

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.92 of 2012

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1. Nawal Kishore Prasad Singh.
 2. Raj Kishore Prasad Singh.
 3. Ram Kishore Prasad Singh all 1 to 3 are S/O Late Ramautar Singh.
 4. Rajdeo Singh.
 5. Upendra Singh both S/O Ram Lakhan Singh all are R/O Village-
Hasanpur, P.O.- Koylawan, P.S.- Harnaut, District- Nalanda.

.... Petitioner/s

Versus

1. Sita Ram Singh S/O Late Ram Bilash Singh.
2. Ram Pramod Singh.
3. Shiv Narayan Singh both S/O Sita Ram Singh all R/O Village-
Hasanpur, P.O.- Koylawan, P.S.- Harnaut, District- Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Kishore Prasad Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

20 11-05-2015

Heard the learned counsel for the parties.

Calling in question the order dated 09.04.2012 passed in Misc. Appeal No. 05 of 2009 allowing the appeal and overturning the order dismissing the Misc. Case No. 19 of 2006 by the trial court, filed under Order 9 Rule 13 by the opposite parties, the petitioners have filed this revision application.

The admitted facts are that the plaintiff-petitioners filed T.S. No. 68 of 1987 for declaration of their



title and recovery of possession over the suit land and have also prayed for a decree of mesne profit against the opposite parties. The defendant-opposite party 1st set appeared in the suit and has filed his written statement. Eventually, however, the suit proceeded ex parte in view of the non-representation of the defendant-opposite party 1st set and ultimately was decreed ex parte on 29.10.2005. The defendant-opposite parties thereafter filed Misc. Case No. 19 of 2006 under Order 9 Rule 13 C.P.C. praying for setting aside the ex parte decree. By order dated 17.01.2009, this Misc. Case No. 19 of 2006 was dismissed. The defendant-opposite parties filed Misc. Appeal No. 05 of 2009 assailing the said order of rejection of their prayer under Order 9 Rule 13 C.P.C. This Misc. Appeal no. 05 of 2009 has been allowed by the impugned order.

The learned counsel for the petitioners has vehemently submitted that the order passed by the trial court ought not to have been interfered with in appeal as the defendant-opposite parties squarely failed to establish sufficient cause for their non-appearance when the hearing of the suit was taken up. It has further been submitted that the appellate court below has not discussed the evidence led on behalf of the parties and has even not taken into consideration

the reasonings assigned by the trial court and as such, the impugned order is vulnerable. It has also been canvassed that the appellate court below has acted with material irregularity in passing the impugned order.

The learned counsel for the opposite parties, however, has submitted that though the defendant-opposite parties filed their written statement and engaged an advocate for making pairvi in the case from time to time but it was due to negligence of the said advocate that the proceeding of the suit continued ex parte and ended in an ex parte decree. It has further been canvassed that the defendant-opposite parties have produced sufficient evidence to establish the facts indicating sufficiency of cause for their non-appearance and the appellate court below after considering the entire facts and circumstances has correctly passed the impugned order allowing the prayer and setting aside the ex parte decree affording a chance to the defendant-opposite parties to contest the suit.

After careful consideration of the matter and the submissions on behalf of the parties, it is limpid that the issue in the suit relates to rival claim of the parties over immovable property. The facts have not been denied that the opposite parties appeared in the suit and filed their written statement and

were also represented therein by their counsel for some dates. It is the case of the opposite parties that their counsel in the learned court below had acted with negligence and had also misled the opposite parties who have also adduced evidence in support of the said plea. The appellate court below after considering the entire facts and circumstances has allowed the prayer of the defendants to contest the suit after setting aside the ex parte decree. Although the finding has also been recorded that the defendant-opposite parties had made laches in making the pairvi in the suit, the appeal has been allowed after imposing the cost of Rs. 5,000/- on the defendant-opposite parties. The discretion exercised by the appellate court below in the facts and circumstances of the case does not appear to be reprehensible nor there is error of jurisdiction or material irregularity committed by the appellate court below in passing the impugned order.

However, in order to balance the equilibrium the cost of Rs. 5000/- imposed by the learned court below is enhanced to Rs. 10,000/- and the impugned order is modified only to that extent. The defendant opposite parties are directed to deposit the cost of Rs. 10,000/- (after adjusting Rs. 5000/- if already deposited as per the direction by the impugned order)

immediately after their appearance before the court below after this order or within such time as the learned court below in its discretion may allow. The learned court below is also directed to take up the suit for hearing expeditiously and dispose it of preferably within a period of nine months from the date of receipt/production of this order without granting unnecessary adjournment. The parties are directed to co operate in disposal of the suit at the earliest within the aforesaid time frame and avoid unnecessary adjournments.

The revision application is, accordingly, disposed of with the aforesaid directions and observations.

(V. Nath, J)

Devendra/-

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