

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.304 of 2016

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Lok Nath Sah & Ors

.... Appellant/s

Versus

Awadhesh Kumar Sah & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Suresh Prasad Sah @ Baranwal

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

4 28-11-2016 Heard the learned counsel, Mr. Dhirendra Kumar Jha, for the petitioner and the learned counsel, Mr. Vishwanath Prasad Singh for the respondent No.1 to 5.

Perused the impugned order dated 19.02.2016 passed by Sub Judge Baisi, Purnea in Title Suit No.13 of 2011 whereby the learned Court below rejected the application filed by the petitioner under Order IX Rule 7 of the Code of Civil Procedure and even refused to accept the written statement filed on the same day. The Court below recorded finding that one of the defendant, i.e., defendant No.5 had already appeared, therefore, the others must have got the knowledge about the partition suit.

The learned counsel for the petitioner submitted that all the petitioners are resident of difference places such as district of Katihar, Bhagalpur, Purnea, New Delhi etc. and, therefore, they had no knowledge at all. Summons were also not served on them.



In fact the plaintiff mentioned wrong address in the plaint and after issuance of summons, he got the address amended. Moreover on the date when they appeared, they have already filed written statement. According to the learned counsel, if the impugned order is allowed to stand, it will occasion failure of justice because the suit is proceeding ex.-parte.

On the other hand, the learned counsel for the respondent submitted that all the petitioners are the close relation, i.e., brother and sister of the defendant No.5. The notice was published in a newspaper but they intentionally did not appear for three years, therefore, their intention is to delay the disposal of partition suit.

From perusal of the impugned order, it appears that the Court below presumed that because the petitioners are brothers and sister of defendant No.5, they must have got knowledge. No opportunity has been granted to the petitioner to adduce evidence nor the plaintiffs have adduced any evidence in support of the fact that in fact the summons was validly served on them. So far publication of notice in newspaper is concerned, it appears that the petitioners are resident of difference places. The suit is of the year 2011 and it is partition suit, therefore, considering the above facts and circumstances of the case, the Civil Misc. application is allowed subject to payment of cost of Rs.2000/- to the plaintiff

respondent No.1 to 5 within one month from today in the Court below. The cost should be deposited in the Court below and if deposited, the plaintiff respondents shall withdraw the same. If the cost is not deposited, the same may be realized through the process of the Court.

Accordingly, this Civil Misc. application stands allowed subject to payment of cost as aforesaid.

(Mungeshwar Sahoo, J)

Sanjeev/-

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