

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1129 of 2018

In

Civil Writ Jurisdiction Case No.533 of 1986

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Rajendra Mahto, son of Late Bengali Mahto, resident of Village- Binda, P.S. Mushari, District Muzaffarpur.

... ..(heir of deceased respondent no.4) Appellant/s
Versus

1. The Joint Director Of Consolidation, Govt. Of Bihar, Patna.
2. The Deputy Director of Consolidation, Muzaffarpur.
3. The Consolidation Officer, Mushari, P.S. Mushari, District Muzaffarpur.
..... Respondents 1 to 3 – Respondents 1st Set.
4. Munni Devi.
5. Nutan Devi.
6. Miki Kumari,
All daughter of Late Bindeshwar Mahto, All residents of Village- Binda, P.S. Mushari, District- Muzaffarpur.
7. Sumitra Devi, Daughter of Late Bindeshwar Mahto, wife of Lali Mahto, resident of Village- Sarfuddinpur, P.O. Sarfuddinpur, P.S. Bocha, District- Muzaffarpur.
8. Chandreshwar Mahto Son of Late Kusheshwar Mahto.
9. Shail Devi Wife of Chandreshwar Mahto.
..... Petitioners in connected writ/ Respondents 2nd Party.
10. Most. Prema Devi, Wife of Late Tilak Pd. Sharma
11. Bharath Prasad Sharma.
12. Pankaj Prasad Sharma.
13. Rajesh Prasad Sharma,
all sons of Late Tilak Prasad Sharma, All residents of Village- Binda, P.S. Mushari, District- Muzaffarpur.
(Heirs of deceased respondent no.5)

... .. Respondents 3rd Party

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with

Letters Patent Appeal No. 1130 of 2018

In

Civil Writ Jurisdiction Case No.5116 of 1985

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Rajendra Mahto, son of Late Bengali Mahto, resident of Village- Binda, P.S. Mushari, District Muzaffarpur.

(heir of deceased respondent no.7) Appellant/s
Versus

1. Most. Prema Devi and Ors W/o Late Tilak Prasad Sharma



2. Bharath Prasad Sharma.
3. Pankaj Prasad Sharma.
4. Rajesh Prasad Sharma,
all sons of Late Tilak Prasad Sharma,
All residents of Village- Binda, P.S. Mushari, District- Muzaffarpur.
.... Heirs of deceased petitioner Tilak Pd. Sharma
... Respondents 1st Party.
5. The State of Bihar.
6. The Joint Director of Consolidation, Govt. of Bihar, Patna.
7. The Deputy Director of Consolidation, Muzaffarpur.
8. The Consolidation Officer, Mushahari Block in the district of Muzaffarpur.
9. Munni Devi.
10. Nutan Devi.
11. Milki Kumari, All daughter of Late Bindeshwar Mahto, All residents of
Village- Binda, P.S. Mushari, District- Muzaffarpur.
12. Sumitra Devi, Daughter of Late Bindeshwar Mahto, wife of Lali Mahto,
resident of Village and P.O. Sarfuddinpur, P.S. Bocha, District- Muzaffarpur.
13. Chandeshwar Mahto Son of Late Kusheshwar Mahto. resident of Village-
Binda, P.S. Mushari, District Muzaffarpur.

... .. Respondent/s- Respondents 2nd Party.

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Appearance :

(In Letters Patent Appeal No. 1129 of 2018)

For the Appellant/s : Mr. Yogendra Mishra, Senior Advocate
Mr. Ramesh Kumar Choudhary, Advocate
For the Respondent/s : Mrs. Nutan Sahay, Advocate
AC to AAG 12

(In Letters Patent Appeal No. 1130 of 2018)

For the Appellant/s : Mr. Ramesh Kumar Choudhary, Advocate
For the Respondent/s : Mrs. Nutan Sahay, Advocate
AC to AAG 12

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-10-2019

Heard Shri Jogendra Mishra, learned counsel for the
appellant and perused the supplementary affidavit filed today.



We had adjourned the matters previously in order to enable the learned counsel for the appellant to give some explanation with regard to the delay of 10 years and 238 days in the filing of these intra court appeals.

The supplementary affidavit records that this being a dispute pertaining to title over land before the Consolidation authorities, the appellant's father late Bengali Mahto had been earlier contesting the matter, but he died. The proceedings before the Joint Director of Consolidation were carried out pursuant to the directions of a learned Single Judge on 15.11.1986. The father of the appellant had died and it is urged by Shri Mishra that any order issued against a dead person is a nullity and, therefore, the order of the learned Single Judge impugned herein dated 12.11.2007 deserves to be set aside.

It is also the submission of Shri Mishra that knowledge cannot be presumed even if the appellant had appeared before the Joint Director of Consolidation, inasmuch as, the appellant had not even been served or supplied a copy of the order of the Joint Director of Consolidation which he obtained after filing of the writ petition before this Court. The contention is that the knowledge having been received much later on, therefore, has been



sufficiently explained and, therefore, the delay deserves to be explained.

We have considered the submissions raised and we find that the learned Single Judge was justified in declining to reopen the case which already stood disposed of on 12.11.2007. The learned Single Judge, however, observed that if at all the appellant was aggrieved, he should have filed a Letters Patent Appeal. It is in this background that the appeals have now been filed against the order of 2007.

Shri Mishra, learned counsel for the appellant has cited a judgement of the Apex Court in the case of **N. Balakrishnan versus M. Krishnamurthy**, reported in **(1998) 7 SCC 123** to contend that the delay is immaterial and it is the explanation given which deserves to be considered for the purpose of either accepting the same or refusing to exercise jurisdiction.

We have considered all the submissions and we find that the explanation given by the appellant is not at all satisfactory, inasmuch as, the appellant is the son of late Bengali Mahto. Upon a direction by the High Court on 15.11.1986, the Joint Director of Consolidation proceeded to hear the parties and from a perusal of the order of the Joint Director of Consolidation dated 23.02.2007, it is evident that the appellant, who is the son of late Bengali



Mahto, had been heard before the passing of the order. This fact is not disputed. Thus, the contention that the appellant had no knowledge about the pendency of the proceedings before this Court is a lame excuse, inasmuch as, the order of the Joint Director of Consolidation clearly recites that it had proceeded keeping in view the directions issued by the High Court in 1986 and with clear reference to CWJC No.533 of 1986 and CWJC No.5116 of 1985. This very recital in the order of the Joint Director of Consolidation about the writ proceedings are a clear knowledge to the appellant who has not chosen to explain the same.

From the facts as on record and on a perusal of the order of the Joint Director of Consolidation, it is evident that the appellant being the legal heir of late Bengali Mahto was put to notice and he had appeared and the matter was disposed of by the Joint Director of Consolidation returning a finding for the purpose of being placed before this Court in the writ petitions which were disposed of on 12.11.2007. There is, therefore, a clear presumption of the knowledge of the pending proceedings before this Court which the appellant has failed to successfully dislodge. The explanation given in the supplementary affidavit is, therefore, of no help to the appellant.



In the absence of any valid or cogent explanation with regard to the heavy delay in the filing of the appeals as noted above, the appeals are clearly beyond limitation with no valid explanation from the appellant.

The appeals are, accordingly, rejected.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

Sunil/-

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CAV DATE	
Uploading Date	19.10.2019
Transmission Date	

