

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1183 of 2019

Dinesh Singh @ Dinesh Kumar Singh Son of Sadhu Sharan Singh Resident of Mohalla- Bakarganj, Opposite Mona Cinema Hall, Police Station- Pirbahore, District- Patna.

... .. Petitioner/s

Versus

1. Pankaj Singh Son of Late Awadhesh Singh Resident of Mohalla- Bakarganj, Opposite Mona Cinema Hall, Police Station- Pirbahore, District- Patna.
2. Dheeraj Singh Son of Late Awadhesh Singh Resident of Mohalla- Bakarganj, Opposite Mona Cinema Hall, Police Station- Pirbahore, District- Patna.
3. Pushpa Singh @ Suman Daughter of Late Awadhesh Singh Daughter of Late Sadhu Saran Singh Resident of Mohalla- Bakarganj, Opposite Mona Cinema Hall, Police Station- Pirbahore, District- Patna.
5. Asha Singh Wife of Late Awadhesh Kumar Singh Daughter of Late Sadhu Saran Singh Resident of Mohalla- Manpur, Gorakchhini, Behind Bus Stand (Ram Vilash Kothi), Police Station- Muffasil, District- Gaya.
6. Usha Singh Wife of Mahender Prasad Singh Daughter of Late Sadhu Saran Singh Resident of Bank Colony, Jagdeo Path, Police Station- Hawaii Adda, District- Patna.
7. Kiran Singh Wife of Uday Prakash Singh Daughter of Late Sadhu Saran Singh Resident of Flat No. 205, Pranjal Apartment, West Boring Road, Police Station, S.K. Puri, District- Patna.
8. Meena Singh Wife of Rajender Prasad Singh Daughter of Late Sadhu Saran Singh Resident of Quarter No. 259, A.P. Colony, Police Station- Rampur Chowk, District- Gaya.
9. Neelam Singh Wife of Arun Singh Daughter of Late Sadhu Saran Singh Resident of West Boring Canal Road, Police Station- S.K. Puri, District- Patna.
10. Punam Singh Wife of Dhananjay Prasad Singh Daughter of Late Sadhu Saran Singh Resident of Flat No. 203, Minara Place, Near Gandhi Maidan, Police Station- Gandhi Maidan, District- Patna.
11. Manju Devi Wife of Late Mithilesh Singh Resident of Mohalla- Bakarganj, Behind Mona Cinema, Police Station- Pirbahore, Post Office- Bankipur, District- Patna, 800004.
12. Soni Singh Daughter of Late Mithilesh Singh Resident of Mohalla- Bakarganj, Behind Mona Cinema, Police Station- Pirbahore, Post Office- Bankipur, District- Patna, 800004.
13. Moni Singh Daughter of Late Mithilesh Singh Resident of Mohalla- Bakarganj, Behind Mona Cinema, Police Station- Pirbahore, Post Office- Bankipur, District- Patna, 800004.
14. Toni Singh Daughter of Late Mithilesh Singh Resident of Mohalla- Bakarganj, Behind Mona Cinema, Police Station- Pirbahore, Post Office- Bankipur, District- Patna, 800004.



15. Mahesh Singh Son of Late Sadhu Saran Singh Resident of Mohalla- Bakarganj, Behind Mona Cinema, Police Station- Pirbahore, Post Office- Bankipur, District- Patna, 800004.
17. Ritesh Singh Son of Late Mithilesh Singh Resident of Mohalla- Bakarganj, Behind Mona Cinema, Police Station- Pirbahore, Post Office- Bankipur, District- Patna, 800004.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Manoj Kumar, Advocate
Mr. Rajesh Kumar, Advocate
For the Respondent Nos. 1&3: Mr. Manoj Kumar Singh
For the Respondent Nos. 5 to 9: Mr. Ranvijay Narain Singh, Advocate
Mr. Amit Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 15-07-2025

Heard learned counsel for the parties.

