

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.624 of 2017

Kushal Kishore Singh son of Late Nand Kishor Singh resident of Village Turuk Telpa, Police Station Karpi and District Arwal presently residing at Village- Shahartelpa, Police Station Karpi, Post Office Shahar Telpa and District Arwal.

... .. Appellant/s

Versus

1. Ramnath Singh and Ors son of Late Vishwanath Singh
2. Shirish Bhardwaj son of Ramnath Singh.
3. Abhilash Bhardwaj son of Raghunath Singh. resident of Village- Sheotar, Police Station Atri, Post Office Sheotar and District Gaya.
4. Nirmal Kumar @ Dablu Kumar son of Late Lal Narain Sharma.
5. Nishant Kumar son of Ajay Sharma. Both Sl. Nos. 4 and 5 are resident of Village- Keyal, Police Station Karpi and District Arwal.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Pushkar Narain Shahi, Sr. Advocate with Mr. Manish Kumar No. 2, Advocate
For the Respondent/s	:	Mr. Dronacharya, Sr. Advocate with Mr. Jairam Shankar, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

10 10-08-2023 Heard the learned counsel for the parties.

2. This Miscellaneous Appeal has been filed against the judgment and order dated 10.04.2017 passed by learned Civil Judge (Sr. Div.) 4th , Arwal in Miscellaneous Case No. 02 of 2017, whereby the application filed under Order IX Rule 9 read with Section 151 of the Code of Civil Procedure praying for setting aside the order dated 19.01.2017 passed in Title Suit No. 317 of 2014 and to restore Title Suit No. 317 of 2014, has been rejected.



3. Learned counsel for the appellant submitted that learned lower court has completely failed to understand that the application filed under Order IX Rule 9 read with Section 151 of the Code of Civil Procedure was for restoration of Title Suit No. 317 of 2014. Learned counsel for the appellant submitted that the said application was not just under Section 151 of the Code of Civil Procedure but was filed under Order IX Rule 9 read with Section 151 of the Code of Civil Procedure. Learned trial court assumed that the said application was filed under Section 151 of the Code of Civil Procedure only. Learned counsel for the appellant further submits that learned lower court failed to appreciate that by order dated 19.01.2017, the Title Suit was not dismissed on merits.

4. Learned counsel for the respondents submits that for the negligence on the part of the plaintiff-appellant, impugned order has been passed for which cost may be imposed upon him for compensating defendant-respondent for unnecessary prolonging the matter.

5. In the facts and circumstances, this Court finds that the lower court has failed to consider that the Miscellaneous Application No. 02 of 2017 was filed under Order IX Rule 9 read with Section 151 of the Code of Civil Procedure for



restoration of Title Suit No. 317 of 2014. Learned lower court has committed irregularity and passed the order without exercising its jurisdiction.

6. Accordingly, the instant Miscellaneous Appeal is allowed.

7. Accordingly the order dated 10.04.2017 passed by the learned Civil Judge (Sr. Division) 4th, Arwal, in Miscellaneous Case No. 02 of 2017 is hereby set aside, subject to payment of Rs. 2000/- as cost to be deposited before the lower court by the appellant-plaintiff to be paid to defendant.

(Khatim Reza, J)

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