

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.74 of 2020

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Sant Sharan Singh Son of Late Bishwanath Singh Resident of Mohalla-
Laskariganj, P.S.- Sasaram, District- Rohtas.

... .. Petitioner/s

Versus

1. Md. Aftab Son of Late Bibi Raisha and Late Samsu Rain Resident of Mohalla- Laskariganj, P.S.- Sasaram, District- Rohtas.
2. Mr. Imteyaj Son of Late Bibi Raisha and Late Samsu Rain Resident of Mohalla- Laskariganj, P.S.- Sasaram, District- Rohtas.
3. Mr. Shamim Son of Late Bibi Raisha and Late Samsu Rain Resident of Mohalla- Laskariganj, P.S.- Sasaram, District- Rohtas.
4. Md. Akbar Son of Late Bibi Raisha and Late Samsu Rain Resident of Mohalla- Laskariganj, P.S.- Sasaram, District- Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Bajarangi Lal
For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL JUDGMENT
Date : 16-01-2020

Heard learned counsel for the petitioner.

2. This petition has been filed "*for setting aside the order dated 28.08.2019 passed by the learned Additional District & Sessions Judge-7, Rohtas at Sasaram in Civil Misc. Case No. 01 of 2012 whereunder and whereby petition under Order 41 Rule 19 read with Section 151 CPC filed by the appellant/opposite parties for restoration of T.A. No. 7 of 1993 has been allowed and order dated 07.10.2009 passed in T.A. No. 7 of 1993 has been recalled on payment of cost of Rs. 3,000/-.*"

3. Learned counsel for the plaintiff/respondent/petitioner submits that the learned Court below has erred in directing restoration of Title Appeal No. 7 of 1993. No doubt, the original appellant Bibi Raisha had remained in judicial custody from 03.07.2004 to 28.02.2011 and thus could not appear in the



appeal on 07.10.2009 leading to its dismissal for default. However, the defendant/appellant/opposite parties had stopped pursuing the appeal since 2008 itself and hence the fact of death of Bibi Raisha thereafter in the year 2011 could not have constituted valid ground for restoration of the appeal. It is further submitted that the judgment and decree were passed as far back as on 28.11.1992 and 11.12.1992 respectively, and it was only when the execution case has progressed that the petition for restoration was filed.

4. Having heard learned counsel for the petitioner and on consideration of the materials on record, this Court is not inclined to interfere in the matter. A perusal of the impugned order dated 28.08.2019 discloses that the learned Court has taken note of the attending facts and circumstances in considerable detail, including the order passed in NDPS Sasaram (Town) P.S. Case No. 314/2004 indicating illness and period of custody of Bibi Raisha and her death certificate. This Court is of the view that the mere fact that steps were taken to pursue the appeal for some time since the year 2004 when Bibi Raisha was taken in judicial custody, which was discontinued some time in the year 2008, would not detract from the fact that the appeal was finally dismissed on 07.10.2009, on which date the learned Court below has found that Bibi Raisha was in judicial custody and could not represent her case. The learned Court in its discretion has therefore found it a fit case for restoring the appeal subject to payment of Rs. 3,000/- by way of cost.

5. It is well settled that this Court does not sit in appeal over the impugned order while exercising jurisdiction under Article 227 of the Constitution of India, the scope whereof is primarily only to ensure that the learned Court below acts within the bounds of its authority. No jurisdictional error in the impugned order has been pointed out by learned counsel for the



plaintiff/respondent/petitioner.

6. The petition accordingly stands dismissed with the observation that the learned Court below may, in its own discretion and having regard to any exigencies and special circumstances obtaining in the case, consider expeditious disposal of T.A. No. 7 of 1993.

(Vikash Jain, J)

Chandran/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.01.2020
Transmission Date	NA

