

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.550 of 2019

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Yogendra Jha son of late Ramchandra Jha Resident of Village- Harpur Pusa
(Bhuskaul), P.S. and P.O.- Pusa, District- Samastipur.

... .. Appellant/s

Versus

1. Shambhu Jha son of late Ram Narain Jha resident of Village- Harpur Pusa
(Bhuskaul), P.O. and P.S.- Pusa, District- Samastipur.
2. Sarwan Jha son of late Ram Narain Jha resident of Village- Harpur Pusa
(Bhuskaul), P.O. and P.S.- Pusa, District- Samastipur.
3. Harendra Jha son of Late Ram Narain Jha resident of Village- Harpur Pusa
(Bhuskaul), P.O. and P.S.- Pusa, District- Samastipur.
4. Suresh Kumar Jha Son of Late Ram Narain Jha resident of Village- Harpur
Pusa (Bhuskaul), P.O. and P.S.- Pusa, District- Samastipur.
5. Gudiya Devi D/o Late Ram Narain Jha, W/o Ajit Jha resident of Village-
Mahisari, Ujarpur, P.O.- Mahisari Babu Pokhar Chowk, P.S.- Ujarpur,
District- Samastipur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shashi Kant Singh, Advocate
For the Respondent/s	:	Mr. Siyaram Pandey, Advocate
		Mr. Dewesh Kr. Pandey, Advocate

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**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

Date : 08-04-2025

This Misc. Appeal is directed against order dated 29.05.2019 passed by the learned 2nd Additional District Judge, Samastipur in Misc. Case No. 12 of 2011 whereby and where-under the application filed by the appellant under Order XLI Rule 19 of the Code of Civil Procedure, 1908 (hereinafter referred as “CPC”) has been rejected.

2. The case of the plaintiff/ appellant is that



they have filed Title Suit No. 29 of 2005 in the Court of learned Subordinate Judge, 1st, Samastipur for declaration of their right, title and possession over the suit land of khata no.142, khesra no. 2477 area 3 decimals situated in Mauza-Harpur Pusa, P.S.-Pusa, Samastipur.

3. The case of the plaintiff-appellant in short is that Ram Sumri Devi was the grand mother of the appellant who died leaving behind a son namely Ramchandra Jha and he also died leaving behind a son Yogendra Jha (appellant). Ram Sumri Devi purchased the disputed plot S. T. No. 2477 with an area 16 dhurs by registered sale deed dated 14.07.1928. She also purchased S. P. No. 2476 before execution of S.P. 2477 which is adjacent on the east side of the disputed plot No. 2477. The appellant have contended that the defendant (OP no.1) constructed a hut in S.P. No. 2477 without right and title from the west side in part of S.P. No. 2477 and started creating dispute. The defendant No. 1 (OP No.1) filed a rent fixation suit No.15 of 1996-97 before the Anchal office, Pusa in which the appellant filed an objection but it was rejected and C.O., Pusa ordered for fixation of rent and sent



the record to the D.C.L.R. Samastipur for its consideration. The appellant also made an objection in the court of D.C.L.R., Samastipur but the same was rejected. The appellant preferred Mutation Appeal before the Additional Collector, Samastipur in which Addl. Collector, inspected the disputed plot and found an area of 2 decimals only on the disputed plot No. 2477 to be in possession of the plaintiff and 4 decimals in possession of the defendants. The land was thus demarcated by Anchal Amin and he disposed of Mutation Appeal vide order dated 25.11.2000. In the March 2005, the defendant No.1 dispossessed the appellant from an area of 3 dhur from north of his land. Hence the plaintiff filed T. S. No. 29 of 2005. Upon contest, the aforesaid Title suit No.29 of 2005 was dismissed vide judgment and decree dated 29.06.2009 and 16.07.2009.

4. Being aggrieved and dissatisfied with the said judgment and decree dated 29.06.2009 passed in Title Suit No. 29 of 2005, the plaintiffs preferred title appeal No. 81 of 2009 before the learned District Judge, Samastipur. The appeal was admitted and transferred in the court of FTC-IVth for disposal.



