the appeal in default.

5. The miscellaneous application aforesaid was dismissed by the impugned order dated 04.03.2010 by the learned Court-below by a reasoned order disbelieving the claim of the appellants that they were prevented by sufficient cause to not attend the case. The Court-below noticed that murder of the father of the appellant was committed in the year 1988. Thereafter, the appellants were doing proper and regular pairvy in the appeal up to 24.06.1995. Considering the aforesaid act of the appellants the learned Court-below disbelieved that the



appellant has established a case of prevention by sufficient cause from appearing in the appeal.

6. On factual position of the case, no disputing material has been brought on the record nor it has been pointed out that Court-below has committed any error of the record. Only submission is that in the event of dismissal of the appeal for default the parties would be debarred from getting their dispute adjudicated. Hence, for substantial justice the impugned order be set aside and the appeal be heard afresh.

7. In exercise of supervisory jurisdiction, this Court does not find any infirmity with the impugned order, which is based on reasons supported by materials on the record. Hence, this appeal has got no merit.

8. Accordingly, it stands dismissed without cost.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.01.2019
Transmission Date	08.01.2019