2. Petitioner is aggrieved by the judgment dated 28.11.2015 passed by learned Sub Judge-IV, Patna in Title Suit No. 141 of 2001 wherein while dismissing the suit on contest, the learned trial court granted liberty to the plaintiff to file a new suit after removal of ambiguity and vagueness.

3. Learned counsel for the petitioner, at the outset, submits that the petitioner has approached this Court under Article 227 of the Constitution of India in its supervisory jurisdiction for the reason that a completely illegal order has been passed while dismissing the suit. If the learned trial court proceeded to dismiss the suit on contest after considering all the evidence, it was not open to it to grant liberty to the plaintiff to file a new suit on same cause of action. Such liberty would run



counter to the principles of *res judicata* and would be against this specific provisions of law. Learned counsel admits that the petitioner has an opportunity to file first appeal but he did not choose to do so as he was not aggrieved by the order passed on merits and the respondents had already challenged the judgment and decree of Title Suit No. 141 of 2001 by filing First Appeal No. 18 of 2016. While the first appeal has been pending, the respondents withdrew the appeal mentioning before the learned Single Judge of this Court that they want to file a new suit in the light of liberty granted by the learned trial court. The first appeal was disposed of as withdrawn with the aforesaid liberty. Subsequently, in Misc. Case No. 3921 of 2018 in First Appeal No. 18 of 2016, it was clarified by the learned Single Judge that no liberty was granted by this Court rather liberty which was being availed by the plaintiff was granted by the learned trial court. The learned counsel admits the delay and laches in approaching this Court but submits that since petitioner has challenged an illegal order, delay in filing the petition is immaterial and the petitioner can approach this Court at any point of time.

4. Learned counsel refers to the decision of the High Court of Kerala in the case of ***Karloose vs. Stella Lasar & Ors.,***



(CRP No. 237 of 2022) wherein almost similar circumstances, the learned Single Judge held that granting such liberty was against the provisions contained in the Code of Civil Procedure regarding finality of the suit and doctrine of *res judicata* and further held that the reservation made in the said decree by removing the bar in instituting a fresh suit on the same cause of action amounts to re-writing the relevant provisions of Code of Civil Procedure and, hence, *non est* in the eye of law and cannot be sustained. Thus, the learned Single Judge held that liberty granted in the decree for filing a fresh suit was without any jurisdiction and, hence, *non est* in the eye of law. Learned counsel next refers to the case of Hon'ble Supreme Court in the case of ***Kalpesh Hemantbhai Shah vs. Manhar Auto Stores Through its Partner & Ors. (Civil Appeal Nos. 4266-4267 of 2014)*** wherein the Hon'ble Supreme Court has reiterated that It is well settled that the High Court under Article 227 of the Constitution of India has jurisdiction to correct the error if apparent on the face of the record. Thus, the learned counsel submits that in the judgment of Title Suit No. 141 of 2001, granting liberty while dismissing the suit on merits is an error which is apparent on face of the record and, hence, this Court has got jurisdiction to entertain the present petition to correct the



error.

5. Learned counsel appearing on behalf of the respondents vehemently contends that the present civil miscellaneous petition is not maintainable and only an appeal would lie against the judgment and decree of the learned trial court passed in Title Suit No. 141 of 2001. Learned counsel further submits that the petitioner has failed to file an appeal against the judgment and decree dated 28.11.2015 and this Court should not entertain such petition when there is specific provision of law. Learned counsel further submits that Title Suit No. 141 of 2001 was dismissed on technical ground with liberty to respondent to file a fresh suit after removal of ambiguity and vagueness and accordingly the petitioner has filed a fresh suit which is Title Suit No. 351 of 2017 which is pending in the court of learned Sub Judge-I, Patna and the matter has traveled far. At this stage interfering with the said order would affect the Title Suit No. 351 of 2017 which has been filed by the respondents and the order passed in Title Suit No. 141 of 2001 has attained finality. Moreover, the said judgment came to be assailed before this Court in first appeal and not making any interference in the said judgment by this Court means the Court declined to interfere with the judgment of the learned trial court.



