

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5750 of 2014

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Pramod Kumar Yadav

.... Petitioner/s

Versus

The District Magistrate Sheikhpura & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar

For the Respondent/s : Mr. Anil Kr Uapdhyay

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO

ORAL ORDER

2 05-02-2016 1. Heard the learned counsel, Mr. Pankaj Kumar, for the

petitioner and the learned counsel, appearing on behalf of the State

respondent No.1 to 5.

2. By the impugned order dated 06.02.2014, the learned

Munsif, Sheikhpura in Title Suit No.2 of 2013 allowed the

application filed by the respondent No.6 under Order IX Rule 7

CPC on payment of cost of Rs.2000/-.

3. The learned counsel for the petitioner submitted that

respondent No.6 had the knowledge about the pendency of the suit

and in fact notices were sent under registered post which was

refused by her and then notice was published in newspaper but

intentionally she did not appear to contest the suit and the Court

below illegally allowed the application under Order IX Rule 7

CPC.

4. On the other hand, the learned counsel for the State objected the prayer and submitted that the Court below has rejected the prayer after assigning reasons that still no issues have been framed.

5. Perused the order. The Court below found that the summons in ordinary process was returned with report that she was not found in the address as she was out of station. Registered notice was sent and it was returned with endorsement that she refused. Therefore, so far service of notice under registered post in view of the endorsement, the presumption of service is there. So far the publication of notice in newspaper is concerned, it may be mentioned that Article 123 of the Limitation Act, the explanation has been given to the effect that for the purpose of this Article, substituted service under Rule XX Order 5 of the Code of Civil Procedure shall not be deemed to be due service. Therefore, only presumption of service of notice was there. The respondent No.6 appeared and denied the service of notice. The Court below also noticed that still today, the issues have not been framed.

6. In such view of the mater, when the Court below for the

ends of justice has allowed the application, there is no question of interference in supervisory jurisdiction arises. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

Sanjeev/-

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