

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.546 of 2019**

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Ram Sevak Sah Son of late Pahari Sah Resident of Village-Dumaria, P.S-
Bathnaha, Dist-Sitamarhi

... .. Petitioner

Versus

Nathuni Sah Son of late Pahari Sah Resident of Village-Dumaria, P.S-
Bathnaha, Dist-Sitamarhi

... .. Respondent

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Appearance :

For the Petitioner : Mr. Nalin Vilochan Tiwary, Advocate
For the Respondent : Mr.

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 06-09-2019

Heard learned counsel for the petitioner.

2. This application under Article 226 of the Constitution of India has been filed by the petitioner challenging the order dated 29.01.2019 passed in Misc. Case No. 02 of 2017 by the learned District Judge, Sitamarhi whereby the application filed under the provision of Order 9 Rule 4 of the Code of Civil Procedure for restoration of Probate Case No. 07 of 2015 has been rejected.

3. Learned counsel appearing for the petitioner submitted that the court below failed to appreciate the evidence adduced on behalf of the petitioner. He contended that four witnesses examined on behalf of the petitioner had stated that the petitioner had gone to Delhi for earning his livelihood instructing



his Pairvikar to take necessary steps in the case. It also failed to appreciate that for the fault on the part of Pairvikar, the petitioner would suffer irreparable loss and injury if restoration is not allowed.

4. A perusal of the order impugned would show that Probate Case No. 7 of 2015 was filed by the petitioner in the court of District Judge, Sitamarhi. On 30.11.2016, the same was dismissed for want of prosecution. Subsequently, an application under Order 9 Rule 4 of the Code of Civil Procedure was filed before the court for restoration of the suit. In support of the application preferred under Order 9 Rule 4, four witnesses were examined on behalf of the petitioner. They deposed that for earning livelihood, the petitioner went to Delhi in the month of June, 2016 and came back in the month of November, 2016. The contesting respondent had filed a rejoinder to the application filed by the petitioner wherein he had pleaded that on the basis of the will in question Probate Case No. 8 of 2005 was filed earlier by the petitioner which was rejected long back and no step was taken for restoration of the same. After 10 years, again, Probate Case No. 7 of 2015 was filed by the petitioner, which was also rejected on 30.11.2016 for want of prosecution. The averments made in the



rejoinder filed by opposite party respondent were not denied by the petitioner.

5. Having regard to the facts and circumstances of the case, learned District Judge came to the conclusion that the petitioner was casual in dealing with the probate case. He had earlier filed a suit in the year 2005 which got dismissed for want of prosecution and no step for restoration of the same was ever taken and , after lapse of 10 years, he again filed another suit on the basis of the same will which too got dismissed.

6. Taking into consideration all these, learned District Judge vide impugned order rejected the application filed under Order 9 Rule 4 of the Code of Civil Procedure.

7. Considering the facts and circumstances of the case, I see no illegality in the impugned order passed by the court below.

8. The application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.09.2019
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