

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.28 of 2014

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Shivanand Rai Son Of Late Ram Sundar Rai Resident Of Village Khalilpura, Tola
Upharpura, P.O. Dhanaut, P.S. Danapur, (Now Phulwari Sharif), District Patna
..... Petitioner

Versus

Ugranath Mishra Son Of Late Indra Nath Mishra Resident Of Debhi Tola Deep
P.O. Harbhanga, P.S. Lakhnour, District- Madhubani And At Present Resident Of
Road No.9 East Patel Nagar, P.O. And P.S. Shastrinagar, Patna- 23, District- Patna
..... Respondent

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Appearance :

For the Petitioner/s : Mr. MANOJ KUMAR MANOJ
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 24-10-2016

Heard the learned counsel for the parties.

The petitioner is the defendant in the suit and has filed the present revision application against the order passed by the appellate court below dismissing the appeal filed by the petitioner against the order dismissing the petition under Order 9 Rule 13 C.P.C. After the ex parte decree passed in the suit against him the petitioner filed the petition under Order 9 Rule 13 C.P.C praying for setting aside the ex parte decree on the ground of fraudulent suppression of summons. The parties led their evidence and after scrutiny of the evidence the trial court returned the finding that the petitioner had the knowledge of the suit. The miscellaneous case initiated on the basis of the petition under Order 9 Rule 13 C.P.C filed by the petitioner was accordingly dismissed. The petitioner thereafter filed Miscellaneous Title Appeal No. 19/2012 against the order dismissing the



Miscellaneous Case No. 03/2005. The appellate court below on reappraisal of evidence has affirmed the findings by the trial court and dismissed the miscellaneous appeal.

The learned counsel for the petitioner has submitted that it was the case of the petitioner that there was fraudulent suppression of summons in the suit and therefore the ex parte decree passed therein was fit to be set aside. It has also been contended by the learned counsel that the learned courts below have misread the evidence as well as have not properly considered the evidence on record and therefore the orders by both the courts below are vulnerable. It has, however, been accepted that it is not the case of the petitioner that any part of the evidence has been omitted from consideration by both the courts below.

The learned counsel for the opposite party however, has supported the findings by the courts below and has submitted that the impugned order does not suffer from error of jurisdiction or material irregularity and therefore cannot be interfered in revisional jurisdiction of this Court.

After perusal of the orders passed by both the courts below and consideration of the submissions on behalf of the parties, it is evident that the findings of fact have been recorded by both the courts below holding that the petitioner had the knowledge of the suit and there was no fraudulent suppression of summons. The learned



courts below have also taken into notice the deposition made by A.W.3 (one of the defendants in the suit) examined as A.W.3 in paragraph-15 wherein it has been stated that he had the knowledge of the judgment passed in the suit. The deposition by advocate's clerk which has been relied upon by both the courts below has also been brought on record by the opposite party in his counter affidavit. From the bare perusal of the said deposition it appears that the petitioner had the knowledge of the suit and both the courts below have taken into notice the evidence on record including the Ext. A and Ext.A/1 which are the registered notice with the report of the refusal.

This Court has not been persuaded to hold that the findings of fact recorded by both the courts below suffer from error of jurisdiction or material irregularity. The entire submission on behalf of the petitioner centers around reappreciation of evidence which cannot be done in the revisional jurisdiction.

This Court, therefore, does not find any merit in this revision application, which is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.12.2016
Transmission Date	