5. The Appellant- Petitioner filed Civil Misc. Case no. 42 of 2010 under section 24 C.P.C. for transfer of Title Appeal No. 81 of 2009 from the court of F.T.C.- IVth, Samastipur to any other court for interest of justice before the learned District Judge, Samastipur. During pendency of the Civil Misc. No. 42/2010 and inspite of filing Time petition, the learned court dismissed the Title Appeal No. 81 of 2009 by rejecting the Time petition dated 26.05.2011 vide order dated 26.05.2011 on default. Following this the Appellant filed Misc. Appeal No. 12 of 2011, under Order XLI, Rule-19 C.P.C. with a prayer for restoration of T.A. No. 81 of 2009 which was dismissed on 29.05.2019.

6. Learned counsel for the appellant submits that the learned Appellate Court failed to appreciate that the appellants had filed a time petition during the pendency of Civil Misc. Case No. 42 of 2010 filed under Section 24 of CPC for trasnfer of suit to some other Court from the FTC-IVth, Samastipur in the interest of justice. He further submits that the ground taken by the learned Appellate Court that the appellant failed to get the appeal



disposed of within 10 years is not correct in the facts and circumstances of this case because the appellants had already filed a time petition. He submits that the appellants are not responsible for pendency of appeal for 10 years and there were no delaying tactics on the part of the appellants. He further submits that the appellant has good case on merit and will suffer irreparable loss / injury which cannot be compensated in any manner whatsoever.

7. In the leading case of Hon'ble Supreme Court in ***Sangram Singh Vs. Election Tribunal, Kotah*** reported in ***AIR 1955 SC 425***; observed as under:

“A code of procedure must be regarded as such. It is procedure something designed to facilitate justice and further its ends: not a penal enactment for punishment and penalties, not a thing designed to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both sides) lest the very means designed for the furtherance of justice be used to frustrate it. Our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decisions



should not be reached behind their backs, that proceedings that affects their lives and property should not be precluded from participating in them. Of course, there must be exceptions and where they are clearly defined they must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be construed, wherever, that is reasonably possible, in the light of that principle.”

8. The law is well settled that the first appeal is a valuable right of the appellant and the appellant are entitled for an opportunity to prosecute their appeal on merit. The Hon’ble Supreme Court in ***The Commissioner Mysore Urban Vs. S.S. Sarvesh (2019) 5 SCC 144*** in paragraph 19 observed as follows:

“19. In our view, the courts below should have seen that the first appeal is a valuable right of the appellant and, therefore, the appellant Authority was entitled for an opportunity to prosecute their appeal on merits. If the appellant’s advocate did not appear may be for myriad reasons, the Court could have imposed some costs on them for restoration of their appeal to compensate the respondent (plaintiff) instead of depriving them of their valuable right to prosecute the appeal on merits. This is what Vivian Bose, J. has reminded to the courts while dealing with the cases of this



nature in Sangram Singh to do substantial justice to both the parties to the lis. Indeed, dismissal of the appeal in default and dismissal of the appeal on merits makes a difference. The former dismissal is behind the back of the litigant and latter dismissal is after hearing the litigant. The latter is always preferred than the former.” (Emphasis supplied)

9. Having heard the learned counsel for appellant and on perusal of the materials on record and keeping the aforementioned statement of law in consideration and applying the same in the facts of this case, in my considered opinion, the application made by appellant discloses a ‘sufficient cause’ and thus the learned Appellate Court erred in dismissing the application/Misc. Case made under Order XLI Rule 19 CPC. The application, therefore, deserves to be allowed.

10. In view of the foregoing discussions, the appeal succeeds and is accordingly allowed. The impugned order is set aside. As a consequence, the application filed by appellants (Misc. Case No. 08 of 2015) is allowed. The Title Appeal No. 81 of 2009 is, accordingly, restored to its original number for its hearing on merits in



accordance with law. In light of the delay caused to the present case, costs amounting to Rs. 10,000/- (Ten Thousand rupees) is imposed on the appellant. It is expected that the learned Appellate Court shall take steps for hearing and disposal of appeal expeditiously.

11. Appellants are directed to appear themselves or through their counsel before the concerned Appellate Court on to enable the learned Appellate Court to fix a date for hearing of the appeal on merits uninfluenced by any observation herein on merits because this court has not applied its mind to the merits of the controversy in the appeal.

12. Interlocutory application, if any, shall stands disposed of.

13. Let the Trial Court Record be returned back to the court concerned.

(Ramesh Chand Malviya, J)

Harshita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.04.2025
Transmission Date	NA

