

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1786 of 2014

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Smt. Manju Chaudhary

.... Petitioner/s

Versus

Smt. Meera Devi & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Md. Anis Akhtar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 06-01-2016 Heard the learned counsel, Mr. Anis Akhtar for the petitioner and the learned counsel, Mr. Bhubneshwar Prasad for the respondent.

By the impugned order dated 02.11.2013, the learned Sub Judge I, Muzaffarpur in Title Suit No.603 of 2011 rejected the application filed by the defendant No.1-petitioner for recall of the order dated 30.04.2012 and to accept the written statement filed by the defendant No.1.

The learned counsel for the petitioner submitted that in fact, no notice was ever served and, therefore, earlier the petitioner did not appear in the Court below. Subsequently, when she learnt that suit is pending which is proceeding *ex parte*, she filed the application for recall of the order whereby the Court below had fixed the case for *ex parte* hearing against the defendant No.1 and along with the application, written statement was also filed but the

Court below rejected the application filed by the defendant No.1. According to the learned counsel, if the impugned order is allowed to stand, it will greatly prejudice the petitioner and there will be grave injustice because in fact, no notice was served on the petitioner which would be evident from the ordersheet itself.

On the other hand, the learned counsel, Mr. Bhubneshwar Prasad appearing on behalf of the plaintiff-respondent submitted that intentionally only to delay the disposal of the suit, the defendant no.1 was not appearing in the suit.

Perused the order passed by the Court below. The defendant No.1-petitioner has filed the application for recall and with the application, written statement has also been filed. It is admitted fact that the other defendants have already sold the property to the defendant No.1-petitioner who is a lady and if the opportunity is not granted to the petitioner then it will occasion failure of justice and the petitioner shall be greatly prejudiced and the plaintiff's suit may be decreed *ex parte*.

So far the submission of the learned counsel for the respondents that after receiving the notice, the defendant No.1 intentionally did not appear is concerned, it may be mentioned here that only in the ordersheet, it has been mentioned that notice has been served but no opportunity was granted to the petitioner to

prove the fact that in fact, she did not receive the notice or that no evidence was adduced by the plaintiff in support of the fact that in fact, the summon was served on the petitioner. It further appears that no affidavit from the process server has also been received in support of the fact that the summon was served on defendant No.1-petitioner.

In view of the above facts and circumstances of the case, the impugned order is set aside and the order fixing the case for *ex parte* hearing is hereby recalled. The written statement filed by the petitioner-defendant No.1 is hereby accepted. The Court below shall proceed for expeditious disposal of the suit according to law.

Accordingly, this writ application is allowed.

(Mungeshwar Sahoo, J)

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