

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.230 of 2015

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Kusheshwar Jha and Ors

.. ... Appellant/s

Versus

Smt. Dropati Jha and Ors

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Naresh Chandra Verma, Adv.
		Mr. N. Verma, Adv,
For the Respondent/s	:	Mr.Ram Kumar Singh.
For the respondent no.1		Mr. Ajay Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

8 11-04-2019

I.A. No. 6135 of 2015

Heard the parties.

Against the impugned order Civil Revision No. 509 of 2010 was filed however, same was dismissed for default due to non-appearance on 25.04.2012 and was restored by order dated 29.04.2015 passed in M.J.C. No. 1209 of 2014. However, it was observed that against the impugned order Civil Revision is not maintainable but the order is appealable and as such Civil Revision was withdrawn with liberty to file Miscellaneous Appeal.

This interlocutory application has been filed for condoning the delay of about 04 years and 11 months in



preferring the present appeal.

For the reasons mentioned in this interlocutory application, this Court is satisfied that the appellant was prevented from sufficient cause from preferring this appeal within time.

As a result, this interlocutory application is allowed and the delay in filing this appeal is condoned.

This interlocutory application stands disposed of.

M.A. No. 230 of 2015

This Miscellaneous Appeal has been filed for setting aside the order dated 08.03.2010 passed by learned Additional District Judge-II, Hajipur, Vaishali in Misc. Case No. 04 of 2009 which was filed under Order 47 Rule 1 of the C.P.C. for review of order dated 18.11.2009 passed in Title Appeal No. 01 of 1991.

Miscellaneous Case No. 04 of 2009 was filed by the respondent who were appellant in Title Appeal no. 01 of 1991 against the judgment and decree passed in Title Suit No. 20 of 1988 by learned Munsiff 2nd, Hajipur. In the Title Appeal no. 01 of 1991, a compromise petition was filed and prayer was made to dismiss the appeal and accordingly the Title Appeal was dismissed as withdrawn on 18.11.2009 by



the learned Additional District Judge-II, Vaishali thereafter respondent no.1 filed Misc. Case No. 04 of 2009 before the learned Additional District Judge 2nd Vaishali at Hajipur under Order 47 Rule 1 of C.P.C. for review of order dated 18.11.2009 passed in Title Appeal No. 01 of 1991.

It has been submitted on behalf of appellants that learned Additional District Judge Vaishali at Hajipur without issuing notice to appellants allowed the prayer of respondent no.1 and reviewed the order dated 18.11.2009 and recalled the same and restored the appeal by order as impugned dated 08.03.2010 passed in Misc. Case No. 04 of 2009. Notices were issued to respondents and office has reported that all respondents and substituted respondents have appeared.

A counter affidavit has been filed on behalf of respondent no.1 in which it is stated that compromise petition in the court below was only with respect to appellants no. 2 not with appellant no.1. Appellant no.1 is the real contestor of the suit or appeal and it has been submitted that the compromise petition was fraudulently filed and has further stated that the Appellate Court had rightly recalled the order which was passed on misrepresentation and suppression of fact.



It appears that Devendra Jha and Smt. Dropati Devi had filed Title Appeal No. 01 of 1991 against the judgment dated 21.11.1990 and its decree dated 04.12.1990 passed in Title Suit No. 20 of 1988. In above Title Appeal the miscellaneous petition dated 02.01.2002 was filed by Devendra Jha appellant no.2 and Respondent 1st party to dispose of appeal on the ground that both parties have compromised the case and have filed compromise petition duly signed by appellant no.2 and Respondent 1st party and their lawyers duly supported by affidavits. The said compromise petition was not signed by appellant no.1 Dropati Devi and respondent 2nd party i.e respondent no. 4 to 7, as such, on the basis of said compromise petition the appeal could not have been dismissed as compromise petition was not filed on behalf of all the parties and same could not have been accepted by the Appellate Court and, as such, the compromise petition filed on 02.01.2001 was not fit to be accepted and on basis of said compromise petition the appeal ought not to have been dismissed as withdrawn and accordingly by the order as impugned dated 08.03.2010 order was reviewed and the order passed in Title Appeal no. 01 of 1991 was recalled.

It is true that on petition for review of the



judgment and order filed and court is of the opinion that order is fit to to be reviewed then it is incumbent for said court to issue notice to the parties in whose favour judgment and order has been passed but in present case admittedly the review petition was allowed without issuing notice to the party in whose favour judgment and order was passed on basis of compromise entered between some of the parties before Appellate Court.

It is equally true that the Appellate Court had wrongly entertained the compromise petition entered into between some of the parties before the Appellate Court and other contesting parties before the Appellate Court were not signatory to said compromise and the Appellate Court ought to have not accepted said compromise petition.

After hearing the parties and going through the order as impugned in this Miscellaneous Appeal this court is of the opinion that on review petition filed by respondent the Appellate Court ought to have issued notices to the opposite parties before allowing the review application even if the Appellate Court had erroneously dismissed the case as withdrawn on basis of compromise petition which was not signed by all the parties in appeal, however from the records



it appears that title Appeal No. 01 of 1991 after setting aside the order passed on compromise petition by order dated 18.11.2009 and the case was fixed for argument on 08.06.2016 which was brought to the notice of this court in I.A. No. 4636 of 2016 by which prayer for stay of Title Appeal No. 01 of 1991 was prayed however from the order-sheet it does not appear that any order of stay was passed by this court as such order as impugned does not require any interference by this Court at this stage. Appellate Court is directed to pass the final order in Title Appeal No. 01 of 1991, after hearing all the parties, if already not passed, within 3 months from production/receipt of copy of order passed by this court.

With aforesaid observation and direction this Miscellaneous Appeal is disposed of.

(S. Kumar, J)

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