

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Jurisdiction Case No.2858 of 2017**

**In**  
**SECOND APPEAL No.271 of 1994**

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1. Mahendra Prasad @ Mahendra Prasad Agrawal and Ors Son of Nemchand Prasad @ Nemchand Prasad Agrawal.
  2. Alok Kumar @ Alok Kumar Agarwal.
  3. Jitendra Kumar @ Jitendra Kumar Agarwal,
  4. Ganesh Prasad @ Manish Kumar Agarwal.
  5. Basant Prasad @ Basant @ Kumar Agarwal, all sons of Mahendra Prasad @ Mahendra Prasad Agrawal.
  6. Chandra Ketu Prasad @ Ambrish Kumar Agrawal, Son of Mahendra Prasad @ Mahendra Prasad Agrawal, All resident of Village Bhagwanpur, Anchal Bhagwanpur, at present town Bhabua, P.O. and P.S.- Bhabua, District- Bhabua Kaimur.

... .. Petitioner/s

Versus

1. Poonam Gupta @ Poonam Agrawal and Ors Wife of Late Ashok Kumar Agrawal.
2. Akash Agrawal, Son of Late Ashok Kumar Agrawal. Both resident of Village- Bhabua Ward No. 2, P.O. and P.S. Bhabua, District- Bhabua Kaimur at present resident of Mohalla- Nawa Toli, P.S.- Daltanganj, District- Daltanganj.
3. Sheo Prasad Agrawal.
4. Banke Bihari Agrawal.
5. Chaturbhuj Prasad @ Lala Son of Late Sri Niwas Prasad.
6. Raj Kumar Agrawal.
7. Raju Agrawal,
8. Mukesh Agrawal, Son of Sheo Prasad Agrawal.
9. Rahul Kumar Agrawal @ Pinku, Son of Banke Bihari
10. Rohit Kumar Agrawal @ Toni, Son of Banke Bihari, Ward No. 2, P.O. and P.S.- Bhabua, District- Bhabua.

... .. Opposite Party/s

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with  
**CIVIL REVIEW No. 337 of 2017**  
**In**  
**SECOND APPEAL No.271 of 1994**

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1. Mahendra Prasad @ Mahendra Prasad Agrawal and Ors Son of Nemchand Prasad @ Nemchand Prasad Agrawal,
2. Alok Kumar @ Alok Kumar Agarwal,
3. Jitendra Kumar @ Jitendra Kumar Agarwal,



4. Ganesh Prasad @ Manish Kumar Agarwal,
5. Basant Prasad @ Basant @ Kumar Agarwal, all sons of Mahendra Prasad @ Mahendra Prasad Agarwal,
6. Chandra Ketu Prasad @ Ambrish Kumar Agrawal, Son of Mahendra Prasad @ Mahendra Prasad Agrawal, All resident of Village- Bhagwanpur, Anchal Bhagwanpur, at present Town Bhabhua, P.O. and P.S.- Bhabhua, District- Bhabhua Kaimur.

... .. Petitioner/s

Versus

1. Poonam Gupta @ Poonam Agrawal and Ors Wife of Late Ashok Kumar Agrawal,
2. Akash Agrawal, Son of Late Ashok Kumar Agrawal, Both resident of Village- Bhabua Ward No.2, P.O. and P.S.- Bhabua, District- Bhabua Kaimur at present resident of Mohalla- Nawa Toli, P.s.- Daltanganj, District- Daltanganj.
3. Sheo Prasad Agrawal,
4. Banke Bihari Agrawal,
5. Chaturbhuj Prasad @ Lala, Sons of Late Sri Niwas Prasad,
6. Raj Kumar Agrawal,
7. Raju Agrawal,
8. Mukesh Agrawal, Sons of Sheo Prasad Agrawal,
9. Rahul Kumar Agrawal @ Pinku, Son of Banke Bihari,
10. Rohit Kumar Agrawal @ Toni, Son of Banke Bihari, Ward No.2, P.O. and P.S.- Bhabua, District- Bhabua.

... .. Opposite Party/s

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**Appearance :**

(In Miscellaneous Jurisdiction Case No. 2858 of 2017)

For the Petitioner/s : Mr. Viveka Nand Singh, Advocate

For the Opposite Party/s : Mr. Parth Gaurav, Advocate

(In CIVIL REVIEW No. 337 of 2017)

For the Petitioner/s : Mr. Ajit Kumar, Advocate

For the Opposite Party/s : Mr. Parth Gaurav, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA**  
**ORAL ORDER**

16 18-08-2023

1. Heard learned counsel for the petitioners, Mr. Viveka Nand Singh and learned counsel appearing for the opposite party, Mr. Parth Gaurav.

2. The MJC No. 2858 of 2017 and Civil Review No. 337 of 2017 are taken up together and are being disposed of by



this common order.

