

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.356 of 2017

In
Miscellaneous Jurisdiction Case No.4738 of 2014

=====

Ram Chandra Sharma and Ors

... .. Petitioner/s

Versus

Madho Yadav and Ors

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Ray Saurabh Nath
For the Opposite Party/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

7 07-03-2019 Heard Mr. Ray Shivaji Nath, the learned senior
counsel for the petitioners.

The petitioners have filed this petition for review of the order dated 09.08.2017 passed in MJC No. 4738 of 2014 (restoration petition) by Hon'ble Mr. Justice Mungeshwar Sahoo whereby the judgement passed in S.A. No. 73 of 1985 has been set aside and the appeal was restored to its original file.

The learned senior counsel for the petitioners submits that petitioners/ opposite parties in the MJC have very categorically stated the facts that respondents of the Second Appeal committed fraud in procuring the death certificate of appellant No. 1(c). It is submitted that noticing the facts that respondents are not being represented through anyone after death of Bindeshwari Prasad Sinha, learned counsel, notice was



directed to be issued to the respondents but no notice was ever served on them. It is submitted that appellant No. 1(c) died on 05.02.2015, after disposal of Second Appeal and, therefore, affidavit filed by the petitioners of the MJC is incorrect. The advocates were on record and when the appeal was called for hearing Mr. Chitragupta Prasad, advocate on record, did not appear on behalf of the respondents and there is no such provision for issuance of direct notice to the respondents on the death of one of the advocates but the learned single Judge has committed error and did not take notice of the facts.

Having heard the submission of learned senior counsel for the petitioners and on perusal of the order dated 09.08.2017, I find that contention and submission of learned senior counsel for the petitioners have been considered in paragraph 8 of the order and it has been held that points raised by the opposite parties are disputed question of fact and moreover that question do not go to the real controversies between the parties in this present MJC application. The only question to be decided whether the respondents were prevented by sufficient cause or not for their non appearance in the appeal. The question of falsity of facts is not relevant at all. The ambit of review is very limited and if the contention and submission of



the petitioners is fully considered and rejected by a reasoned finding, the same facts could not be held to be a good ground for review of the order.

Considering the facts aforesaid, I find no merit in this petition and the same is, accordingly, dismissed.

(Prabhat Kumar Jha, J)

BKS/-

U			
---	--	--	--

