

(2012) 04 PAT CK 0096

In the Patna High Court

Case No : Miscellaneous Appeal No. 516 of 2010

Jagdish Singh and Rajpati Singh

APPELLANT

Vs

The State Of Bihar and Ram Narayan Singh

RESPONDENT

Date of Decision : 17-04-2012

Acts Referred:

Citation : (2012) 04 PAT CK 0096

Hon'ble Judges : Shailesh Kumar Sinha, J

Bench : Single Bench

Advocate : Sanjeev Kumar Jha, for the Appellant; Manoj Kumar, for the Respondent

Judgement

Honourable Mr. Justice Shailesh Kumar Sinha

1. The appeal is directed against the order dated 19th of April 2010 passed by the Additional District Judge, Lakhisarai in Miscellaneous Case No. 6 of 2010 whereby the application under order 41 Rule 19 for re-admission of the Title Appeal No. 9 of 2004 was dismissed. Heard learned counsel for the appellants and Assistant Counsel to Standing Counsel No. VI appearing for the respondent nos. 1 and 2. However, no one appears on behalf of the respondent no. 3, despite service of notice.

2. Shortly the facts are that a Title Suit No. 112 of 1993 was filed for declaration of title and confirmation of possession over the suit land. The said suit on contest was dismissed. Hence, plaintiffs preferred an appeal vide S.T.A No. 9 of 2004. The said appeal, however, was dismissed since no one appeared when the appeal was called out for hearing by order dated 23rd of December 2009 vide Annexure-1 to the Memo of Appeal. Appellant for re-admission of the appeal filed Miscellaneous Case No. 6 of 2010 which was dismissed at the admission stage as the appellant failed to satisfy any sufficient cause for not filing the said application within time. The said miscellaneous case, having been dismissed, plaintiff has preferred the present appeal.

3. Learned counsel for the appellants submits that miscellaneous case for re-admission of the title appeal could not be filed within the period of limitation as both the appellants were unwell and an application for condensation of delay was filed explaining the delay of appellant no. 1. It is further submitted that records of the title suit was not made available before the appellate court as such, the appeal was otherwise also not ready for hearing.

4. A counter affidavit has been filed on behalf of the respondent nos. 1 and 2, however, the above fact is not denied in the counter affidavit.

5. Learned counsel for the respondent no. 1, however, submits that even accepting the submissions that both the appellants were unwell, the counsel for the appellants were required to appear when the appeal was called out for hearing.

6. Considering the submissions of the parties and the nature of controversy as raised in the suit as also the fact as to whether the lower court records were available before the appellate court to enable hearing of the appeal being not denied on behalf of the respondent as also in the facts and circumstances of the case as noticed above, the order dated 19.04.2010 in Miscellaneous Case No. 6 of 2010 is set aside and the appeal vide STA No. 9 of 2004 is directed to be re-admitted for hearing subject to the payment of cost of Rs. 1,000/- (one thousand) to be deposited with the Patna High Court, Legal Services Committee within a period of 2 weeks and the receipt showing such payment be filed.

7. Learned counsel for the appellants and the respondent nos. 1 and 2 state that the parties would appear before the appellate court on 4th of June 2012. The court below shall fix a date of hearing of the appeal which may be disposed of expeditiously preferably within a period of 6 months thereafter.

8. Learned counsel for both the parties submits that they will co-operate with the proceedings in the appeal. The appeal stands disposed as indicated above.