

IN THE HIGH COURT OF JUDICATURE AT PATNA
MJC No.889 of 2005

1. KAILASH PRASAD SINGH
 2. Baleshwar Singh,
Both sons of Late Bhaloo Singh alias Hira Singh
 3. Rudradeo Singh (Minor) Son of Kailash Prasad Singh U/g of his father and next friend.
 4. Krishnadeo Singh
 5. Nabin Prasad Singh
 6. Bilayati Prasad Singh minor sons of Late Bahso Singh U/g of Baleshwar Singh.
 7. Ramanuj Prasad Singh minor son of Baleshwar Singh U/g of his father and next friend.
- All resident of village- Tilakpur, P.S.- Mananpur, District- Lakhisarai
----- Petitioners

Versus

1. RAM CHANDRA SINGH, S/o Late Radhey Singh
2. Upendra Singh Minor Son of Late Radhey Singh under guardianship of Shishendra Kumar Advocate G/A
3. Arji Devi
4. Kari Devi
5. Shivaro Devi
6. Kajma Devi
All D/o Late Radhey Singh
7. Sitaram Singh S/o Late Hira Singh
8. Subodh Singh @ Rabindra Singh S/o Late Dina Singh
9. Bachoo Singh @ Satyendra Singh Minor Son of Late Dina Singh U/G of Sri Shishendra Kumar, Advocate
10. Narain Singh son of Late Dina Singh
11. Dazy Kumari
12. Bauni Kumari
Both D/o Late Dina Singh
13. Jitendra Kumar Minor S/o Late Sitaram Singh under guardianship of Sri Shishendra Kumar, Advocate
14. Ram Jivan Singh Minor son of Ramchandra Singh U/G of Shishendra Kumar, Advocate
15. Suresh Singh
16. Girish Singh
17. Mahesh Singh
18. Umesh Singh
(O.P. No. 15 to 18) All S/o Late Tahal Singh
19. Widow of Late Dinesh Singh
20. Dharmendra Kumar
21. Pankaj Kumar
Both son of Late Dinesh Singh
22. Ram Dulari Devi, W/o Late Nand Kishor Singh
23. Widow of Late Bishundeo Singh
24. Ramanuj Singh
25. Sachita Nand Singh
Both son of Late Bishundeo Singh
26. Sitara Devi
27. Kalpana Devi
Both daughter of Late Bishundeo Singh
28. Ram Sakhi Devi W/o Late Daroga Singh
29. Ramashish Kumar
30. Sanjay Singh
All S/o Late Daroga Singh
31. widow of Late Shushil Singh
32. Nush kumar Son of late Shushil Singh
33. Renu Devi W/o Late Vijay Singh
34. Gunjan Kumar, Minor, Son of Late Vijay Singh under guardianship of Mother Renu Devi

35. Jay Narayan Singh, S/o Late Chamo Singh
36. Ram Sagar Singh, S/o Late Bisho Singh
37. Basuki Singh, S/o Late Jamuna Singh
38. Babu Saheb Singh
39. Ram Balak Singh, Both son of Late Ayodhya Singh
40. Rabo Devi, D/o Late Ayodhya Singh

All O.P. No. 1 to 40 are resident of Village- Tilakpur, P.S.- Mananpur, District- Lakhisarai

----- Opposite Parties.

With

MJC No.2657 of 2005

1. KAILASH PRASAD SINGH
 2. Baleshwar Singh,
Both sons of Late Bhaloo Singh alias Hira Singh
 3. Rudradeo Singh (Minor) Son of Kailash Prasad Singh U/g of Baleshwar Singh.
 4. Krishnadeo Singh
 5. Nabin Prasad Singh
 6. Bilayati Prasad Singh minor sons of Late Bahso Singh U/g of Baleshwar Singh.
 7. Ramanuj Prasad Singh minor son of Baleshwar Singh U/g of his father and next friend.
- All resident of village- Tilakpur, P.S.- Mananpur, District- Lakhisarai

