

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.3807 of 2017

Arising out of

Miscellaneous Jurisdiction Case No.3766 of 2013

Arising out of

Miscellaneous Jurisdiction Case No.5026 of 2010

Arising out of

Second Appeal No. 39 of 2007

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1. Smt. Shanti Kumar Singh @ Shanti Kumari Sinha, widow of Sri Braj Ballabh Kumar at present resident of Mohalla - Punaichak, P.S. Shastri Nagar, District Patna, permanent address - resident of Village Pandaul, Tola Bandhubigha, P.S. - Kurtha (Shakurabad), District - Jehanabad.
 2. Subhash Chandra Yadav,
 3. Laxman Yadav,
Both sons of Late Indrasan Prasad Yadav, resident of Village Rajapur, P.O. Rajapur, P.S. Simri, District Buxar at present- Punaichak, East Police Station Shastrinagar, District Patna.

... .. Petitioner/s

Versus

1. Smt. Sheela Devi, W/o Late Bhaskar Sharma, resident of Village - Jalalpur, P.O.- Sahainagar, P.S. - Danapur, District - Patna.
2. Shrimati Kauleshwari Devi, W/o Sri Laxman Singh Yadav, resident of Village- Pasian, P.S.- Shar, District- Bhojpur at present Mohalla - Punaichak, P.S.- Shastrinagar, District- Patna.
3. Shrimati Kiran Devi, W/o Rajendra Kumar, resident of Karla, P.S. Muffasil, District Munger, at present Quarter No. T/94, Danapur Cantt., District Patna.
4. Manu Nandan Giri, S/o Late Acharya Indra Raman Shastri,
5. Madhusudan Giri, S/o Manu Nandan Giri,
6. Madhu Bala, D/o Sri Manu Nandan,
7. Anuj Bala, D/o Sri Manu Nandan, all residents of Bailey Road, Saguna More, near Keshav Hospital, P.O.- Danapur Cantt., P.S. Danapur, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Shrivastava, Advocate

For the Opposite Party/s :

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 02-11-2022

Heard Mr. Rakesh Kumar Shrivastava, learned



counsel for the petitioners.

2. The present application has been filed seeking recall of order dated 08.05.2014 passed in MJC No. 3766 of 2013, which was a peremptory order and non-compliance has led to dismissal of MJC No.3776 of 2013.

3. The MJC, which has been dismissed, was also for restoration of MJC No.5026 of 2010, which had been dismissed for non-appearance of the counsel for the petitioners on 26.06.2013. The root of the present case is Second Appeal No. 39 of 2007 in which on 30.01.2009, an order was passed and due to non-compliance of the same, the Second Appeal No. 39 of 2007 stood dismissed. To restore the said Second Appeal, MJC No. 5026 of 2010 was filed and the same also stood dismissed on 14.12.2011 on account of non-prosecution. This led to filing of MJC No. 1852 of 2012 seeking restoration of MJC No. 5026 of 2010. The same was allowed by order dated 08.05.2013 and MJC No.5026 of 2010 was restored to its original file and number. Once again, on 26.06.2013, MJC No. 5026 of 2010 stood dismissed due to non-prosecution. This was followed by filing of MJC No.3766 of 2013 once again seeking restoration of MJC No.5026 of 2010. On 08.05.2014, the Court passed peremptory and the same was not complied with causing



dismissal of MJC No.3766 of 2013 on 16.06.2014.

4. The present application has been filed seeking restoration of MJC No. 3766 of 2013.

5. Learned counsel for the petitioners submitted that there was bereavement in the family of the petitioners and the matter could not be pursued.

6. On a query, learned counsel for the petitioners submitted that the husband of the petitioner no. 1 passed away in the year 2011.

7. The Court finds that after 2011, again the matter had come up in the year 2012, when MJC No. 1852 of 2012 was filed and there were various orders in the year 2013 and 2014. Thus, the Court is unable to accept the plea that because of the death of the husband of the petitioner no. 1 in the year 2011, the matter could not be pursued.

8. Moreover, having been assisted by learned counsel for the petitioners on the merits of the matter, the Court does not find it a fit case where it should exercise its discretion by allowing the present petition.

9. Having considered the matter, the Court does not find any occasion to allow the prayer made in the present petition.



10. Accordingly, the petition stands dismissed.

(Ahsanuddin Amanullah, J)

J. Alam/-

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