

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4473 of 2014

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1. Tripureshwar Prasad Sinha Alias Tiru Prasad Son Of Late Kameshwar Prasad Resident Of House No. 101 (B), Sector 105, Noida Block- C, Police Station- Sector- 39, Noida (Uttar Pradesh)

.... Petitioner/s

Versus

1. Shri Nagendra Srivastava
2. Shri Surendra Prasad Srivastava Both Sons Of Late Ram Narain Prasad Resident Of Village- Kartaha, P.S.- Lalganj, Munsifi Hajipur, District- Vaishali
3. Shobha Devi Wife Of Late Ratneshwar Prasad Sinha
4. Navneet Ratna Son Of Late Ratneshwar Prasad Sinha
5. Harit Ratna Alias Bitesh Kumar Son Of Late Ratneshwar Prasad Sinha
6. Priyanka Alias Gudiya Daughter Of Late Ratneshwar Prasad Sinha
7. Smriti Daughter Of Late Ratneshwar Prasad Sinha
8. Dr. Chandeshwar Prasad Srivastava Alias Bulan Pd. Son Of Late Kameshwar Prasad Bima Chikitsa Padadhhikari, Karamchari Raj Bima Hospital, Phulwarisharif, Patna
9. Prem Nandani Srivastava Daughter Of Late Kameshwar Prasad Lecturer, Vaishali Mahila College, Hajipur, Town And Munsifi, Hajipur, District- Vaishali
10. Rishav Sarvahara
11. Sakshi Sarvahara Alias Tunnu Defendant No. 10 And 11 Are Son And Daughter Of Sitamram Sarvahara

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bimal Kumar Datta

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 20-01-2016 Heard Mr. Bimal Dumar Dutta, learned counsel appearing for the petitioner, who was defendant No.3 in the court below.

The plaintiffs-respondents filed suit for specific performance being Title Suit No. 80 of 1980 on the ground that the plaintiffs entered into an agreement with Kameshwar Prasad.

During the pendency of the suit, said Kameshwar Prasad died and in his place, his widow, sons and daughter were substituted. The petitioner was defendant No.3 in the court below.

It appears that after notice, defendant No.2, who is son of original-defendant, Kameshwar Prasad appeared and filed contesting written statement. Both the parties adduced evidences and then their evidences have been closed. The case was fixed for argument. At this stage, the present petitioner-defendant No.3 appeared and filed an application to recall the order dated 28.04.1981, whereby notice on him accepted as valid service. The petitioner prayed for permission to contest the suit. The plaintiffs-respondents filed objection and after hearing the parties, the court below by the impugned order dated 13.01.2014 rejected the application filed by the petitioner on the ground that he had the knowledge about the pendency of the suit and, in fact, his brother is contesting suit by filing contesting written statement.

The learned counsel for the petitioner submitted that, in fact, wrong address was give by the plaintiffs in the plaint and no notice was ever served on the petitioner.

As stated above, the court below considered the submission of the petitioner and also the respondents and after going through the record came to the conclusion that the case is

being contested by the defendant and after closure of the evidences of both the parties, at this stage, the petitioner has filed this application. The court below has recorded clear finding that the petitioner had the knowledge about the pendency of the suit. In view of this finding, which is finding of fact, the same cannot be interfered with in supervisory jurisdiction, at his stage, after 34 years of the order passed by the court below recording a finding that notice has already been validly served on the petitioner in the year 1981. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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