

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2553 of 2023

In
FIRST APPEAL No.376 of 1975

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1. Ram Naresh Singh Son of Late Janakdhari Singh Resident of Village-Rastriyaganj, Police Station-Phulwari Sharif, District-Patna Presently residing at Village- Shikarpur Usri, Police Station-Danapur, District-Patna. PIN-801105.
 2. Kaushal Kishore Son of Late Janakdhari Singh Resident of Village-Rastriyaganj, Police Station-Phulwari Sharif, District-Patna Presently residing at Village- Shikarpur Usri, Police Station-Danapur, District-Patna. PIN-801105.

... .. Petitioner/s

Versus

1. Smt. Nilam Kumari Wife of Raghubans Singh, Daughter of Bhagwan Singh Resident of Village-Sheikhpur, Post Office, Police Station-Hawai Adda, District-Patna, Presently residing at Road No. 19, Sri Krishna Puram (Naya Tola Saguan), Police Station-Danapur, District-Patna.
2. Geeta devi daughter of Late Janakdhari Singh, Wife of Shambhu Narayan Singh Resident of Village-Ranipur, Police Station-Phulwari Sharif, District-Patna.
3. Rekha Devi Daughter of Late Janakdharai Singh, Wife of Sri Ranjan Singh Resident of Village-Gorgama, Police Station Shahpur, District-Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dhanendra Chaubey, Advocate
For the Opposite Party/s : Mr.

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

4 29-03-2024 Heard learned counsel for the petitioners.

2. The present petition has been preferred for restoration of First Appeal No. 376 of 1975 (Smt. Sudama Devi vs Smt. Nilam Kumari & Anr).

3. The order dated 16.10.2014 passed by Bench of this Court (**Hon'ble Mr. Justice Mungeshwar Sahoo**) as his lordship then was read as follows:



“In view of the office rote dated 15.10.2014, it becomes clear that now no direct notice can be issued to the legal representatives of the deceased appellant. The sole appellant has died.

It is submitted by the learned counsel for the respondents that the husband of the sole appellant, who is respondent no.2, has also died in 2012.

Now; therefore, there is no appellant in this First Appeal and nobody is also appearing on behalf of the appellant praying for substitution of the legal representatives, therefore, this First Appeal has become now incompetent to proceed.

Accordingly, this First Appeal is dismissed as incompetent.”

4. Nine years later, the present restoration petition has been filed for restoration of First Appeal No. 376 of 1975, a perusal of the order would show that the same has not been dismissed for non-prosecution and the presence of learned counsel for the appellant Mr. Sheo Dayal Singh and Mr. Madan



Pd. Singh has been recorded in the said order dated 16.10.2014.
The order clearly shows that the same was dismissed as incompetent.

5. A report was sought for from the office and it has been reported that it has been dismissed for non-prosecution. It clearly shows that the office while incorporating the comment do not apply its mind.

6. In view of the aforesaid fact, since, the petition has not been dismissed for non prosecution, the present petition cannot be allowed.

7. MJC. No. 2553 of 2023 stands dismissed.

(Rajiv Roy, J)

Adnan/-

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