

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14812 of 2014

- =====
1. Smt. Pramila Devi Wife of Late Ram Chandra Mahto
 2. Rakesh Kumar Son of Late Ram Chandra Mahto
 3. Rajesh Kumar Son of Late Ram Chandra Mahto All resident of Village Badara, P.O. Badara, P.S. Noor Sarai, District Nalanda.

.... Petitioner/s

Versus

1. Ashok Kumar Son of Late Ram Chandra Mahto Resident of Village Badara, P.O. Badara, P.S. Noor Sarai, District Nalanda.
2. Smt. Chinta Devi Wife of Late Sukhu Mahto
3. Shashi Bhushan Prasad
4. Bhushan Prasad both sons of Sukhu Mahto
5. Ramji Mahto Son of Late Dahu Mahto
6. Kamlesh Prasad
7. Guddu Prasad Both sons of Ramji Prasad
8. Harinandan Prasad Son of Late Dahu Mahto
9. Rajju Kumar Son of Harinandan Prasad
10. Blamiki Prasad alias Bachchan Kumar Son of Ashok Kumar Respondent No. 2 to 10 are all resident of Village Badara, P.O. Badara, P.S. Noorsarai, District Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Sinha No.-2

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-10-2016

Heard learned counsel for the petitioners.

The Plaintiffs are the petitoners in this application filed



under Article 227 of the constitution of India assailing the impugned order by which the learned court below has set aside the ex parte decree on the application filed by the defendant-respondent no. 1

Learned counsel for the petitioners has submitted that the court below has committed material irregularity in not considering the fact that the petition filed by the defendant-respondent no. 1 was hopelessly barred by limitation as it was filed 22 years after passing of the ex parte decree. It has been next submitted that the suit was for partition and the plaintiff and the defendants belong to the same family and, therefore, it was inconceivable that the defendant-respondent no. 1 had no knowledge of the suit proceeding. Learned counsel for the petitioners has also placed the impugned order in order to substantiate his submissions.

After considering the submissions as well the averments made in the application and the impugned order, it is evident that the defendant-respondent no. 1 has come out with a definite case in his petition under Order 9 Rule 3 C.P.C that he got the knowledge of the ex parte decree only on 30.06.2011. The prescribed period of limitation for filing a petition for setting aside the ex parte decree is provided under Article 123 of the Limitation Act which envisages filing of such petition within 30 days from the date of knowledge of the ex parte decree. It has not been the case of



the petitioners here that even after getting the knowledge of the ex parte decree, the petition was filed by defendant-respondent no. 1 beyond 30 days.

In this background, this court does not find substance in the submission on behalf of the petitioners that the petition under Order 9 Rule 13 C.P.C filed by respondent no. 1 was barred by limitation. The learned court below has scrutinized the evidence adduced by the parties in the miscellaneous case instituted upon the basis of the petition filed under Order 9 rule 13 C.P.C and thereafter has come to the finding that the summons were not served upon the defendant-respondent no. 1. The learned court below has also taken particular notice of the fact that the direction to the plaintiff-petitioners in the suit to take steps for fresh service of summons was not complied. The findings by the learned court below have been recorded on the basis of evidence which were acceptable and could have been relied upon. This Court has not been persuaded to find the same to be perverse in any manner. The submission that the plaintiffs and the defendants belong to one family and therefore the knowledge of the suit would be presumed to be there with defendant-respondent no. 1, would not be sufficient to decline the prayer made by the defendant-respondent no. 1 on the ground that no summon in the suit was served upon him.



Accordingly, this Court is not inclined to invoke its jurisdiction under Article 227 of the Constitution of India for interdicting the impugned order.

The application is, accordingly, dismissed.

Ranjan/-

(V. Nath, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	13.12.16
Transmission Date	N.A.

