

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5745 of 2014

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1. Kanhaiya Prasad Son Of Late Binda Lal
2. Pankaj Kumar Son Of Kanhaiya Prasad
3. Suraj Preakash @ Dipak Kumar Son Of Kanhaiya Prasad All Resident Of
New Area Behind Sabzi Bazar, Dehri On Soan, Police Station- Dehri,
District- Rohtas
-Plaintiffs -Opp.Party-Petitioners.

Versus

1. Ajay Kumar Gupta Son Of Late Ram Narayan Sah, Resident Of New
Sidhauli, Dalmia Nagar, Police Station- Dehri, P.O. Dehri, District- Rohtas.
-Defendants-Applicants-Respondent 1st.
2. Gopal Prasad Son Of Binda Lal, Resident Of Village- Garikhana Road,
Police Station- Khagaul, District- Patna.
-Defendant-Opp.Party-Respondent 2nd party.

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

3 19-02-2015 Heard Mr T.N.Maitin, the learned senior counsel
appearing on behalf of the petitioners.

Calling in question the order passed by the learned
court below setting aside the ex parte decree and posting the suit
for hearing, the petitioners have filed this application under Article
227 of the Constitution of India.

Mr Maitin, the learned senior counsel for the
petitioners has submitted that the defendants had the knowledge of
the ex parte decree on the basis of the orders passed in mutation
cases where the petitioners stated this fact in the petitions. It has
further been canvassed by the learned counsel that the learned
court below has not considered the documents properly and has

wrongly come to the finding that the defendants had no knowledge of the suit and the notices had not been validly served.

After considering the facts and circumstances and the submissions on behalf of the petitioners, it is limpid that the suit has been filed with regard to declaration of title over the suit property. The learned court below after hearing the parties and scrutinizing the evidence has come to the conclusion that the defendants had no knowledge of the suit and no knowledge of the ex parte decree. It has also been observed by the learned court below that the dispute with regard to the immovable properties should be normally decided on merits after hearing the parties. The learned court below has also imposed cost upon the defendants by the impugned order, though the learned senior counsel has submitted that the amount of cost awarded to the plaintiffs is meager. Manifestly, the learned court below has reached to the findings of fact after consideration of evidence and this Court has not been persuaded to find the said conclusion to be perverse or unreasonable. The outcome of the impugned order is only that the civil litigation will be decided on merits.

The writ application is, accordingly, dismissed with direction to the court below to expeditiously take up the suit and dispose it of without granting unnecessary adjournments and

avoiding the dilatory tactics which may be adopted by the parties.

In view of the submission made by the learned senior counsel that the proceeding of the suit should be completed within six months, this Court directs the learned court below to take appropriate steps for early disposal of the suit preferably within six months.

(V. Nath, J)

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