

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.51 of 2016

In

Civil Writ Jurisdiction Case No.15239 of 2012

Kishori Ram Son of Late Bechan Ram, Resident of Village - Mapatpur, P.O. - Nuaon, P.S. - Ramgarh, District - Kaimur Bhabhua, At present resident of 128/c, Patliputra Colony, Patna.

... .. Appellant/s

Versus

1. The State of Bihar.
2. The District Officer, Kaimur (Bhabhua).
3. The Sub - Divisional Officer, Sub - Division Mohania, District Kaimur (Bhabhua).
4. The Circle Officer, Nuaon Block, District - Kaimur (Bhabhua).
5. Sri Mukhram Ram, Son of Late Chauth Ram, Residing at Village - Mapatpur, P.S. Ramgarh (Nuaon), District - Kaimur Bhabhua.
6. Sri Sukhram Ram, Son of Late Chauth Ram, Resding at Village Mapatpur, P.S. - Ramgarh (Nuaon), District - Kaimur Bhabhua.

... .. Respondent/s

Appearance :

For the Appellant/s : None
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

4 01-11-2022 Nobody appears on behalf of the appellant.

We find that there was no appearance on behalf of the appellant on two earlier occasions before different Benches, leading to the dismissal of the case for default. Later, the case was restored to its original file. We realize that today is the first day when the Courts have reopened after long holidays, but we find that there has been a delay of 57 days in preferring the appeal,



which has not been explained in the petition for condonation of delay, which is on record (I.A. No. 83 of 2016).

Apart from this, on perusal of the order passed by the learned Single Judge, we find that there had been a dispute between the parties with respect to ownership and possession of a plot of land, over which a house had been constructed. In the Title Suit, instituted for declaration of title and recovery of possession, the prayer of the respondents was allowed and the suit was decreed *ex-parte* against the father of the appellant, who chose to file a miscellaneous application under Order IX Rule-13 of the CPC for rescinding the *ex-parte* order. The appellant was substituted after the death of his father, but before the miscellaneous appeal could be decided, the respondents were dispossessed by the appellant.

On complaint made by the respondents, they were restored their possession.

This act of the authorities was challenged by the appellant before the learned Single Judge on the ground that the invocation of the provisions of Public Land Encroachment Act, 1956 by the authorities for dispossessing him and restoring the possession of the respondents was bad in the eyes of law and was also uncalled for. During the pendency of the miscellaneous appeal, referred to above, the writ petition assailing the decision of the authorities to restore possession to the respondents was heard



and dismissed.

Hence this appeal.

We have no idea as to what happened to the miscellaneous appeal preferred by the father of the appellant. In case the *ex-parte* decree has been rescinded, the appellant would surely have a right to demand possession.

Otherwise also, we do not find any fault with the order of the learned Single Judge, who has held that the appellant wrongly dispossessed the respondents when there was an *ex-parte* decree in favour of the respondents-plaintiffs and that invocation of a wrong law would only be wrong nomenclature; for it is the duty of the State to come to the aid of the victim, who in this case are the respondents, who were dispossessed by the appellant, notwithstanding the decree in their favour, even though *ex-parte*.

There is no merit in this appeal, which is being dismissed with the observation that in case the appellant succeeds in miscellaneous appeal or has succeeded by now, he can take recourse to the provisions of law for restoration of his possession.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

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