

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.204 of 2013

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1. Md. Zakir Hussain Son Of Late Ishaque
2. Md. Imran (Minor) Son Of Md. Salahuddin
3. Gajala Khatoon (Minor) Daughter Of Md. Salahuddin Both Under The
Guardian Ship Of Their Maternal Grandfather Md. Zakir Hussain, The
Petitioner No. 1 Well Wisher And Next Friend. All Residing At Mohalla
Ansar Nagar Imli Nawada, P.O., P.S. And District- Nawada

.... Petitioners

Versus

Md. Salahuddin Son Of Late Abdul Sattar Resident Of Mohalla- Ansar
Nagar, Nawada P.O. And P.S. And District- Nawada

.... Opposite Party.

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Appearance :

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

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL ORDER

4 27-09-2016 Heard Mr. R.K.P. Singh, learned counsel for the
petitioners.

2. No one appears on behalf of the opposite party.

3. Learned counsel for the petitioners has submitted that
the notice was issued earlier to the opposite party in the present
revision application and the same has been validly served. The
opposite party, is however, not represented when the matter has
been called out for hearing and final disposal.

4. The petitioners are aggrieved by the impugned order
passed by the learned District Judge, Nawada under Section 24



C.P.C. transferring the Execution Case no. 1 of 2009 filed by the present petitioners to the court of Sub Judge-1st Nawada without issuing notice to the petitioners and without granting opportunity of hearing.

5. From perusal of the records, it transpires that the Misc. Case No. 49 of 2013 under Section 24 C.P.C. was filed on 21.10.2013 by the present opposite party who was defendant in Title Suit No. 51 of 1996. In the said proceeding, the present petitioners were impleaded as opposite parties. The relief prayed in the said miscellaneous case was for transfer of Title Suit No. 232 of 2009 from the court of Sub Judge II, Nawada to Sub Judge I, Nawada.

6. However, from perusal of the order sheet in Misc. Case No. 49 of 2013 annexed to the writ application, it further transpires that no notice was issued to the present petitioners and the final order for transfer of Execution Case No. 1 of 2009 as well as Title Suit No. 232 of 2009 was passed on 24.10.2013, within three days of the filing of the Misc. Case No. 49 of 2013.

7. Mr. R.K.P.Singh learned counsel appearing on behalf of the petitioners submits that the impugned order suffers from material irregularity and error of jurisdiction as it was incumbent upon the court below to issue notice and grant sufficient



opportunity of hearing to the petitioners before passing any order.

8. This court finds substance in the submission on behalf of the petitioner in view of the fact that the impugned order for transfer of the suit and the proceeding from the court where they were pending has been passed on the prayer and the petition filed by a party to that suit and proceeding as distinguished from the order of transfer of a suit or proceeding passed in the administrative jurisdiction. The notice and grant of opportunity to the other side before grant of such prayer for transfer of the suit or proceeding from one court to another are the requirement in law which must be adhered to. As no such step for issue of notice to the other side has been taken, the conclusion is inevitable that the impugned order suffers from material irregularity and deserves to be overturned.

9. This revision application is accordingly allowed and the impugned order is set aside.

(V. Nath, J)

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