

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.248 of 2021

1. Most Shobha Devi W/o Late Janardan Yadav, resident of Village - Tankulha, P.O. - Tankulha, Thana - Sonbarsa Raj, District - Saharsa.
2. Ashok Yadav, Son of Late Janardan Yadav, resident of village - Tankulha, P.O.- Tankulha, Thana- Sonbarsa Raj, District - Saharsa.
3. Subodh Yadav, Son of Late Janardan Yadav, resident of village - Tankulha, P.O.- Tankulha, Thana- Sonbarsa Raj, District - Saharsa.
4. Mukesh Yadav, Son of Late Janardan Yadav, resident of village - Tankulha, P.O.- Tankulha, Thana- Sonbarsa Raj, District - Saharsa.
5. Gita Devi, W/o Jai Kumar Yadav, D/o Late Janardan Yadav, R/o Village - Raghunathpur, P.S.- Murliganj, District - Madhepura.
6. Rita Devi, W/o Shashi Shekhar Yadav, D/o Late Janardan Yadav, R/o Village - Pariyahi, P.S. - Kumar Khand, District - Madepura.

... .. Appellant/s

Versus

1. Smt. Bishwari Devi @ Bisheshwari Devi, W/o Shib Nandan Prasad Yadav, resident of Village - Tankulha, Thana - Sonbarsa Raj, District - Saharsa at present Ward No. 12, under Nagarpalika Thana - Madhepura, District - Madhepura.
2. Shib Nandan Prasad Yadav, S/o Late Tanuk Lal Yadav, resident of Village - Tankulha, Thana - Sonbarsa Raj, District - Saharsa at present Ward No. 12, under Nagarpalika Thana - Madhepura, District - Madhepura.
3. Haribal Yadav, Son of Late Ras Bhari Yadav, resident of Village - Tankulha, Thana- Sonbarsa Raj, District - Saharsa.
4. Indra Kumar Yadav, Son of Late Ras Bhari Yadav resident of Village - Tankulha, Thana- Sonbarsa Raj, District - Saharsa.
5. Madan Yadav, Son of Late Ras Bhari Yadav, resident of Village - Tankulha, Thana- Sonbarsa Raj, District - Saharsa.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anant Kumar 1, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

7 07-01-2025

This Second Appeal has been filed against the
judgment and decree dated 31.01.2020 passed in Final Decree



Appeal No. 24/13-19/15 by the learned Additional District Judge-II, Saharsa affirming the judgment and decree dated 31.01.2013 passed in Title Suit No. 107 of 1996 by the learned Munsif, Saharsa. The aforesaid suit was filed for declaration of title and possession and also for declaration that the sale deed dated 02.05.1989 in favour of appellant is void and not binding upon the plaintiffs.

2. On summons, the defendants appeared and filed their written statement but neither adduced any evidences nor filed any document to support their pleadings. On the basis of pleadings, trial court framed the issues. After scrutinizing the materials on record as well as evidences adduced in the suit, the learned trial court decreed the suit.

3. Being aggrieved by the judgment and decree dated 31.01.2013 passed in Title Suit No. 107 of 1996, the defendants-appellants filed Title Appeal No. 24/13-19/15 along with a petition for condonation of delay of 146 days. The learned Appellate Court dismissed the appeal on the ground of limitation after considering the explanation given by the appellants for condonation of delay in filing the memo of appeal.

4. Learned counsel for the appellants submitted that



original appellant Janardan Yadav was not aware of passing of the impugned judgment and decree. They came to know about the same through their villagers. Thereafter, they filed an information slip dated 16.07.2013 which was made available to him on 18.07.2013. Soon thereafter, they filed appeal on 26.07.2013. It is submitted that during the pendency of the title suit, original appellant Janardan Yadav became ill and was absent from Court w.e.f. 25.03.2011 to 26.06.2012 and again from 05.07.2012 to 15.07.2013 because he was suffering from Arthritis and a medical certificate dated 15.07.2013 has also been annexed in support thereof. The Appellate Court has examined the record of the lower Court and held that the plaintiffs' witnesses were examined on 29.06.2011, 16.09.2011, 19.10.2011, 08.11.2011, 02.12.2011 and 01.06.2012 but they were not cross-examined by the plaintiffs' witnesses. Even after closure of the evidence of the plaintiff's witnesses, neither defendants nor their counsel appeared and adduced their evidence. It is apparent from the records of lower court that defendant nos. 1 to 4 had filed their written statement jointly. The aforesaid appeal was filed by defendant no. 1 only. All the defendants were represented by a common Advocate. However, it is not clear as to why other defendants also made no effort to



