

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.244 of 2018

Sk. Manzoor Ahmad Son of Late Sk Abdul Rahman, Resident of Village-
Phulwaria, P.O.P.S.- Manjhagarh, District- Gopalganj.

... .. Petitioner/s

Versus

1. Mustaque Ahmad
2. Abdul Mabud,
3. Abdul Malik,
4. Wozir Ahmad,
5. Mahmad Samiullah, All are sons of Late Sk Mahmad Abbas, All are resident
of Village P.O.- Ratan Padauli, P.S.- Bhagwanpur, District- Siwan.
6. Saleha Khatoon, D/o Sk. Mahmad Abbas, Wife of Abdul Khalik, Resident of
village- Jalpurwa, P.O.- Mogal Biraicha, P.S.- Barauli, District- Gopalganj.
7. Manzura Khatoon, Wife of Sk. Ashique, D/o Sk. Mahmad Abbas, Resident
of Village- Sareya Narendra Tola Dhantali, P.O.- Sareya Narendra, P.S.-
Barauli, District- Gopalganj.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Siddharth Harsh, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 25-08-2022 Heard Mr. Siddharth Harsh, learned counsel for the
petitioner.

Petitioner is the purchaser of a piece of land from the
mortgagee. He is aggrieved by the order dated 30.11.2017
passed by the learned Sub Judge-IV, Gopalganj, by which,
Misc. Case No. 08 of 2009 filed by the plaintiffs/respondents
has been allowed and the Title Suit bearing No. 162 of 1993 has
been restored.

The brief fact of the case is that one Noor Jatan was



mortgagor of the suit land who sold the mortgaged property in favour of Md. Abbas on 7.1.1967, and suit for redemption was filed vide Title Suit No. 162 of 1993 by Md. Abbas. After the death of Md. Abbas, his heirs were substituted who are Respondents herein.

Learned counsel for the petitioner submits that while deciding the Misc. Case for restoration of the suit, which was dismissed for default, the learned court below failed to appreciate that after dismissal of the suit, the respondents sold the suit property on 16.01.2008 in favour of Shavpujan and others. As such, right to sue does not survive to the plaintiffs as per Section 91 of the the Transfer of Property Act, 1882, accordingly, suit need not be restored in Misc. Case. He further submits that at the time of filing of Misc. Case, the *Vakalatnama* on behalf of the respondent Nos. 2 and 4 was filed on the basis of forged signature, which has not been taken into consideration by the learned court below while deciding the Misc. Case No. 08 of 2009.

I have heard learned counsel for the petitioner. It appears that the Title Suit No. 162 of 1993 was dismissed for default and Misc. Case No. 08 of 2009 was filed for restoration of the same in which it was the specific case of the plaintiffs that



the *pairvikar* of the plaintiffs did not take proper care of the suit and, accordingly, the same was dismissed.

Learned court below after taking into consideration the deposition of the witnesses examined by both the parties, has allowed the Miscellaneous Case and has restored the Title Suit No. 162 of 1993 to the original file.

The contention of the petitioner that the plaintiffs have lost the right to sue after sell of the suit property cannot be decided in the Misc. Case. The petitioner may raise this question during course of trial of the suit on its own merit.

In so far as the forged signature of respondent Nos. 2 and 4 are concerned, only bald statement has been made and no petition under Section 340 Cr. P.C. appears to have been filed by the petitioner for holding an inquiry for forgery which alleged to have been committed in relation to the proceeding before the concerned court.

Accordingly, I do not find any jurisdictional error and material irregularity in the impugned order.

This application stands dismissed.

(Anil Kumar Sinha, J)

S.Ali/-

U			
---	--	--	--

