

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1151 of 2017

1. Mira Devi, wife of Late Prahlad Sah,
2. Kailash Sah, son of Late Prahlad Sah,
3. Sarwesh Kumar Sah, son of Late Prahlad Sah,
4. Most. Pancha Devi, wife of Late Dinesh Sah,
5. Raj Kishore Sah, son of Late Dinesh Sah,
6. Prabhakar Kumar Dinkar, son of Late Dinesh Sah,
7. Braj Kishore Sah, son of Late Dinesh Sah, above all are residents of Barahat, P.S.- Barahat, District- Banka.
8. Most Feko Devi, wife of Late Mahendra Sah @ Mahadeo Sah,
9. Yogendra Mandal, son of Late Mahendra Sah @ Mahadeo Sah,
10. Mangal Mandal, son of Mahendra Sah @ Mahadeo Sah, Petitioner no.8 to 10 are at present resident of Baidachak, P.O.- Lakhpura, P.S.- Panjwara, District- Banka.
11. Arvind Sah, son of Late Basudeo Sah, at present resident of Village and P.O.- Asarganj, District- Munger.

... .. Petitioner/s

Versus

Smt Nutan Devi, wife of Gopal Singh, resident of Village- Rangaon, P.S.- Dhoraiya, District- Banka.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Brij Nandad Prasad, Advocate
For the Respondent/s	:	Mr. Shiv Kumar Dwivedy, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

8 21-10-2024

Heard learned counsel for the parties.

2. The present petition has been filed against the order dated 20.12.2016 passed by learned Additional District Judge-I, Banka in Misc. Case No. 1 of 2016 filed by the petitioners under Order 41 Rule 19 of the Code of Civil Procedure (in short ‘the Code) for restoration of Title Appeal No. 156 of 2005 which has been dismissed on the ground of non-appearance of the



appellants.

3. Admittedly, against the dismissal of petition under Order 41 Rule 19 of the Code, an appeal is maintainable under Order 43 Rule 1(t) of the Code and in no case the civil miscellaneous petition under Article 227 of the Constitution would be maintainable.

4. Faced with the situation, learned counsel for the petitioners seeks permission to convert the present civil miscellaneous petition into the miscellaneous appeal which is opposed by learned counsel for the respondent.

5. However, for the ends of justice, the prayer of learned counsel for the petitioners is allowed. He is permitted to convert the present civil miscellaneous petition into miscellaneous appeal within two weeks from the date of opening of the Court after Chhath Puja Holidays. It is made clear that the said conversion would be subject to all the applicable laws and office will take note of this fact and would do proper stamp reporting in the matter including the limitation.

(Arun Kumar Jha, J)

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