

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.55 of 2013

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Lilawati Devi W/O Late Bindeshwari Prasad Chaurasia Resident Of
Mohalla Hanuman Phatak Buxar, P.S. Buxar (T), District Buxar.

.... Petitioner/s

Versus

Shyam Rathi Devi W/O Late Kamta Prasad Verma Resident Of Mohalla
Nalband Toli, Buxar, P.S. Buxar (T), District Buxar.

.... Respondent/s

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

13 08-02-2016

Heard learned counsel for the petitioner and the
learned counsel for the opposite party.

2. The present revision application has been filed against the order passed by the appellate court below affirming the order of the trial court, whereby, a petition filed by the petitioner under Order 9 Rule 13 of the C.P.C has been rejected. The suit was filed for specific performance of contract and was ultimately decreed ex parte in favour of the plaintiff-opposite party. The defendant therein filed a petition under Order 9 Rule 13 C.P.C., for setting aside the said ex parte decree on the ground that no summons were served upon the petitioner. The Miscellaneous Case No. 02 of 2009 was initiated and the parties led their evidence in the said miscellaneous case on the crucial issue of service of summons. After considering the evidence on record, the trial court came to the finding that the summons in



the suit has been validly served upon the defendant. In appeal by the defendant, the appellate court below on re-appraisal of evidence concurred with the finding of the trial court regarding the valid service of summons in the suit upon the defendants.

3. The learned counsel for the petitioner has submitted that the learned court below has failed to consider that the steps for substituted service of notice ought to have been directed to be taken in the facts and circumstance of the case. It has also been submitted that there was no finding recorded in the suit as with regard to valid service of summons upon the defendants. No other submission has been made on behalf of the petitioner.

4. Learned counsel for the other side however has supported the impugned order.

5. After considering the submissions and perusal of the orders passed by both the courts below, it is manifest that the courts below have recorded concurrent finding on the core issue with regard to service of summons upon the defendants in the suit and have come to the conclusion on the basis of scrutiny of evidence that there was valid service of summons upon the defendants in the suit. It has also been taken into notice that the defendant refused to take the notice when the process server went to serve the said notice. In that view of the matter, the

requisite pre-condition for substituted service of notice as envisaged under Order 5 Rule 20 C.P.C. is not present. It has also been accepted by the learned counsel for the petitioner that all these points have been raised and considered by both the courts below. This Court does not find any error in jurisdiction or illegality to interdict the concurrent findings of fact recorded by both the courts below.

6. In the result, this revision application fails and is, accordingly, dismissed.

(V. Nath, J)

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