

IN THE HIGH COURT OF JHARKHAND, RANCHI

Misc. Appeal No.109 of 2012

Kapil Deo Saw, son of Late Rameshwar Saw, resident of Belchadhi, P.O.
& P.S. Nirsa, District -Dhanbad*Opposite Party/Appellant*

-- *Versus* --

Shiv Kumar, son of Late Kalyan Prasad Singh, resident of Village-
Mugma, P.O.-Nirsa, P.S. Nirsa, District -Dhanbad
.....*Applicant/ Respondent*

CORAM :- HON'BLE MR. JUSTICE P.P. BHATT

For the Appellant	:-	M/s Ashim Kumar Sahani, Advocate
For the Opp. Party	:-	Mr. Shekhar Prasad Sinha, Respondent

08/ 03.03.2015 The present appeal is preferred under Order-XLIII, Rule-1(c) of the Code of Civil Procedure, 1976, being aggrieved and dissatisfied with the order dated 19.5.2012, passed by the learned Civil Judge (Junior Div.) No.2, Dhanbad, in Misc. Case No.33 of 2011.

Learned counsel for the appellant has submitted that the learned court below has committed an error while passing the order of restoration of Title Suit No.9/2011. It is further submitted that the amount of cost awarded by the learned court below is also disproportionate/inadequate considering the default on the part of the plaintiff. Accordingly to learned counsel for the appellant, the amount of award ought to have been much higher than the amount awarded by the learned court below. It is submitted that though the plaintiff has not given any reasonable explanation/ justification for restoration of the suit, the learned court below, in a mechanical manner, passed an order, and thereby, restored the suit, instead of dismissing the application for restoration filed by the respondent.

As against it, the learned counsel appearing for the respondent (original plaintiff) submitted that the learned court below has passed a detailed order considering the explanation /justification rendered by the plaintiff justifying the restoration of the suit. It is further submitted that the amount of cost awarded by the learned court below

is also adequate and the interference of this Court is not at all needed in view of the detailed order passed by the learned court below.

Having regard to the above submission, as also in view of the reasons assigned by the learned court below while passing the order for restoration of the Title Suit No.9/2011, it appears that the learned court below after careful consideration of the justifications /explanations given by the plaintiff, passed an order for restoration. The amount of cost awarded by the learned court below is also reasonable , and therefore, this Court is of the view that the learned court below has adopted the right approach and with a view to do substantial justice, the suit was ordered to be restored, and therefore, the said order is not required to be disturbed in the present appeal.

Accordingly, the present appeal is ordered to be dismissed, and thereby, the order passed by the learned court below, is ordered to be confirmed.

(P.P. Bhatt, J.)

SI/-