

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.4270 of 2018

In
SECOND APPEAL No.129 of 2011

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Surendra Manjhi @ Pallu Manjhi Son of Late Kapildeo Manjhi, Resident of Village- Sahpur, Post Office- Sakra, Police Station- Maharajganj, District- Siwan.

... .. Petitioner/s

Versus

1. Ambika Sah Son of Gopal Sah, Resident of Village- Sahpur, Pargana Bara, Police Station- Maharajganj, District- Siwan.
2. Vishwanath Sah, Son of Gopal Sah. Resident of Village- Sahpur, Pargana Bara, Police Station- Maharajganj, District- Siwan.
3. Roopchandra Sah, Son of Gopal Sah, Resident of Village- Sahpur, Pargana Bara, Police Station- Maharajganj, District- Siwan.
4. Devendra Manjhi Son of Late Kapildeo Manjhi, Resident of Village- Sahpur, Post Office- Sakra, Police Station- Maharajganj, District- Siwan.
5. Phuljharia @ Ramrati Devi Wife of Late Kapildeo Manjhi, Resident of Village- Sahpur, Post Office- Sakra, Police Station- Maharajganj, District- Siwan.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjeet Kumar, Advocate
For the Opposite Party/s : Mr. Kaushal Kishore Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

5 13-10-2023 Heard Mr. Digvijay Narain Singh, learned counsel

 appearing on behalf of the petitioner and learned counsel for the

 State.

 2. The present application has been filed on behalf of

 the plaintiff/appellant no.1 for restoration of Second Appeal No.

 129 of 2011 (Surendra Manjhi @ Pallu Manjhi & Ors. Vs.

 Ambika Sah & Ors.) to its original record which stood



dismissed on 09.05.2014 for non-compliance of peremptory order dated 02.05.2014 passed by a bench of this Court.

3. It is submitted that the aforementioned Second Appeal No. 129 of 2011 was listed before Lawazima Board on 30.10.2013 for removal of defects, however, despite the time having been allowed, the defects could not be removed and subsequently the matter has been listed before a bench of the Hon'ble Court under the heading "For Orders on Office Notes." Since the aforesaid appeal goes unattended on behalf of the appellant when the matter was called, one week peremptory time is allowed to remove the defects, but within the peremptory time, the same has not been done which resulted into dismissal of the second appeal.

4. It is submitted across the Board that the mistake committed on behalf of the appellant was not intentional and deliberate, as he could not mark the case, thus, resulting into non-compliance of the peremptory order leading to dismissal of the Second Appeal.

5. Notices were issued to the Opposite Party and Opposite Party No. 1 has also entered his appearance by filing *Vakalatnama*, however, today there is none on behalf of the Opposite Parties.



6. In view of the submissions made on behalf of the petitioner and taking note of the aforementioned materials, the present restoration application stands allowed. The Second Appeal No. 129 of 2011 be restored to its original records.

(Harish Kumar, J)

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