

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.499 of 2017**

Prabhawati Devi, W/o- Shri Amrendra Kumar,D/o late Gauri Shankar Prasad
Resident of Mauza-Rajpur, P.S.- Nasiriganj, P.O. - Rajpur, District- Rohtas.

... .. Petitioner/s

Versus

1. Ashok Kumar
2. Manoj kumar
3. Saroj Kumar @ Bhim All are Sons of Bangali Prasad Resident of Village-
Rajpur, P.S. Nasiriganj, P.O. - Rajpur, District- Rohtas.
4. Thakur Mani Kunwar W/o late Bangali Prasad Resident of Village- Rajpur,
P.S. Nasiriganj, P.O. - Rajpur, District- Rohtas.
5. Kalwati Devi D/o late Gauri Shankar Prasad Resident of Village- Rajpur,
P.S. Nasiriganj, P.O. - Rajpur, District- Rohtas.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jyoti Shankar, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

3 13-07-2023 Heard learned counsel for the petitioner.

2. This Civil Miscellaneous Application has been filed for quashing the order dated 03.01.2017 passed by learned Sub-Judge-I, Bikramganj, Rohtas in connection with Misc. Case No. 01 of 2004 by which the learned Sub-Judge rejected the petition dated 28.08.2015 of the petitioner.

3. The brief facts of the case are that a title suit bearing Title Suit No. 39 of 1989 (Gauri Shankar Prasad Vs.



Ram Autar Sah and Ors.) was compromised in between the parties and final decree was prepared on 02.05.1992. The said decree, after 12 years, was challenged by Ashok Kumar and Ors. who were defendants in the suit, under Order XXIII Rule 3 r / w Section 151 C.P.C. vide Misc. Case No. 1-A of 2004 and an application under Section 5 of Limitation Act for condonation of delay has also been filed. The said Misc. Case has been admitted by the Court on the basis of seristedar report on 18.01.2004. Opposite Party Nos. 1 to 3 of the Misc. Case appeared and filed objection on 06.07.2005. On 28.12.2006, opposite parties filed application to hear on condonation of delay and after hearing both parties, the learned Court below vide order dated 01.02.2014 observed that on 18.01.2004 delay has already been condoned. Against the said order, the petitioners filed CWJC No. 5078 of 2014 in which this Court vide order dated 18.12.2014 directed on prayer of the petitioner, to dispose of the Miscellaneous Case No. 01 of 2004 preferably within six months from the date of receipt / production of the copy of the said order. It was directed the Court below not to grant unnecessary adjournment to the parties in view of the fact that matter relates to the decree passed in year 1992. The Review petition bearing Civil Review No. 04 of 2015 in the said



CWJC No. 5078 of 2014 filed on behalf of petitioner was withdrawn with liberty to raise his grievances in accordance with law before the learned Court below.

4. The learned Court below on the petition dated 28.08.2015 filed on behalf of petitioner, in detailed order held that after hearing both parties, detailed order had been passed by the learned Court below vide order dated 01.02.2014 and accordingly dismissed the said petition.

5. Learned counsel for the petitioner submits that the learned Court below in complete departure of the order passed by this Court on 18.12.2014, lingered and delayed the matter unreasonably and instead of disposal of Misc. Case No. 01 of 2004, the learned Court below again heard the matter on the point of limitation and passed the order which is bad in law as well as on facts and liable to be set aside.

6. Having heard the learned counsel for the petitioner and on perusal of the material on record, it appears that the learned trial Court vide the order dated 01.02.2014 had observed that without oral and documentary evidence, it is not appropriate to pass the order on limitation and when there is mixed question of fact and law, it cannot be decided as preliminary issue and accordingly, held that the point of limitation shall be considered



with other points in Misc. Case.

7. On perusal of the impugned order, it appears that there is no illegality or jurisdictional error in the impugned order passed by the learned trial Court and requires no interference by this Court in its supervisory jurisdiction under Article 227 of the Constitution of India. The Civil Miscellaneous Application is devoid of merit and is liable to be dismissed. The Civil Misc. Application is, accordingly, dismissed.

8. It is unfortunate that despite the direction of this Court vide order dated 18.12.2014 passed in **Civil Writ Jurisdiction Case No. 5078 of 2014** to dispose of the Miscellaneous Case No. 01 of 2004 preferably within six months from the date of receipt / production of a copy of the order and the Court was also directed to not grant any unnecessary adjournment to the parties in view of the fact that the matter relates to the decree passed in the year 1992, the aforesaid Miscellaneous Case is still pending.

9. The learned District Judge, Rohtas is directed to look into the matter as under what circumstances the aforesaid miscellaneous case has not been disposed of till date despite the aforesaid direction of this Court and ensure the compliance of the order of this Court in letter and spirit.



10. This Civil Miscellaneous application is thus disposed of with the aforesaid direction.

11. The office is directed to communicate this order to learned District Judge, Rohtas as well as the trial Court without delay for needful.

(Sunil Dutta Mishra, J)

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