

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.2095 of 2009

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TALA MARANDI S/O Late Lakhan Marandi R/O Vill.- Channo, P.S.-
Kahalgaon, Distt.- Bhagalpur.

... .. Petitioner/s

Versus

1. ABDUL MAJEED S/O Late Jamait Ali R/O Vill.- Kurma, P.S.- Kahalgaon,
Distt.- Bhagalpur
2. Sk. Fajjo Ali S/O Late Jamait Ali R/O Vill.- Kurma, P.S.- Kahalgaon, Distt.-
Bhagalpur.
3. Sk. Salim Ali S/O Late Jamait Ali R/O Vill.- Kurma, P.S.- Kahalgaon, Distt.-
Bhagalpur.
4. Guru Marandi S/O Late Lakhan Marandi R/O Vill.- Channo, P.S.-
Kahalgaon, Distt.- Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajib Ranjan Jha
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 19-04-2019

Heard the parties.

2. This civil revision has been filed for setting aside the order dated 29.08.2009 passed by 1st Additional District Judge, Bhagalpur in Miscellaneous Case No. 05 of 1995 by which the learned court below has dismissed the Miscellaneous case filed by petitioner.

3. Petitioners who were defendants in court below in a Title Suit No. 41 of 84 which was suit for redemption in which it was pleaded that suit land as described in the schedule A of the plaint was acquired by settlement. The plaintiffs have further pleaded that their father had transferred the schedule- A property



alongwith other lands vide registered deed of gift dated 14.03.1972, as such they have got clear right to redeem the schedule A property from the defendants.

4. The suit was contested by the defendants and they appeared and filed their W.S. and claimed that schedule A property belong to defendants by Kabuliyat dated 13.10.1909.

5. The defendants denied their father Lakhan Manjhi was mortgagee of the suit property. In the survey Khatiyani the lands have been recorded in their names and the trial court dismissed the suit filed by plaintiffs on contest.

6. Aggrieved by order passed by the trial court, the plaintiffs preferred an appeal before the District Judge, Bhagalpur which was transferred to the court of 6th Additional District Judge, Bhagalpur in which notices were issued to defendants/respondents but even after valid service of notice they did not appear and the appeal was allowed ex parte. Defendants/petitioners thereafter filed an application under Order 41 Rule 21 of CPC giving rise to Miscellaneous Case No. 05 of 1995 for setting aside the ex parte order in appeal on the ground that they were prevented by sufficient cause from contesting the appeal and they have given sufficient cause for their non-appearance at time of hearing of appeal, although they



had appeared through Vakalatnama, however, the appellate court rejected their Miscellaneous Case No. 05 of 1995 as not maintainable against which defendants have preferred the present civil revision petition. Notices were validly served upon the opposite parties and they had appeared also but subsequently they have left appearing in this revision petition.

7. After hearing learned counsel for the petitioner, this Court finds that they had given sufficient cause for not appearing at the appellate stage when the case was called for hearing as such their petition filed for setting aside the ex parte appellate court order is allowed, the judgment and decree passed in Title Appeal No. 24 of 1986 vide order dated 24th May 1994 is set aside and the case is remanded to the appellate court to decide the matter after hearing all the parties in appeal.

8. The Civil Revision stands allowed.

veena/-

(S. Kumar, J)

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

