

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.319 of 2020

1. Sanjiv Kumar Son of Late Nandlal Prasad, Resident of Mohalla-Linepar, Mirzapur, P.O. and P.S.-Nawada, District-Nawada.
2. Sanjay Kumarr, Son of Late Nandlal Prasad, Resident of Mohalla-Linepar, Mirzapur, P.O. and P.S.-Nawada, District-Nawada.
3. Lalita Kumari, Daughter of Late Nandlal Prasad, Resident of Mohalla-Linepar, Mirzapur, P.O. and P.S.-Nawada, District-Nawada.
4. Prem Lata Kumari, Daughter of Late Nandlal Prasad, Resident of Mohalla-Linepar, Mirzapur, P.O. and P.S.-Nawada, District-Nawada.
5. Punam Devi, Daughter of Late Nandlal Prasad, Resident of Mohalla-Linepar, Mirzapur, P.O. and P.S.-Nawada, District-Nawada.

... .. Petitioner/s

Versus

1. Jawahar Prasad Son of Late Hira Lal Prasad, Resident of Mohalla-Linepar, Mirzapur, Nawada, P.O. and P.S. and District-Nawada.
2. Moti Prasad, Son of Late Hira Lal Prasad, Resident of Mohalla-Linepar, Mirzapur, Nawada, P.O. and P.S. and District-Nawada.
3. Subhash Prasad, Son of Late Hira Lal Prasad, Resident of Mohalla-Linepar, Mirzapur, Nawada, P.O. and P.S. and District-Nawada.
4. Anil Prasad, Son of Late Hira Lal Prasad, Resident of Mohalla-Linepar, Mirzapur, Nawada, P.O. and P.S. and District-Nawada.
5. Sunil Kumar, Son of Late Hira Lal Prasad, Resident of Mohalla-Linepar, Mirzapur, Nawada, P.O. and P.S. and District-Nawada.
6. Amit Kumar @ Guddu, Son of Late Hira Lal Prasad, Resident of Mohalla-Linepar, Mirzapur, Nawada, P.O. and P.S. and District-Nawada.
7. Rakesh Kumar @ Dabbu, Son of Late Hira Lal Prasad, Resident of Mohalla-Linepar, Mirzapur, Nawada, P.O. and P.S. and District-Nawada.
8. Bhim Kumar @ Biggu, Son of Late Hira Lal Prasad, minor, through next friend his mother Saroj Devi, Resident of Mohalla-Linepar, Mirzapur, Nawada, P.O. and P.S. and District-Nawada.
9. Meena Devi, Wife of Ranjeet Prasad, Resident of Jani Bazar, P.O. and P.S. and District-Nawada.
10. Beena Devi, Wife of Deepak Prasad, Mohalla-Tilhapar, by the side of lane of Ram Lakhan Yadav College, Gaya, P.O. and P.S. and District-Gaya.
11. Rina Devi @ Gudia Devi, Wife of Rakesh Prasad, Mohalla-Bank Road, Muzaffarpur, P.O. and P.S. and District-Muzaffarpur.
12. Saroj Devi, Wife of Late Hira Lal Prasad, Resident of Mohalla-Linepar, Mirzapur, P.O. and P.S. and District-Nawada.
13. Smt. Rekha Devi, Wife of Late Sidheshwar Prasad, Resident of Mohalla-Gudari Khach-Kalla, Pan Dariwan Lane, Near Sale Tax Office, P.O. and P.S.-Patna City, District-Patna.
14. Deep Shikha, Daughter of Late Sidheshwar Prasad, Resident of Mohalla-Gudari Khach-Kalla, Pan Dariwan Lane, Near Sale Tax Office, P.O. and P.S.-Patna City, District-Patna.
15. Gyan Saurabh, Son of Late Sidheshwar Prasad, Resident of Mohalla-Gudari Khach-Kalla, Pan Dariwan Lane, Near Sale Tax Office, P.O. and P.S.-Patna City, District-Patna.
16. Surbhi Kumari (Minor), Daughter of Late Sidheshwar Prasad, minor and



through their next friend and well-wisher mother Smt. Rekha Devi, Resident of Mohalla-Gudari Khach-Kalla, Pan Dariwan Lane, Near Sale Tax Office, P.O. and P.S.-Patna City, District-Patna.

17. Kinshuk Verma (Minor), Son of Late Sidheshwar Prasad, minor and through their next friend and well-wisher mother Smt. Rekha Devi, Resident of Mohalla-Gudari Khach-Kalla, Pan Dariwan Lane, Near Sale Tax Office, P.O. and P.S.-Patna City, District-Patna.
18. Bimla Devi @ Fariran Devi, Wife of Shiv Chand Kasera, Daughter of Late Jitwahan Prasad, Resident of Mohalla-Linepar, Mirzapur, P.O. and P.S. and District-Nawada (now dead and her name deleted).
19. Nepal Prasad Kesara, Son of Late Kanhaia Ram, Resident of At Pasi Tola, Jagdishpur, P.O. and P.S.-Jagdishpur, District-Bhojpur.
20. Surjee Devi, Daughter of Late Jitwahan Prasad, Wife of Dwarika Prasad, Resident of At P.O. and P.S.-Raghunathpur, District-Bhojpur.
21. Rambati Devi, Daughter of Late Jitwahan Prasad, Wife of Kamlesh Prasad Kasera, Resident of at Kasera Toli, Daud Nagar, P.O. and P.S.-Daudnagar, District-Aurangabad.
22. Savitri Devi, Daughter of Late Jitwahan Prasad, Wife of Kamlesh Prasad, Resident of at Dighbara Bazar, P.O. and P.S.-Dighbara, District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sunil Kumar Sharma
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

ORAL ORDER

2 11-04-2022 Heard the learned counsel for the petitioners.

The petitioners were plaintiffs in Partition Suit no. 47 of 2007. The suit was dismissed for default. In order to restore the case, the petitioners filed Misc. Case No. 35 of 2018 under Order IX Rule 4 of the Code of Civil Procedure. In that restoration proceeding, the learned court of Sub Judge-VII, Nawada directed the petitioners to furnish requisites of notice and postal notice. Being aggrieved by that order, the petitioners preferred civil miscellaneous before the 3rd Additional District



and Sessions Judge, Nawada which was converted into civil miscellaneous appeal by the Additional District and Sessions Judge-III, Nawada.

The learned Additional District and Sessions Judge-III, Nawada has dismissed the appeal, mentioning therein that the plaintiffs/appellants have failed to point out under which provision of law they have approached that court.

The learned counsel for the petitioners has submitted that before dismissal of the suit, notice and gazette publication had already been done, so if the suit is dismissed in default and a restoration is filed, there is no need of fresh notice.

The submission on behalf of the petitioners is not tenable. As soon the order of dismissal in default is passed, the suit itself comes to an end and if restoration is filed, a fresh notice is essential.

As such, I do not find merit in the present civil miscellaneous petition, which is accordingly dismissed.

(Nawneet Kumar Pandey, J)

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