

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.181 of 2014

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Sachchida Nand Jha. Son of Late Dhaneshwar Jha. Resident of village - Harauli, Post Office - Sati Ghat, Police Station - Kusheshwar Asthan, District - Darbhanga.

.... Petitioner/s

Versus

1. Smt. Bachchi Devi. Widow of Late Parma Nand Jha. Resident of village - Harauli, Post Office - Hirnee, Police Station - Kusheshwar Asthan, District - Darbhanga.
2. Smt. Arti Devi. W/o Sri Indra Kumar Jha. Resident of village - Mauzawari, Post Office - Hirnee, Police Station - Singhia, District - Samastipur and Daughter of Late Parma Nand Jha, resident of village - Harauli, Post Office - Hirnee, Police Station - Kusheshwar Asthan, District - Darbhanga.
3. Smt. Neelam Devi alias Gopali Devi. Wife of Mr. Shibendra Kumar, Daughter of Late Dhaneshwar Jha. Resident of village and Post Office - Kanhai, Police Station and Anchal - Ghanshyampur, District - Darbhanga.
4. Daya Nand Jha. Son of Late Nathuni Jha. Resident of village - Harauli, Post Office - Hirnee, Police Station - Kusheshwar Asthan, District - Darbhanga.
5. Umesh Jha. Son of Late Nathuni Jha. Present address - Nagdata T.E.A., Post office - Birpara, District - Jalpaiguri, PIN - 735204. Permanent address - village - Harauli, Post Office - Hirnee, Police Station - Kusheshwar Asthan, District - Darbhanga.
6. Dinesh Jha Son of Late Nathuni Jha Present address - Swastic Steel and alide product 117A , Chitranjan Avenue , Kolkata 73. Permanent address- Village - Harauli , Post Office - Hirnee, Police Station - Kusheshwar Asthan , District - Darbhanga.'
7. Ganesh Jha son of Late Nathuni Jha resident of Village - Haraulil , Post Office - Hirnee , Police Station - Kusheshwar Asthan , District- Darbhanga.
8. Anil Thakur
9. Arvind Thakur
10. Amar Thakur
11. Ajay Thakur Defendants/ Opposite Parties nos. 8 to 11 are sons of Batohi Thakur , resident of Village and Post Office - Sahjaur, Police Station- Bahera , District - Darbhanga .
12. Shiv Dai Devi daughter of Late Nathuni Jha , wife of Babu Narain Jha resident of Village 0- Harauli , Post Office - Hirnee , Police Station - Kusheshwar Asthan , District - Darbhanga.
13. Babu Dai Devi daughter of Late Nathuni Jha , wife of Ishwar Chand Kunwar, resident of Village and Post Office - Kanhai, Police Station - Ghanshyampur , District - Darbhanga.
14. Lalita Devi wife of Late Bathuni Jha , wife of Mithilesh Pathak resident of Village - Bishunpur , Post Office - Ber , Police Station- Kusheshwar Asthan , District - Darbhanga.
15. Sri Makeswar Jha son of Late Jallu Jha , resident of Village- Harauli , Post Office - Hirnee , Police Station - Kusheshwar Asthan , District - Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Navendu Kumar
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

2 15-09-2015

Heard the learned counsel for the petitioner.

By the order under assail in this revision application the learned court below has restored the suit exercising its power under Order 9 Rule 4 C.P.C.

The facts are not in dispute that the suit filed by the plaintiff-opposite parties was dismissed for default for non-appearance on 10.09.2014. Thereafter, from Annexure-2 to the revision application it appears that the Miscellaneous Case No.28/2014 was filed on behalf of the plaintiffs praying for restoration of the suit to its original file. It has been indicated in the said petition that the petition has been filed under Order 9 Rule 4, Rule 9 and Section 151 C.P.C. By the impugned order the learned court below after hearing the plaintiffs has restored the suit to its original file and directed for issuance of summons to the defendant-petitioner.

The learned counsel for the petitioner has submitted that the petition filed by the plaintiffs before the learned court below in fact was under Order 9 Rule 9 C.P.C. and therefore



the notice to the defendant was a precondition. It has been further submitted by the learned counsel for the petitioner that there was an office report on the said petition (Miscellaneous Case No.28/2014) from which also it transpires that the petition for restoration was filed under Order 9 Rule 9 C.P.C. In that view of the matter, the learned counsel has submitted that the learned court below has committed error of jurisdiction in restoring the suit without granting opportunity to the defendant-petitioner for hearing after issuing notice to him.

After considering the submissions and the materials on record, it is manifest that the learned court below by the impugned order has restored the suit which has been dismissed for default on 10.09.2014. There is no material to show that the defendant was present on 10.09.2014 when the order dismissing the suit for default was passed. From the fascicules of the provisions of Order 9 Rule 4 and Order 9 Rule 9 C.P.C., it is apparent that the said provisions operate under two different situations. Firstly, when the defendant does not appear and the suit is dismissed for default for non-appearance to the plaintiff, the prayer for restoration is maintainable under Order 9 Rule 4. Secondly, when the defendant alone appears and the plaintiff does not appear when the suit is called on for hearing, the dismissal of

the suit is Order 9 Rule 8 and the prayer for restoration can be made under Order 9 Rule 9 C.P.C. In the case at present, the petition for restoration was filed by the plaintiff under Order 9 Rule 4, Rule 9 and Section 151 C.P.C. The office had though reported that the said petition was under Order 9 Rule 9 but from the perusal of the impugned order, it is manifest that the Court has taken the petition to be under Order 9 Rule 4 C.P.C. As there is no material to indicate that the defendant was present on 10.09.2014 when the suit was called on for hearing, there is no base for coming to the conclusion, as submitted, that the learned court below has committed error of jurisdiction in proceeding with the restoration application as provided under Order 9 Rule 4 C.P.C. This Court, therefore, does not find any error of jurisdiction or illegality in the impugned order.

Accordingly, the revision application is dismissed.

(V. Nath, J)

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