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2. Upendra Singh Minor Son of Late Radhey Singh under guardianship of Shishendra Kumar Advocate G/A
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8. Subodh Singh @ Rabindra Singh S/o Late Dina Singh
9. Bachoo Singh @ Satyendra Singh Minor Son of Late Dina Singh U/G of Sri Shishendra Kumar, Advocate
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15. Suresh Singh
16. Girish Singh
17. Mahesh Singh
18. Umesh Singh
(O.P. No. 15 to 18) All S/o Late Tahal Singh
19. Widow of Late Dinesh Singh
20. Dharmendra Kumar
21. Pankaj Kumar
Both son of Late Dinesh Singh
22. Ram Dulari Devi, W/o Late Nand Kishor Singh
23. Widow of Late Bishundeo Singh
24. Ramanuj Singh
25. Sachita Nand Singh
Both son of Late Bishundeo Singh
26. Sitara Devi
27. Kalpana Devi
Both daughter of Late Bishundeo Singh
28. Ram Sakhi Devi W/o Late Daroga Singh

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 37. Basuki Singh, S/o Late Jamuna Singh
 38. Babu Saheb Singh
 39. Ram Balak Singh, Both son of Late Ayodhya Singh
 40. Rabo Devi, D/o Late Ayodhya Singh
 All O.P. No. 1 to 40 are resident of Village- Tilakpur, P.S.- Mananpur, District- Lakhisarai

----- Opposite Parties.

With
 MJC No.2817 of 2005

1. KAILASH PRASAD SINGH
 2. Baleshwar Singh,
 Both sons of Late Bhaloo Singh alias Hira Singh
 3. Rudradeo Singh (Minor) Son of Kailash Prasad Singh U/g of Baleshwar Singh.
 4. Krishnadeo Singh
 5. Nabin Prasad Singh
 6. Bilayati Prasad Singh minor sons of Late Bahso Singh U/g of Baleshwar Singh.
 7. Ramanuj Prasad Singh minor son of Baleshwar Singh U/g of his father and next friend.
 All resident of village- Tilakpur, P.S.- Mananpur, District- Lakhisarai
 ----- Petitioners

Versus

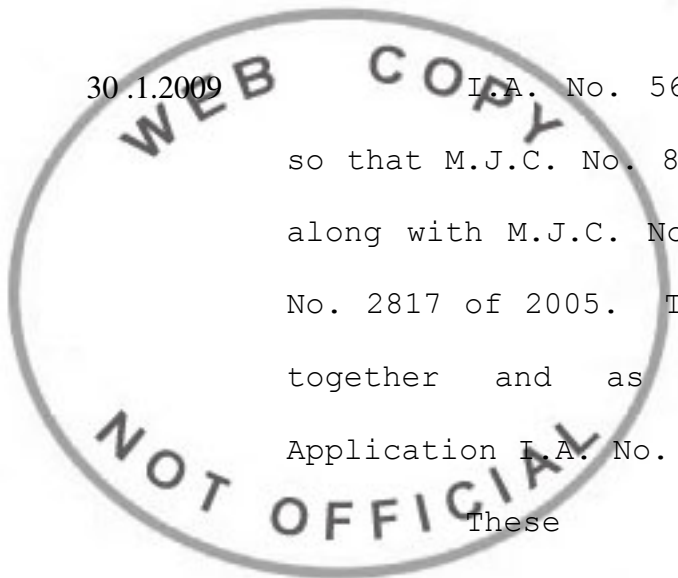
1. RAM CHANDRA SINGH, S/o Late Radhey Singh
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 39. Ram Balak Singh, Both son of Late Ayodhya Singh
 40. Rabo Devi, D/o Late Ayodhya Singh
 All O.P. No. 1 to 40 are resident of Village- Tilakpur, P.S.- Mananpur, District- Lakhisarai

----- Opposite Parties.

