

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.333 of 2019

Pramod Ranjan Sinha Son of Late Upendra Narayan Sinha, resident of Village-Parauna, P.S. Taraiyan, District Saran at Present Resident of Kamta Sakhi Mutt, P.O. Sandha, Town Chapra, P.S. Chapra Muffasil, District-Saran
... .. Petitioner

Versus

1. Smt. Kanti Devi Wife of Mukteshwar Prasad Resident of Kanti Sada, Mohalla Kamta Sakhi Math, P.O. Sandha, P.S. Chapra Muffasil, District-Saran
... Defendant/Judgement Debtor/Respondent 1 set.
2. Rakesh Ranjan Sons of Amod Ranjan Sinha Resident of Mohalla Kamta Sakhi Math Chapra, P.O. Sandha, P.S. Chapra Muffasil, District-Saran
3. Rachal Ranjan Son of Amod Ranjan Sinha Resident of Mohalla Kamta Sakhi Math Chapra, P.O. Sandha, P.S. Chapra Muffasil, District-Saran
4. Amit Ranjan Son of Amod Ranjan Sinha Resident of Mohalla Kamta Sakhi Math Chapra, P.O. Sandha, P.S. Chapra Muffasil, District-Saran
5. Smt. Madhu Verma, Wife of Ashok Verma Resident of Mohalla Kamta Sakhi Math Chapra, P.O. Sandha, P.S. Chapra Muffasil, District-Saran
6. Smt. Sudha Sharan Wife of Gurumukh Sharan Resident of Mohalla Kamta Sakhi Math Chapra, P.O. Sandha, P.S. Chapra Muffasil, District-Saran
7. Nishi Sinha Wife of Himanshu Sinha Resident of Mohalla Kamta Sakhi Math Chapra, P.O. Sandha, P.S. Chapra Muffasil, District-Saran
8. Sushma Akhauri Wife of Vinay Akhauri Resident of Mohalla Kamta Sakhi Math, Chapra, P.O. Sandha, P.S. Chapra Muffasil, District Saran
9. Tarun Jeyesth, Wife of Manoj Kumar Sinha Residents of Mohalla Kamta Sakhi Math, Chapra, P.O. Sandha, P.S. Chapra Muffasil, District Saran
10. Minakshi Prabha, Wife of Manoj Kumar Sinha Resident of Mohalla Kamta Sakhi Math, Chapra, P.O. Sandha, P.S. Chapra Muffasil, District Saran
11. Deepa, Wife of Dr. Sushrut Resident of Mohalla Kamta Sakhi Math, Chapra, P.O. Sandha, P.S. Chapra Muffasil, District Saran
12. Kumari Swati, Daughter of Late Amod Ranjan Sinha Residents of Mohalla Kamta Sakhi Math, Chapra, P.O. Sandha, P.S. Chapra Muffasil, District Saran
13. Alok Ranjan Sinha Son of Late Upendra Narayan Sinha Resident of Mohalla Kamta Sakhi Math, Chapra, P.O. Sandha, P.S. Chapra Muffasil, District Saran
14. Smt. Shashi Bala Sinha Wife of Akhileshwar Prasad Sinha Resident of Mohalla Kamta Sakhi Math, Chapra, P.O. Sandha, P.S. Chapra Muffasil, District Saran
15. Smt. Bindu Kumari Wife of Bipin Bihari Srivastava Resident of Mohalla Kamta Sakhi Math, Chapra, P.O. Sandha, P.S. Chapra Muffasil, District Saran
16. Smt. Sakuntala Sinha Wife of Shambhuji Srivastava Resident of Mohalla



- Kamta Sakhi Math, Chapra, P.O. Sandha, P.S. Chapra Muffasil, District Saran
17. Smt. Urmila Sinha Wife of Kamelsh Kumar Sinha Resident of Mohalla Kamta Sakhi Math, Chapra, P.O. Sandha, P.S. Chapra Muffasil, District Saran
 18. Smt. Panmati Devi Wife of Shyam Sundar Sah Resident of Mohalla Kamta Sakhi Math, Chapra, P.O. Sandha, P.S. Chapra Muffasil, District Saran
 19. Arjun Singh Son of Late Ram Jata Singh Resident of Mohalla Dahiyawn Tola, P.O. Sandha, P.S. Chapra Muffasil, District Saran
 20. Amar Singh Son of Ram Ayodhaya Singh Resident of Mohalla Dahiyawn Tola, P.O. Sandha, P.S. Chapra Muffasil, District Saran
 21. Upendra Singh Son of Ram Ayodhaya Singh Resident of Mohalla Dahiyawn Tola, P.O. Sandha, P.S. Chapra Muffasil, District Saran
 22. Murari Prasad Verms Son of Awinashi Sakhi Resident of Mohalla-Dahiyawan Tola, P.O.Sandha, P.S. Chapra Muffasil, District Saran
 23. Braj Mohan Prasad Verma Son of Awinashi Sakhi Resident of Mohalla Dahiyawn Tola, P.O. Sandha, P.S. Chapra Muffasil, District Saran

... .. Respondents 2nd Set.

Appearance :

For the Petitioner : Mr.Nagendra Rai, Advocate
For the Respondents : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 16-05-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the order dated 30.07.2018 passed by the learned Sub-Judge-IX, Saran at Chapra in Misc. Case No. 06 of 2009 whereby while allowing Misc. Case No. 06 of 2009 filed by the respondent no. 1, he has restored Misc. Case No. 15 of 2000 to its original file.

3. Learned counsel appearing for the petitioner submitted that the order impugned is non-speaking. It has been passed in a mechanical manner without application of judicial



mind. He submitted that in support of the pleas taken by the petitioner in the restoration petition, there was no material on record. Thus, the order for restoration of the Misc. Case is bad in law.

4. On perusal of the record, it would appear that the ancestors of the petitioner along with other decree holders had filed Execution Case No. 3 of 1992 for executing the decree passed by the learned Sub-Judge-2, Chapra in Title Suit No. 155 of 1973, which attained finality on 12.02.1992, vide judgment and decree passed by this Court in First Appeal No. 575 of 1985. The decree was for removal of encroachment from passage described in Schedule-1 of the execution petition. Respondent no. 1 filed a petition under Section 47 of the Code of Civil Procedure (for short 'CPC') in the aforesaid execution case, which was registered, as Civil Misc. Case No. 15 of 2000. However, Misc. Case No. 15 of 2000 was dismissed for want of prosecution on 23.05.2009. Thereafter, Misc. Case No. 6 of 2009 was filed by the respondent no. 1 for restoration of Misc. Case No. 15 of 2000. It was pleaded that the senior advocate of respondent no. 1 Sri Gauri Shankar had left legal profession due to old age and his junior counsel Sri Ravi Shankar had filed attendance on 23.05.2009 contrary to instruction to seek adjournment due to non-availability of Sri Gauri Shankar



Prasad as also because respondent no. 1 is an old *Pardanashin* lady.

5. After notice, the petitioner contested the matter. However, the trial court, vide impugned order dated 30.07.2018 allowed the application filed by respondent no. 1 and restored Misc. Case No. 15 of 2000 to its original file.

6. Since the order of restoration of Misc. Case passed by the court below is discretionary in nature, I am not inclined to interfere with the same in exercise of power conferred under Article 227 of the Constitution of India.

7. Accordingly, the application is dismissed.

8. Since the case is quite old, the trial court is directed to dispose of the case pending before it expeditiously without granting unnecessary adjournments on any ground to either of the parties.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.05.2019
Transmission Date	NA

