

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1319 of 2019

1. Bhushan Kumar Son of Late Nagendra Rai (and Grand son of Late Bodh Narain Rai) Resident of Village- Sirkhiriya, P.S.- Mohindwara, Anchal-Runnisaidpur, District- Sitamarhi.
2. Ekram Rai Son of Late Nagendra Rai (and Grand son of Late Bodh Narain Rai) Resident of Village- Sirkhiriya, P.S.- Mohindwara, Anchal-Runnisaidpur, District- Sitamarhi.
3. Vikram Rai Son of Late Nagendra Rai (and Grand son of Late Bodh Narain Rai) Resident of Village- Sirkhiriya, P.S.- Mohindwara, Anchal-Runnisaidpur, District- Sitamarhi.
4. Brij Kumar Rai Son of Late Nagendra Rai (and Grand son of Late Bodh Narain Rai) Resident of Village- Sirkhiriya, P.S.- Mohindwara, Anchal-Runnisaidpur, District- Sitamarhi.
5. Kapindra Rai Son of Late Bodh Narain Rai Resident of Village- Sirkhiriya, P.S.- Mohindwara, Anchal- Runnisaidpur, District- Sitamarhi.

... .. Petitioner/s

Versus

1. Raj Nandan Rai Son of Late Kunji Lal Rai Bihar
2. Braj Kishore Rai Son of Late Gudari Rai Resident of Village- Sirkhiriya, P.S.- Mohindwara, Anchal- Runnisaidpur, District- Sitamarhi.
3. Chittaranjan Rai Son of Late Gudari Rai Resident of Village- Sirkhiriya, P.S.- Mohindwara, Anchal- Runnisaidpur, District- Sitamarhi.
4. Satya Narain Rai Son of Late Gudari Rai Resident of Village- Sirkhiriya, P.S.- Mohindwara, Anchal- Runnisaidpur, District- Sitamarhi.
5. Dharmendra Rai Son of Late Gudari Rai Resident of Village- Sirkhiriya, P.S.- Mohindwara, Anchal- Runnisaidpur, District- Sitamarhi.
6. Anupi Devi Widow of Late Gudari Rai Resident of Village- Sirkhiriya, P.S.- Mohindwara, Anchal- Runnisaidpur, District- Sitamarhi.
7. Veena Devi Daughter of Late Gudari Rai, Wife of Anirudh Rai Resident of Village- Mahesha Pharakpur, P.O.- Mahesha Pharakpur, P.S.- Mahindwara, Anchal- Runnisaidpur, District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anil Jayaswal, Advocate Mr. Sunil Kumar, Advocate
For the Respondent/s	:	Mr. Pramod Kumar Singh, Advocate Mr. Virendra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 25-06-2024

Heard learned counsel appearing on behalf of the

petitioners as well as learned counsel appearing on behalf of the respondents.

2. The present petition is filed under Article 227 of the Constitution of India against the order dated 07.02.2019 passed by learned Munsif Sadar, Sitamarhi in Miscellaneous Case No. 19 of 2018 whereby and whereunder the learned Munsif rejected the miscellaneous case filed for restoration of Execution Case No. 09 of 1998, which was dismissed for default.

3. Learned counsel appearing on behalf of the petitioners submits that petitioners are very poor persons and they have no knowledge about the dismissal of the execution case. The *pairvi* was being done by the grandfather of petitioner nos. 1-4 and the father of the petitioner no. 5. After death of grandfather of petitioner nos. 1-4, as the fathers of petitioner nos. 1- 4 and petitioner no. 5 were illiterate persons they failed to pursue the matter which was dismissed for default *vide* order dated 06.08.2005. The petitioners moved before the Court of learned Munsif Sadar, Sitamarhi seeking restoration of the Execution Case No. 09 of 1998 which has been dismissed by the order dated 07.02.2019 which is under challenge in this Court.

Learned counsel for the petitioners further submits

that the learned Munsif has not considered the fact that the petitioners are illiterate and very poor persons and have been denied the fruits of the decree (due to their penury). Title Suit No. 117 of 1990 was decreed in favour of the ancestors of the petitioners *vide* judgment and decree dated 08.06.1993 and 22.06.1993, respectively. The appeal preferred against the aforesaid judgment, Title Appeal No. 30 of 1993, and decree was dismissed and the orders of the learned trial court was affirmed. The decree was for declaration of right title over the suit land and the recovery of the possession as the respondents has forcibly occupied the land of the petitioners. The respondents are by nature anti-social persons who do not believe in law and this fact is apparent from the report of the *Nazir* dated 28.01.2001 passed in Execution Case No. 09 of 1998, wherein the *Nazir* reported that judgment debtor by use of lethal weapons did not allow the *Nazir* and other court persons from measuring the land and there arose danger to the life of the court officers. Learned counsel submits that though the record of the execution case has been destroyed but the extract of the execution register of the Court of learned Munsif Sadar, Sitamarhi clearly shows that the Execution Case No. 09 of 1998 was dismissed for default on 06.08.2005. Learned counsel

further submits that the petitioners are in possession of some certified copies which could help in reconstruction of the documents of the execution case and considering the pitiable condition of the petitioners, the learned trial court may be directed to proceed in the matter and the impugned order may be set aside.

4. Learned counsel appearing on behalf of the respondents vehemently opposes the submissions made on behalf of the petitioners. Learned counsel for the respondents submits that the prayer of the petitioners is hopelessly time barred. The execution case was filed in the year 1998 and the application for restoration was filed in 2018. The reasons for not filing the case earlier are not sustainable. Moreover, it has come in the impugned order itself that record of execution case have been destroyed and in light of these facts it is not possible even to reconstruct the record and for this reason the Execution Case No. 09 of 1998 could not be restored. Learned counsel further submits that no prayer for reconstruction or with regard to condonation of delay have been made before the learned Munsif, Sitamarhi.

5. Having regard to the rival submissions and considering the facts and circumstances of the case and without

venturing into the merits of the rival contentions and in the interest of justice, I think the petitioners could be given an opportunity to get their execution case restored since a substantive right has been created in their favour as orders in favour of the petitioners have not been set aside by any competent court. Whatever procedural infirmities/defects might have come up against the restoration of execution case, the same will always be subservient to the cause of substantial justice. Hence, the impugned order dated 07.02.2019 passed by the learned Munsif Sadar, Sitamarhi is set aside, and Misc. Case No. 19 of 2018 is allowed. The learned executing court is directed to take up the matter afresh giving opportunity to the petitioners to further prosecute Execution Case No. 09 of 1998 for which the reconstruction of documents may be made with the help of the parties.

6. With the aforesaid direction the instant petition stands allowed.

(Arun Kumar Jha, J)

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CAV DATE	-
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