

IN THE COURT OF PRINCIPAL DISTRICT JUDGE, SITAMARHI
Dated, Sitamarhi, the 22nd May 2026
Present- AKHILESH KUMAR JHA, Principal District Judge, Sitamarhi
Misc. Case No.25/2019(Reg.29/2019)

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1. Smt. Chanda Devi W/o Ram Deni Rai,
2. Ram Deni Rai S/o Bindeshwari Rai
Both R/o Village- Mehsaul, P.S.- Mehsaul, District- Sitamarhi.
3. Rajiv Kumar and
3(a) Sanjay Kumar, both sons of late Hari Naraian Singh
3(b) Dezi Kumari @ Rambha D/o Late Hari Naraian Singh
R/o-Village-Madhaul Sani, P.O.- Manpur Ratnavali, P.S.- Runnisaidpur,
District-Sitamarhi.
.....Petitioners

Vrs.

1. Aditi Kumari D/o Late Chandrashekhar Sharma & Most. Jaisri Sharma, W/o
Bhushan Kumar Singh
Village+P.O.- Tilak Tajpur, P.S.- Runnisaidpur, District- Sitamarhi.
1(k). Somati Kumari D/o Late Chandra Shekhar Sharma & Most. Jaisri Sharma,
W/o Rakesh Kumar Thakur, Village- Bindi, P.O.- Mohanpur, P.S.- Pipradhi,
District- Sheohar.
2(k). Pravin Kumar S/o Mahesh Thakur @ Lal Babu, Mother- Late Indu Devi, R/o
Village- Ilmat, P.O.- Bhaugarh, Ward No.15, Block- Bokhra, P.S.- Nanpur,
Dist- Sitamarhi.
2(kh) Munmun Thakur W/o Manish Chaudhary, D/o Mahesh Thakur @ Lalbabu,
Mother- Late Indu Devi R/o Village- Ilmat, P.O.- Bhaugarh, Ward No.15,
Block- Bokhra, P.S.- Nanpur, District- Sitamarhi.
.....Opposite Parties

Appearances:

For the Petitioner :Sri Nitesh Kumar Mishra, Ld. Adv.
For the Opposite Parties/Respondents No.1 & 1(k) :Sri Satish Kumar Shahi, Ld. Adv.
For the Opposite Parties/Respondents No.2(k) & 2(kh):Sri Krishandeo Jha, Ld. Adv.

ORDER

1. The Petitioners, Smt. Chanda Devi & others have filed this miscellaneous case under Order 41 Rule 19 CPC for the re-admission of Title Appeal No. 10/2015, which was dismissed for default vide order dated 08-07-2019.
2. Perusal of record shows that during pendency of Misc. case, the Petitioner no.3 namely, Shushila Devi died and her legal heirs namely, 3. Rajiv Kumar 3(a) Sanjay Kumar and 3(b) Dezi Kumari @ Rambha were substituted vide order dated 23-03-2023.

(Contnd.)

3. Opposite party no. 1 namely, Most. Jaisri Sharma also died and her legal heirs namely, 1. Aditi Kumari and 1(k). Somati Kumari were substituted vide order dated 17-05-2022. Opposite party no. 2 namely, Raghubansh Rai also died and his legal heirs namely, 2(k). Pravin Kumar and 2(kh). Mun-mun Thakur were substituted vide order dated 26-03-2021.

4. It is stated in Miscellaneous case that petitioners filed Title Appeal No. 10/2015 against the judgment and decree passed in Title Suit No. 301/2010 by Ld. Sub-judge-I, Sitamarhi. After admission of said appeal Opposite Parties appeared in the appeal and case was fixed for hearing on 08.07.2019. On said date when the matter was called for hearing, the petitioners went to call his advocate, who was in another Court. But when they came to the court, the Bench Clerk told them that appeal was dismissed for default on prayer made by counsel for the Opposite Parties. The dismissal of appeal caused serious harm to the petitioners, who were Appellants in Title Appeal No. 10/2015. The petitioners were prevented by sufficient cause from appearing, when appeal was called on for hearing as their lawyer was engaged in another Court. In the above described circumstances a prayer has been made for setting aside the dismissal order dated 08.07.2019 passed in Title Appeal No. 10/2015 and readmission of the same.

5. After notice of Miscellaneous case opposite parties appeared. Only opposite Party No. 1 and 1(k) filed their objections to miscellaneous case, stating therein that miscellaneous case is not maintainable and the same is liable to be dismissed. The petitioners failed to make proper pairvi in the appeal and due to their negligence and non appearance case was dismissed for default on 08.07.2019. The petitioners are delaying the case and the miscellaneous case filed by them is liable to be dismissed.

6. To substantiate the averments of the Misc. Case, altogether three witnesses have been examined by petitioners. One witness has been examined on behalf of the Opposite Parties in support of this objection.

