

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.714 of 2010

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1. Tarengna Devi, wife of Late Ram Lochan Ram
 2. Lal Babu Thakur, son of Late Ram Lochan Ram
- Both residents of Mohalla Sheoganj, PS Arra Town, District Bhojpur

..... Defendants Appellants

.... Appellants

Versus

Binod Bharti, son of Jagdeo bharti, residernt of Village Bhagwan, PS Sandesh,
District Bhojpur, at present residing at Mohalla Shitaltola, PS Arra, Town, Distreict
Bhojpur

..... Plaintiff Respondent

.... Respondent

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Appearance :

For the Appellant/s : Mr. SIYA RAM SHAHI

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 12-05-2015

Heard Mr. Siya Ram Shahi, learned Counsel for the appellants.

2. Assailing the judgment and decree passed by the appellate court below dismissing their appeal, the defendants have preferred this Second Appeal.

3. The facts are not disputed that a suit for specific performance was filed against the defendants. That suit was decreed *ex parte*. The defendants filed a petition under Order 9 Rule 13 CPC for setting aside the *ex parte* decree. However, the said petition was dismissed. Thereafter the appeal was also dismissed. The matter ultimately came to be dismissed in this Court in Civil Revision application. On being unsuccessful in their attempt in getting the *ex parte* decree set aside under Order 9 Rule 13 CPC, the defendants-appellants thereafter

filed a regular appeal under Section 96 CPC against the decree. In the said appeal the appellants ventured to raise question of non service of summons etc. but the appellate court turned down the plea on the basis that earlier all those facts have been considered and decided in the proceeding under Order 9 Rule 13 CPC. Thereafter the appellate court below further also considered the judgment of the trial court and concurred with the findings and held that the plaintiffs were entitled to the decree passed.

4. After considering the judgments of both the courts below, the admitted facts as well as submission on behalf of the appellants, this Court does not find any substantial question of law arising for consideration in this Second Appeal which is accordingly dismissed.

(V. Nath, J.)

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