enquire about the case in the event of illness of the original appellant (defendant no. 1). During pendency of the appeal, original plaintiff (defendant no. 1) had died and thereafter his heirs were substituted in the appeal. The original appellant had stated that he did not appear before Trial Court from 25.03.2011 to 26.06.2012 and again from 05.07.2012 to 15.07.2013 because he was suffering from illness. It is also observed that what kind of illness he was suffering from has not been mentioned by the appellant either in the petition for condonation of delay or in the memo of appeal. The medical certificate purported to have been issued by a doctor of Porigarhwa (Uttanchal) dated 26.06.2012 was brought on record and the appellant was shown to have been suffering from Arthritis and in the medical certificate dated 15.07.2013, the appellant was shown to have been suffering from Chronic Anemia. The said two medical certificates were marked as Ext.-2 and 2/1. The said medical certificates were not proved by the author of the documents. The genuineness and authenticity of the medical certificate also appears to be doubtful because the appellant was the resident of district Saharsa and if he was suffering from chronic arthritis then how he and went to Uttanchal for his treatment by a Physician, who is not even specialist in Orthopedic branch of medical science. It



is apparent from the records that the defendant/appellant was represented by an Advocate from Saharsa Bar, who did not cross examine plaintiffs' witnesses before the Trial Court. The application for condonation of delay doesn't disclose any satisfactory reason for the delay and the reason given in the memo of appeal for the delay is also not satisfactory. From the order sheet, it appears that appellant/defendant stopped appearing before the Trial Court consistently since 29.10.2010 till passing of the Trial Court judgment i.e. even much before 25.03.2011, the date when the appellant claim to have suffered from illness. The defendant/appellant failed to prove sufficient cause for the delay in filing the appeal. Accordingly, the petition for condonation of delay was dismissed and consequently the Title Appeal has also been dismissed as barred by law of limitation.

5. Having considered the impugned judgments and decree as well as materials on record, it is apparent from the judgments of the courts below that the said suit was filed by the plaintiff on 09.08.1996 and it was admitted on 19.08.1996 and thereafter notices were issued to the defendants but nobody appeared till 14.04.1997. The learned Trial Court passed an order for ex party Hearing on 15.04.1997. Thereafter, the



defendant nos. 1 to 4 appeared and filed a petition for recalling the order dated 15.04.1997, which was allowed and consequently order dated 15.04.1997 was recalled by order dated 14.05.1997 and thereafter defendant nos. 1 to 4 filed their common written statement on 02.02.1999. The defendant raised preliminary objection with regard to valuation of the suit and the jurisdiction of the court of Munsif. The said objection was decided on 20.02.2003 and against the said order the defendants filed a case bearing Miscellaneous Appeal No. 07 of 2003 which was dismissed on 06.06.2008. On 23.03.2011, the Trial Court framed issues for trial, till then defendants contested the matter. It appears from the impugned judgments that the plaintiffs produced oral and documentary evidence in support of their case but the defendant did not produce any oral or documentary evidence in support of their case except those evidence adduced on the point of preliminary issue. Accordingly, the suit was decreed. Against the said judgment and decree, aforesaid Title Appeal was filed by the original defendant no. 1. The defendant nos. 2 to 4 did not choose to challenge the impugned judgment of the Trial Court. The learned Appellate Court after considering the reason assigned in the memo of appeal as well as petition for condonation of delay held that the appellant could not prove



sufficient cause for delay. The learned lower appellate court further held that after the judgment passed in Title Suit No. 107 of 1996 and after appearance of defendants including the original defendant no. 1 and as well as filing of common written statement, the defendants disappeared from the trial. The reason assigned by the appellants is not sufficient cause rather the same is lame excuse for non-appearance before the Trial Court after filing of the written statement and there was no sufficient cause to prevent the appellant to file the appeal and also there was casual approach of the appellant in taking step for filing the Title Appeal.

6. Considering the facts and circumstances of the case, the Court is of the view that there was no proper explanatory effort by the appellant for the delay except mentioning about unaware of the judgment passed against him.

7. In such view of the matter, I am not inclined to interfere with the impugned judgment and decree passed by the lower Appellate Court. It is also apparent that the impugned judgment and decree of the courts below are covered by finding of the facts and no question of law much less substantial question of law arises for consideration in the Second Appeal.

8. Accordingly, this Second Appeal is dismissed at the



stage of Hearing under Order XLI Rule 11 of the C.P.C..

(Khatim Reza, J)

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