

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1209 of 2019

Vijay Singh S/o Late Dhanudhari Singh Resident of Mohalla Rastriyaganj, P.S. Phulwarisharif, Dist. Patna

... .. Petitioner/s

Versus

1. Girija Devi W/o Late Mahanand Singh Resident of Mohalla Raja Bazar, Salempur/Salempur Dumra, P.S. Shastri Nagar,, Dist. Patna.
2. Pappu Kumar S/o Late Mahanand Singh Resident of Mohalla Raja Bazar, Salempur/Salempur Dumra, P.S. Shastri Nagar,, Dist. Patna.
3. Kusum Kumari D/o Late Mahanand Singh Resident of Mohalla Raja Bazar, Salempur/Salempur Dumra, P.S. Shastri Nagar,, Dist. Patna.
4. Puja Kumar D/o Late Mahanand Singh Resident of Mohalla Raja Bazar, Salempur/Salempur Dumra, P.S. Shastri Nagar,, Dist. Patna.
5. Bhuneshwar Singh S/o Late Khirodher Mahto Resident of Mohalla Raja Bazar, Salempur Dumra, P.S. Shastri Nagar,, Dist. Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Dhaneshwar Prasad Gupta
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE S. B. PD. SINGH
ORAL ORDER

2 11-12-2025 The present Civil Misc. Application is filed for quashing the order dated 20.02.2018 and 15.04.2019, passed by learned Sub Judge I, Patna in T.S. No. 134/79 (Girja Devi Vs. Satabi Devi and others) whereby and whereunder the learned Court below has debarred the petitioners from filling the written statement and also reject the petition dated 06.03.2018 for recalling the order dated 20.02.2018 passed by learned sub Judge I, Patna in T.S. No. 134 of 1979.



2. Learned counsel for the petitioner submits that there was no deliberate delay on the part of the petitioner; rather, the Lower Court records were received at a belated stage. Consequently, it was not practically possible for him to file the written statement within time.

3. On perusal of the case record, it appears that against the ex-parte decree passed on 13.05.1982 in Title Partition Suit No. 134 of 1979, First Appeal No. 425 of 1991 and Miscellaneous Appeal No. 112 of 1991 were preferred, wherein the Court was pleased to record the following finding:-

“25. Let the record of Title Partition Suit No. 134 of 1979 be returned to the court of Sub Judge I, Patna with a direction to dispose of the same as early as possible taking the same on priority basis. The applicants will file the written statement within one month from the date of receipt/production of a copy of this judgment in the court below.

26. As Misc. Appeal No. 112 of 1991 has been allowed and as such, First Appeal No. 425 of 1991 has become infructuous and accordingly, the same is hereby dismissed as infructuous.”

4. On perusal of another order dated 09.08.2017, passed by a co-ordinate Bench of this Court in First Appeal



No. 644 of 2000, it appears that the said Miscellaneous Appeal, which had been filed against the final decree, was allowed, and the Court directed that the Lower Court records be returned so that Title Partition Suit No. 134 of 1979 could be decided at the earliest.

5. On perusal of the certified copy of the order sheet, it clearly appears that on 20.11.2017, the Lower Court Record pertaining to Title Suit No. 134 of 1979 in Misc. Case No. 69 of 1988 was received by the Trial Court. Subsequently, by order dated 20.02.2018, the defendants were debarred from filing their written statement, despite the order of the High Court. However, on the very same date, i.e., 20.02.2018, after the aforesaid order was passed, the written statement was filed on behalf of the present petitioner, who is defendant Nos. 10 and 10(a).

6. For the proper and complete adjudication of the suit, it is necessary that the written statement must be brought on record, as the matter cannot be effectively and properly decided in its absence. Although the High Court had directed that the written statement be filed within one month from the receipt of its order, the Lower Court



Records were received after considerable delay. Undoubtedly, there has been some lapse on the part of the defendant; however, in the interest of justice and for proper and complete adjudication of the case, the written statement requires to be taken on record.

7. Accordingly, upon imposing a cost of Rs. 2,000/- (Rupees Two Thousand), payable to the Opposite Party, the written statement is permitted to be taken on record.

(S. B. Pd. Singh, J)

Ankit Kumar/-

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