

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3278 of 2017

In
SECOND APPEAL No.92 of 2010

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Md. Islam Son of Md. Sarafat, Resident of Village-P.S.-Bihpur, District-Bhagalpur

... .. Petitioner

Versus

1. Bibi Gulsan Wife of Sk. Muslim and Daughter of Sk. Mauzi, Resident of Village-Fulpur, P.S.-Chausa, District-Madhepura.
2. Noor Jakima, Wife of Late Kayam. Resident of Village-Bihpur, P.S.-Bihpur, District-Bhagalpur
3. Jamil Ahmad. Son of Late Md. Kayam. Resident of Village-Bihpur, P.S.-Bihpur, District-Bhagalpur
4. Shami Ahmad Son of Late Md. Kayam Resident of Village-Bihpur, P.S.-Bihpur, District-Bhagalpur
5. Bibi Ansari Late Md. Kayam Resident of Village-Bihpur, P.S.-Bihpur, District-Bhagalpur
6. Bibi Anwari Late Md. Kayam Resident of Village-Bihpur, P.S.-Bihpur, District-Bhagalpur
7. Bibi Safeeda Wife of Md. Mustaqim and Daughter of Mauzi Resident of Village-Kharwa, Bhathari, P.O.-Gunday, P.S.-Tarapur, District-Bhagalpur

... .. Opposite Parties

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with
Miscellaneous Jurisdiction Case No. 3460 of 2018
In
SECOND APPEAL No.92 of 2010

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Md. Islam, Son of Md. Sarafat, resident of Village and P.S.- Bihpur, District Bhagalpur.

... .. Petitioner

Versus

1. Md. Ansar and Ors Son of Md. Muslim resident of Village Fulpur, P.O.-Kalasan, P.S.- Chousa, District- Madhepura.
2. Md. Abbas sons of Md. Muslim, resident of Village Fulpur, P.O.- Kalasan, P.S.- Chousa, District- Madhepura.
3. Noor Kaina Wife of Late Kayam. Sons and daughters of Late Md. Kayam. resident of Village- Bihpur, P.S.-Bihpur, District- Bhagalpur.
4. Jamil Ahmad. Sons of Late Md. Kayam. resident of Village- Bihpur, P.S.-Bihpur, District- Bhagalpur.
5. Shami Ahmad. son of Late Md. Kayam. resident of Village- Bihpur, P.S.-Bihpur, District- Bhagalpur.
6. Bibi Ansari, Son of Late Md. Kayam. resident of Village- Bihpur, P.S.-



Bihpur, District- Bhagalpur

7. Bibi Anwari daughters of Late Md. Kayam. resident of Village- Bihpur, P.S.- Bihpur, District- Bhagalpur.
8. Anne Khan Son of Late Md. Mustakin Khan resident of Village- Kharwa, P.O.- Gonai, P.S. Asarganj, District- Munger.
9. Bablu Khan Son of Late Md. Mustakin Khan. resident of Village- Kharwa, P.O.- Gonai, P.S. Asarganj, District- Munger.
10. Abar Khan Son of Late Md. Mustakin Khan resident of Village- Kharwa, P.O.- Gonai, P.S.- Asarganj, District- Munger.
11. Tabasun Khatoon, daughter of Late Mustakin Khan, Wife of Jehangir, resident of Village- Kharwa, P.O.- Gonai, P.S.- Asarganj, District- Munger.
12. Anjana Khatoon Daughter of Late Mustakin Khan, wife of Md. Rijwan resident of Village- Nawada, P.O. Abjuganj, beside Mosque, P.S.- Sultanganj, District- Bhagalpur.
13. Ujali Khatoon, daughter of Late Mustakin Khan, Wife of Md. Mannan, resident of Village- Nawada, P.O. Abjuganj, beside Mosque, P.S.- Sultanganj, District- Bhagalpur.

... .. Opposite Parties

Appearance :

(In Miscellaneous Jurisdiction Case No. 3278 of 2017)

For the Petitioner/s : Mr.Arun Kumar

For the Opposite Party/s : Mr.

(In Miscellaneous Jurisdiction Case No. 3460 of 2018)

For the Petitioner/s : Mr.Arun Kumar

For the Opposite Party/s : Mr.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

4 10-04-2019 The petitioner has filed M.J.C. No. 3278 of 2017 seeking recall of the order dated 24.08.2017 passed in S.A. No. 92 of 2010 to the extent, the petitioner, appellant in S.A. No. 92 of 2010, was directed to take steps for issuance of show cause notices upon respondents No. 1 and 7 on their present and correct address. It is stated in the application that as a matter of fact respondents No. 1 and 7 had died before the order of this Court, dated 24.08.2017, was passed and, therefore, the said



order could not be complied with. It is a different matter that these facts could not be brought to the notice of this Court, because of the circumstances beyond the control of the appellant, within the period during which the order dated 24.08.2017 was required to be peremptorily complied with. By operation of the order dated 24.08.2017, S.A. No. 92 of 2010 has been treated as dismissed for default to the extent the same relates to respondents No. 1 and 7. As has been pleaded, respondents No. 1 and 7 are already dead. It is being stated that substitution petition has also been filed in S.A. No. 92 of 2010.

Considering the facts and circumstances, as noted above, and in the interest of justice, M.J.C. No. 3278 of 2017 is allowed.

The order dated 24.08.2017 stands recalled to the extent it relates to respondents No. 1 and 7, who are said to have died.

So far as compliance of the order dated 24.08.2017 for filing jointness affidavit in respect of respondents No. 2 to 6 is concerned, it has been stated that instead of jointness, steps are required to be taken for issuance of fresh notices to them.

Considering the above, the said part of the order dated 24.08.2017 also stands recalled.



M.J.C. No. 3460 of 2018, wherein a defect has been pointed out by the stamp reporter, has been filed for restoration of S.A. No. 92 of 2010, which stood dismissed for non-compliance of order dated 24.08.2017.

The said defect is ignored.

Since the order dated 24.08.2017 passed in S.A. No. 92 of 2010 has been recalled, this application is also allowed.

S.A. No. 92 of 2010 is restored to its original file.

(Chakradhari Sharan Singh, J)

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