Learned counsel further submits that thus the present petition is not maintainable and the same be dismissed *in limine*.

6. I have given my thoughtful consideration to the rival submission of the parties and perused the record.

7. The respondents filed the suit for partition seeking their share in the property described in Schedule-A of the plaint. The suit was contested and on consideration of the evidence of the parties, the suit came to be dismissed on contest. The dismissal order reads as under:-

“ That the present suit be and the same is dismissed on contest without any order to cost as due to ambiguities and vagueness as regards to properties in suit it is not possible to declare the right, title and interest of the plaintiff over the schedule property. Hence, as mentioned above plaintiff is at liberty to file a new suit after removal of ambiguities and vagueness.”

8. Now petitioner is aggrieved by the last sentence of the judgment whereby the learned trial judge granted liberty to the plaintiff to file a new suit after removal of ambiguities and vagueness. Subsequent developments have also taken place. A first appeal came to be filed by the plaintiffs/respondents and the same was dismissed as withdrawn in order to avail the liberty granted by the learned trial court. Further, Title Suit No. 351 of 2017 has been filed on 21.08.2017 by the respondents.



The contention of learned counsel for the petitioner is that the judgment of the learned trial court contains illegality and, therefore, this Court could interfere with the order under Article 227 of the Constitution of India in its supervisory jurisdiction. On the other hand, it has been contended by the learned counsel for the respondents that even though it was the judgment of dismissal which contained the liberty, the course open to the petitioner was to challenge the same by filing the appeal since there is specific provision of appeal and the same is not assailable in the supervisory jurisdiction under Article 227 of the Constitution of India.

9. Having regard to the fact that pursuant to the liberty, a suit has come to be instituted and the matter is past the stage when further action was to be taken. Moreover, the judgment has been passed in a partition suit and unless the claim of partition is considered and disposed of, it gives rise to a continuing cause of action. The plaintiff in such case can bring suit even without any liberty. That does not mean the liberty granted by the learned trial court in its judgment is correct in the eyes of law but due to subsequent events and as the matter has proceeded further, it could be said that the grant of liberty does not remain such an error which might stare at the face of record



to force this Court to intervene in the matter under its supervisory jurisdiction under Article 227 of the Constitution of India.

10. No doubt the power under Article 227 is to be exercised, though sparingly, in cases where errors are apparent on the face of record, occasioning grave injustice by the court or tribunal assuming jurisdiction, which it does not have, failing to exercise jurisdiction which it does have, or exercising its jurisdiction in a perverse manner. It is also pertinent to take note here that when there is specific provision, this Court cannot proceed in the matter to usurp the original jurisdiction of the Court which it seeks to supervise as held by the Hon'ble Supreme Court in the case of ***K. Valarmathi & Ors. Vs. Kumaresan***, reported in ***2025 SCC OnLine 985***. Paragraph no.9 of the said judgment is quite illuminating.

“9. Essence of the power under Article 227 being supervisory, it cannot be invoked to usurp the original jurisdiction of the court which it seeks to supervise. Nor can it be invoked to supplant a statutory legal remedy under the Civil Procedure Code, 1908. For example, existence of appellate remedy under Section 96 of the Code operates as a near total bar to exercise of supervisory jurisdiction under Article 227.”



11. Even though the judgment of the learned trial court might be erroneous but when appellate jurisdiction is available to the petitioner, this Court would refrain itself in venturing further into the matter. In the light of discussion made hereinbefore, I am not inclined to interfere with the impugned judgment dated 28.11.2015 passed by learned Sub Judge-IV, Patna in Title Suit No. 141 of 2001.

12. Finding no merit in the present petition, the same is dismissed. However, it is made clear that the petitioner can have recourse of law for redressal of his grievance before appropriate forum in appropriate proceeding.

13. Further, considering the fact that the parties have been litigating since 2001 and another suit is still pending, it is expected that the learned trial court would proceed in the matter expeditiously and try to dispose of the suit pending before it at the earliest.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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