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30.1.2009



I.A. No. 5693 of 2005 has been filed
 so that M.J.C. No. 889 of 2005 should be heard
 along with M.J.C. No. 2657 of 2005 and M.J.C.
 No. 2817 of 2005. The matters are being heard
 together and as such the Interlocutory
 Application I.A. No. 5693 of 2005 is allowed.
 These present restoration
 applications arise out of an order passed in
 First Appeal No. 325 of 1977. It would be
 relevant to give the gist of the orders passed
 in First Appeal No. 325 of 1977 which are as
 follows:-

6.9.1979- The Court granted one week

time to file Talbana for issue of appeal notices on the non appearing respondents 5 to 10 and ordered that if the order was not complied, the entire appeal would stand dismissed without further reference to the bench.

10.1.1980- Time was granted to the appellant to file a restoration application within a period of two weeks.

The restoration application was not filed.

16.1.1981- It was discovered that the certified copy of the decree had certain defects and respondents 11 to 19 were not included in the decree and the decree was sent down to the Trial Court for correction. At the same time, notices were also issued to respondents 11 to 19.

19.1.1981- The order records that the decree had been corrected and the names of respondents 11 to 16 and 18 stood expunged whereas the heirs of deceased respondent no. 19 were added as party. The Court also observed "We also for the time being set aside the abatement".

26.8.1985- The Court finally recorded nobody appears, this appeal is dismissed for non-prosecution.

M.J.C. No. 25 of 1981 was filed for setting aside the order dated 6.9.1979 whereby the appeal had been dismissed against respondents no. 5 to 10. This M.J.C. was filed on 24.11.1980.

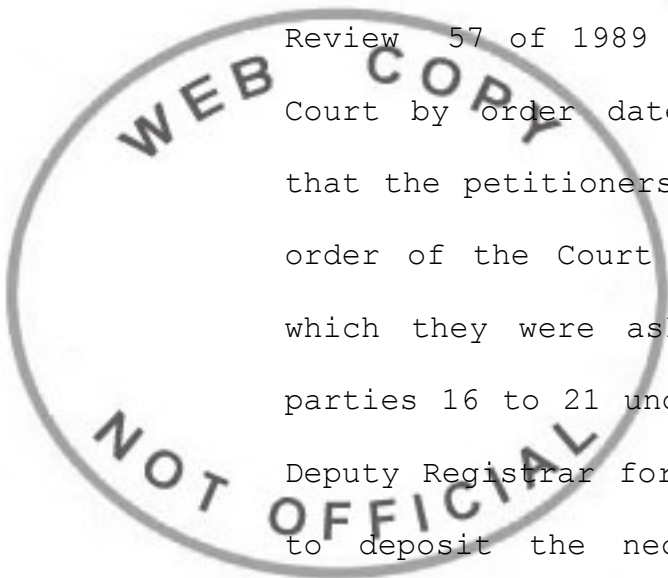
M.J.C. No. 749 of 1985 was filed for setting aside the order dated 26.8.1985 by which order the entire appeal stood dismissed.

The two M.J.C. applications were placed for orders on petition and on 12.9.1986 this Court dismissed the entire appeal.

This First Appeal was listed on 8.8.1985, 12.8.1985, 13.8.1985, 26.8.1985 and finally on 12.9.1986. From the order sheets it is apparent that Sri Madhusudan Singh, Advocate was appearing in this case. From the order sheet i.e. 13.8.1985 Mr. Shashi Bhushan Pathak, Advocate appearing on behalf of the appellant had prayed before the Court that his appearance may be ignored as Mr. Chhote Lal Narayan Singh was to appear in this case. Thereafter nobody appeared on behalf of the

appellant and the appeal stood dismissed against respondent nos. 5 to 10 for non-compliance of order dated 6.9.1979. On 12.9.1986 the matter came up before the Court as to whether the entire appeal had become incompetent as the appeal stood dismissed against the respondents 5 to 10 who were the contesting witnesses, this Court dismissed the First Appeal in its entirety on 12.9.1986.