P.W. 1- Ramdeni Rai, is Petitioner No. 2 and husband of Petitioner No 1, who in his evidence has supported the averment made in petition. He stated that all three Petitioners had filed the appeal, in which he had been making pairvy as his wife Petitioner No 1, was ill. Earlier Petitioner No 3, Sushila Devi (since deceased) was making pairvy, she died on 24-11-2022 and her legal heirs have been substituted. He further stated that the lawyer of the Petitioners was ready for argument on date 08-07-2019 and when case was called out, the pairvikar went to call his lawyer, who was engaged in another court and when the lawyer returned to court, he came to know that the appeal was dismissed for default on the prayer of the lawyer of

(Cotd.)

Opposite Parties. In his cross-examination, he stated that since 2021 he has been making pairvi in the case, earlier Sushila Rai or her son were making pairvi in the case. He came to know about dismissal of appeal on 08.07.2019.

7. **P.W. 2 Chanda Devi** stated in her evidence by way of affidavit that the title appeal was filed by her along with Petitioner No. 2 & 3. She filed the Misc case on 03.08.2019 and due to her illness, Sushila Rai-Petitioner No 3, was making pairvi. For about two years her husband Petitioner no. 2 had been making pairvi in this case. On 08.07.2019, her lawyer was engaged in another court and when he came to court, learnt from bench clerk that Title Appeal 10/2015 was dismissed for default. In her cross-examination, she has stated that she does not know in which court advocate was busy. She also stated that she has been ill for ten to fifteen years.

8. **P.W. 3 Satyendra Kumar** is villager of the Petitioners and he has stated in his evidence that in the year 2019 Title Appeal filed by Petitioners was dismissed as their advocate was busy in some other court. The Petitioners filed Misc. Case in the year 2019. In his cross-examination, this witness stated that the date on which case was dismissed, he came to court along with Sonu Kumar and Deni Rai. P.W.3 could not say date when case was dismissed and has stated that he came to court along with pairvikar four or five times in the court. He denied the suggestion of Opposite Parties that he has deposed falsely.

9. On the other hand Opposite Parties, sole witness no.1 **Rakesh Kumar**, has stated in his evidence by way of affidavit that with intention to delay the hearing of appeal, the petitioners knowingly didn't appear on the date fixed for hearing of the appeal. Therefore, the Appeal was dismissed for default. In his cross-examination, he has stated that he never came to the court during hearing of Appeal No. 10/15. He does not know when appeal was dismissed. He denied suggestion by learned advocate for Petitioners that he has deposed falsely as he is husband of Opposite Party No 1.

10. The learned counsel for petitioners submitted that counsel for Petitioners was engaged in another court at the time of hearing of Appeal and due to said reason Appeal was dismissed for default. The non appearance of Petitioners was not intentional. The restoration Petition was filed immediately within the period of limitation. Therefore, Title Appeal no 10/15 may kindly be restored for adjudication on merits.

(Cotd.)

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11. On the other hand learned counsel for Opposite Parties submitted that the Petitioners intentionally delayed the appeal and falsely stated in petition that their Counsel was engaged in another court. Therefore, Misc Case is liable to be dismissed.

12. Heard both sides and perused the record.

13. From the pleadings and evidence on record, it appears that when the Title Appeal was called on for hearing, the learned counsel for Petitioners was absent as he was engaged in another court. The learned counsel for Opposite Parties appeared and prayed for dismissal of the Title Appeal no 10/15. The Petitioners in their Petition have specifically pleaded that their learned counsel was engaged in another court, at the time when appeal was called on for hearing. The witnesses examined on behalf of Petitioners have supported said assertion in their evidence.

14. The appeal was dismissed for default on 08-07-2019, and the present Misc. case was filed promptly, well within the period of limitation on 03-08-2019, which shows that Petitioners are interested in pursuing of the Appeal on merits. It is also admitted fact in the case that Petitioners had engaged an Advocate, who was pursuing their case. Therefore, personal appearance of Petitioners does not appear to have been mandatory, when appeal was called for hearing. It is settled law that the litigants should not ordinarily be made to suffer for the inadvertent lapse or absence of their lawyer. In the facts and circumstances of the present case, this Court is satisfied that the Petitioners neither acted negligently nor intentionally delayed the proceedings and that sufficient cause has been shown for their non-appearance on 08-07-2019.

15. In the above facts and circumstances, this court is of the considered opinion that the Petitioners should be granted another opportunity to pursue the Appeal on merits. The present Misc. Case is hereby allowed and Title Appeal No. 10/2015 is restored to its original file and number.

16. The Miscellaneous case is disposed of accordingly. The file be consigned to record room. Title Appeal No. 10/2015 be put up for hearing on date 06-06-2026.

Dictated & corrected by:

Sd/-

(AKHILESH KUMAR JHA)

Principal District Judge,
Sitamarhi
22/05/2026

Order passed by:

Sd/-

(AKHILESH KUMAR

Principal District Judge,
Sitamarhi
22/05/2026