3. The learned counsel for the petitioners at the outset submits that it would be apt to bring on record the fact leading to filing of Restoration Application being MJC No. 2858 of 2017 and thereafter Civil Review No. 337 of 2017. It is submitted that petitioners were plaintiffs and opposite parties were defendants in the suit which was filed for declaration of Title along with other ancillary reliefs.

4. It is next submitted that the Title Suit was decreed in favour of the opposite party against which Title Appeal was preferred and the same dismissed, thereafter, the petitioners as appellants filed Second Appeal No. 271 of 1994 which was pending adjudication before this Court. It is next submitted that in the Second Appeal No. 271 of 1994, the respondent no. 2 died, accordingly, the appellants therein (present petitioners) filed I.A. No. 1402 of 2002 for substituting the legal heirs of respondent no. 2 in which notices were directed to be issued upon the legal heirs by order dated 22.08.2016, it is submitted that the order dated 22.08.2016, was not a peremptory order, though notices were issued but the *talbana* amount was short by few rupees, accordingly, the case was again taken up on 08.03.2017, when the petitioners were directed to comply the



notice as issued by order dated 22.08.2016, in its entirety within a period of one week.

5. It is next submitted that the order dated 08.03.2017, was also not complied within time, as such, the I.A. No. 1402 of 2002 which was filed for substituting the legal heirs of the respondent no. 2 stood dismissed. It is next submitted that in the background of dismissal of I.A. No. 1402 of 2002 *vis-a-vis* respondent no. 2 of the appeal, a question came before the Court regarding continuation of appeal in absence of legal heirs of respondent no. 2 as the peremptory order was not complied by the appellants i.e., the present petitioners.

6. It is submitted that the learned Appellate Court took up the question of competency of the Second Appeal and found that the decree is inseparable and if the appeal is allowed to proceed in absence of legal heirs of respondent no. 2 then the same may cause two inconsistent decrees, finding the fact that decree is inseparable in the present case, the learned Second Appellate Court dismissed the whole appeal as incompetent *vide* order dated 18.03.2017.

7. The learned counsel further submits that petitioners being aggrieved by the order dated 08.03.2017 and 18.03.2017, filed two different applications i.e., MJC No. 2858 of 2017 for



restoring IA No. 1402 of 2002 which stood dismissed for default for non-compliance of the order dated 08.03.2017 and Civil Review No. 337 of 2017 for reviewing the order dated 18.03.2017, by which the Second Appeal was held to be incompetent.

8. The learned counsel for the petitioners next submits that during pendency of the Restoration Application and the Civil Review a compromise between the petitioners and the opposite party herein took place and the terms of the compromise was also brought on record by the parties by filing of an Interlocutory Application being I.A. No. 05 of 2023 in Civil Review Application.

9. The learned counsel for the opposite party raises issues of maintainability of the Restoration Application on the ground that the Restoration Application has become meaningless in view of order dated 18.03.2017, by which Second Appeal itself was held incompetent for non-compliance of peremptory order dated 08.03.2017.

10. It is further submitted that even if Restoration Application is allowed what will revive, definitely the Second Appeal will not get revived but only the IA No. 1402 of 2002, but whether IA No. 1402 of 2002 can proceed when



Second Appeal in its entirety itself has been held to be incompetent to proceed.

11. The learned counsel thus submits that Restoration Application be held not maintainable and since a compromise has taken place in between the parties during the pendency of the Civil Review Application, as such, the Civil Review can be disposed of by observing that since the parties have compromised therefore the Civil Review Application is disposed of in terms of the compromise as recorded, which has been brought on record in I.A. No. 05 of 2023.

12. The learned counsel for the petitioners does not oppose rather agrees with the submission of the learned counsel for the opposite party and seeks disposal of the Civil Review in the same terms as submitted by the learned counsel for the opposite parties.

13. However, the learned counsel for the opposite party very fairly submits that since the parties have entered into a compromise during pendency of the present application i.e., Restoration and Civil Review, as such, he has no objection, in the event, if Civil Review is allowed and the Restoration Application is held to be not maintainable.

14. The learned counsel for the petitioners very



fairly after hearing the learned counsel for the opposite parties submits that he understands the proposition of law as being raised by the learned counsel for the opposite party, as such, he is not pressing the present Restoration Application.

15. In view of the submissions made by the learned counsel for the parties, the Restoration Application i.e., MJC No. 2858 of 2017 is held to be not maintainable for the reason that by allowing MJC No. 2858 of 2017 only I.A. No. 1402 of 2002 would have been revived which could not have proceeded as the Second Appeal itself was held incompetent to proceed by order dated 18.03.2017.

16. Further, the Civil Review is disposed of on the basis of compromise entered in between the parties as contained in I.A. No. 05 of 2023, it is made clear that terms of the compromise entered in between the parties is made part of the order in Civil Review.

**(Satyavrat Verma, J)**

GauravSinha/-

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