

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1061 of 2015

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1. Maya Devi wife of Ramesh Lal Daughter of Late Ram Autar Lal, resident of village Makshudpur P.S.Uchkagaon, District- Gopalganj

.... Petitioner/s

Versus

1. Ravi Prakash Kiran , son of Late Surya Lal
2. Smt. Savitri Devi, wife of Late Ram Autar Lal
3. Smt. Sadhna Devi, wife of Late Bijay Kumar Srivastava
4. Abhishek Kumar son of Late Bijay Kumar Srivastava
5. Binod Kumar Srivastava son of Late Ram Autar Lal All resident of Village Rampur Khurd P.S. Kateya, P.O.- Belhi Khas, District- Gopalganj.
6. Urmila Devi Wife of Hira Lal, Daughter of Ram Autar Lal Resident of Village Dhorwalia P.O. - Bolathari P.S.- Kuchaikote, District - Gopalganj.
7. Abhay Kumar Srivastava son of Amresh Lal null

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Naresh Prasad

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL ORDER

2 09-02-2016 Heard Mr. Naresh Prasad, learned counsel appearing for the petitioner.

The plaintiff-petitioner has filed this application under Article 227 of the Constitution of India against the order dated 16.07.2014 passed by the Sub-Judge-I, Gopalganj in Miscellaneous Case No. 76 of 2013, whereby the court below held that the limitation matter shall be considered finally at the time of hearing of the miscellaneous case.

It appears that the title suit was filed by the plaintiff-petitioner against the defendants. The said suit was decreed ex-



parte. The petitioner of the miscellaneous case namely, Ravi Prakash Kiran filed an application under Order 9 Rule 13 C.P.C. praying for setting aside the ex-parte decree after more than 8 years. In the application, the petitioner took the plea that no summons were ever served on him and he had no knowledge about the ex-parte decree. Since it was barred by law of limitation, separate limitation application was filed praying for condoning the delay. The learned court below after considering the submissions of both the parties, held that this matter can be decided only at the time of hearing of the miscellaneous case.

It may be mentioned here that when the respondent no. 1 specifically pleaded that he had no knowledge of the ex-parte decree and that no summons were served on him, this question about his knowledge has to be ascertained on the basis of evidence only in view of the Article 123 of the Limitation Act. Only on presumption that he had knowledge or his relations were appearing in the suit, no presumption can be made that he had the knowledge about the decree.

So far limitation is concerned that is main ground, which has been taken by the petitioner and if he will be able to prove that he had no knowledge or that the plaintiff-petitioner is able to prove that he had the knowledge about the ex-parte decree

naturally the case will be dismissed.

In my opinion, therefore, this matter can only be decided after evidences that may be adduced by the parties and not on the basis of affidavit only, therefore, the learned court below has rightly held that the limitation matter shall be considered finally at the time of hearing of miscellaneous case. Thus, this writ application is dismissed.

(Mungeshwar Sahoo, J)

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