

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10986 of 2012

=====

Ram Jivan Tiwary S/O Late Ramashish Tiwary R/O Nandukha, P.S.-
Pashahi, District- East Champaran. Presently Residing At Mohalla-
Adampur Red Cross Road, P.S.- Kotwali, District- Bhagalpur

.... Petitioner/s

Versus

1. Dr. Indra Nand Singh S/O Of Late Kumar Krishnanand Sinha R/O
Krishnagarh, Sultanganj, P.S. & P.O.- Sultanganj, District- Bhagalpur
2. Anuradha Devi Wife Of Babu Natheshwar Singh, Daughter Of Rani
Prabhawati Devi R/O- Krishnagarh, Sultanganj, P.S. & P.O.- Sultanganj,
District- Bhagalpur. Presently Residing At D54/155. A-29 Srinagar Colony,
Varanasi, Uttar Pradesh

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Shashi Shekhar Dvivedi, Sr. Adv.
Mr. Ranjan Kumar Dubey, Adv.
Mr. Parth Gaurav, Adv.

For the Respondent/s : Mr. Shailendra Kumar Dvivedi, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

6 02-05-2016 Heard learned counsel for the petitioner as well as
learned counsel for the respondent.

Counter affidavit has been filed on behalf of
respondent, taken on record.

Petitioner who happens to be defendant second
party has challenged the order dated 11.04.2012 passed by
Fourth Sub-judge, Bhagalpur in Title Suit No.173 of 2002
whereby and whereunder the learned lower court has refused
to recall the order dated 30.04.2008 and consequent
thereupon, rejected petition dated 02.05.2009.

In order to properly appreciate the lis, it is evident
that respondent first party/plaintiff has filed the aforesaid title



suit wherein defendant second party appeared on 30.09.2002 however, no W.S. was filed on his behalf as a result of which the learned lower court had directed to proceed in terms of Order VIII Rule-10 of the CPC. Consequent thereupon, on 02.05.2009 WS was filed on behalf of petitioner/defendant no.2 with a prayer to recall the order dated 30.04.2008 which was allowed and the WS was entertained at a cost of Rs.500/- which already been deposited. Then thereafter, plaintiff/respondent first party filed CWJC No.17750 of 2010 which was allowed vide order dated 02.05.2011 whereby and whereunder the order dated 02.05.2009 passed by the learned lower court accepting the WS after recalling the order dated 30.04.2008 at a cost of Rs.500/- was set aside and further, matter was remitted back to the learned lower court to pass an order afresh after hearing both the parties whereupon the matter has been heard and by the order impugned, the learned lower court refused to oblige the petitioner. Hence this petition.

It has been submitted on behalf of petitioner that CWJC No.17750 of 2010 was passed behind the back of the petitioner and on account thereof, he was deprived of an opportunity to defend his plea. Apart from this, it has also been submitted that once W.S. has been admitted at a cost of Rs.500/- then in that event, the order dated 02.05.2009 would not have been set aside. Furthermore, it has also been submitted that rules are handmade to impart justice and not to



defeat justice which the Hon'ble Court times without number had held. Furthermore, though there happens to be some sort of laches on his part but for that, the learned lower court had compensated the plaintiff by awarding a cost of Rs.500/-. It has also been submitted that in the facts and circumstances of the case, the learned lower court should not have rejected the prayer.

At the other end, the learned counsel for the respondent no.1/plaintiff has submitted that there happens to be inordinate unexplained delay in filing W.S., which, is found adverse to the interest of the petitioner/defendant no.1 who, by having his appearance on 30.09.2002 allowed the proceeding to linger for such long period without any explanation. Though at an initial stage vide order dated 02.05.2009 W.S. was admitted at a cost of Rs.500/-, being aggrieved thereby petitioner had challenged under CWJC No.17750 of 2010 which was allowed directing the learned lower court to consider the matter afresh, whereupon the learned lower court considered and rejected the prayer. Further submitted that witnesses are being examined on behalf of respondent no.1/plaintiff and so, if allowed will cause prejudice.

Suit has been filed at the end of respondent no.1/plaintiff for declaring the sale deed executed by one Parwati Devi, mother of Anuradha Devi in favour of defendant no.2/petitioner null and void. The aforesaid relief has been



sought for in the background of the fact that respondent no.1/plaintiff has pleaded that there was partition in the family wherein the suit property has been allotted in his share. As such, the vendor of the defendant no.2 had got no right, interest, title with regard thereto consequent thereupon the sale deed executed by the vendor of the petitioner/defendant no.1 happens to be inoperative in the eye of law. In the aforesaid background the status of defendant no.2 happens to be pertinent one and if he is debarred from filing W.S., then in that event it will cause hardship to him as he will be in a position whereunder his presence will be worthless without having any opportunity to defend him. Furthermore, under CWJC No.17750 of 2010, it was directed to hear and pass order afresh without identifying that defendant/ petitioner should not be allowed an opportunity.

That being so, the order impugned is set aside. Prayer is allowed. However, taking into account the subsequent development as has disclosed by learned counsel for the respondent no.1/plaintiff, subject to cost of Rs.10,000/- which should be deposited within four weeks failing which, privilege so allowed by the instant order will cease to survive.

(Aditya Kumar Trivedi, J.)

PN/-

U			
---	--	--	--