In the mean time, a Civil Review numbered as 57 of 1989 was also filed for reviewing the order dated 12.9.1986. The Civil Review 57 of 1989 was also dismissed by this Court by order dated 9.5.1991 on the ground that the petitioners had not complied with the order of the Court passed in Civil Review by which they were asked to place the opposite parties 16 to 21 under the guardianship of the Deputy Registrar for which the petitioners had to deposit the necessary cost within three weeks. The Civil Review was also barred by limitation and as such the Division Bench of this Court held that since the limitation petition against the minor opposite parties was dismissed no effective order could be passed in



the Civil Review in their absence.

M.J.C. No. 889 of 2005 had been filed to recall the order dated 12.9.1986 by which this Court held that the entire appeal stood dismissed as the suit had already been dismissed against the contesting respondents.

M.J.C. No. 2657 of 2005 has been filed to restore M.J.C. No. 25 of 1981 which was earlier dismissed because it was barred by limitation.

M.J.C. No. 2817 of 2005 has been filed to recall the order dated 9.5.1991 by which the Civil Review 57 of 1989 was dismissed which had been filed against the order dated 12.9.1986 passed in the First Appeal 325 of 1977. M.J.C. No. 889 of 2005 and M.J.C. 2817 of 2005 have been filed basically for recall of order dated 12.9.1986. Both the Interlocutory petitions have been filed to set aside the order dated 12.9.1986.

The ground for recall of the orders dismissing the First Appeal No. 325 of 1977 and order dated 9.5.1991 dismissing the Civil Review 57 of 1989 is that the counsel who was initially engaged in the appeal i.e. late Indra

Bhanu Singh became irregular due to ill health and was replaced by Mr. Madhusudan Singh, Advocate who also became ill. It is submitted on behalf of the petitioner appellant that Sri Chhote Lal Narayan Singh, Advocate was not able to inform the appellants regarding the progress of the appeal and the appellant no. 1 could only learn about the result of the appeal in February, 2005. After which the appellant no. 1 has filed the present M.J.C. applications which are under consideration of the Court.

I find that the reasons stated by the appellant for filing the restoration applications whether it be against the order of dismissal dated 12.9.1986 or for recall of order dated 9.5.1991 passed in Civil Review application are not at all tenable in view of the fact that the order sheet of the First Appeal indicates that appellants were not pursuing the appeal. After the order of dismissal was passed an application to restore the First Appeal which was numbered as M.J.C. No. 25 of 1981 was filed and when the M.J.C. was dismissed and steps were taken by the appellant to file a Civil Review application

which was also dismissed by this court. Under the circumstances it cannot be held by this Court that the appellant did not have knowledge of the progress of his case and in fact from time to time steps were taken by the appellant to restore his appeal and having failed to do so has now filed M.J.C. No. 889 of 2005, M.J.C. No. 2657 of 2005 and M.J.C. No. 2817 of 2005 for recalling the orders dated 12.9.1986 and 9.5.1991. M.J.C. No. 2657 of 2005 has been filed to restore M.J.C. No. 25 of 1981. This court finds that the appellant has not made out grounds for restoration of the First Appeal 325 of 1977 and as such the M.J.C. No. 889 of 2005, M.J.C. No. 2657 of 2005 and M.J.C. No. 2817 of 2005 stand dismissed.

The appellant has also filed substitution petitions numbered as Interlocutory Application No. 2317 of 2006 and Interlocutory Application No. 2606 of 2005 filed in M.J.C. No. 889 of 2005 and Interlocutory Application No. 2607 of 2008 in M.J.C. No. 889 of 2005 for substituting the heirs of the opposite party nos. 15 to 28. Interlocutory Application No. 2607 of 2008 has

been filed in M.J.C. No. 2657 of 2008 for substituting the heirs of opposite parties 28 and 15, Interlocutory Application No. 2317 of 2006 has been filed in M.J.C. No. 2657 of 2005 for substituting the heirs of opposite party no. 16. These Interlocutory Applications are not being considered by this Court as the restoration applications aforesaid have all been dismissed.

Sanjay

(Sheema Ali Khan, J.)

