

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.131 of 2013

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1. Kapildeo Sharma Son of Late Mohan Sharma
 2. Narayan Sharma Son of Kapildeo Sharma
 3. Rajesh Kumar Sharma Son of Kapildeo Sharma
 4. Ravish Kumar Sharma Son of Kapildeo Sharma
 5. Rajnish Sharma @ Raj Kamal Rajnish Son of Kapildeo Sharma
 6. Yogendra Narayan Sharma Son of Greej Sharma
 7. Suresh Sharma Son of Greej Sharma All residents of village - Malhipur, P.S. Shahpur Kamal, District - Begusarai

.... Petitioners.

Versus

1. Laddu Lal Sharma Son of Late Ramjee Sharma
2. Juggu Sharma Son of Late Ramjee Sharma
3. Umesh Sharma Son of Late Ramjee Sharma All residents of village - Saligrami, P.S. Shahpur Kamal, District - Begusarai

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. PRAVEEN KUMAR

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 03-05-2016

V.Nath, J.

Heard the learned counsel for the petitioners.

This revision application has been filed calling in question the legal acceptability of the impugned order passed by the appellate court below whereby the appeal filed by the defendant has been allowed setting aside the order passed by the trial court dismissing the petition under Order 9 Rule 13 C.P.C. filed by the defendant. It is not in dispute that the T.S.No.68/1996 filed by the plaintiff-petitioner was disposed of by passing an ex parte decree. Subsequently, however, the defendant filed a petition under Order 9

Rule 13 C.P.C. for setting aside the said ex parte decree.

The trial court after hearing the parties dismissed the Miscellaneous Case No.09/2007 instituted on the basis of the petition filed by the defendant. In appeal the appellate court, on reappraisal of the materials on record, has allowed the appeal by the impugned order and set aside the order passed by the trial court dismissing the miscellaneous case.

Heard the submissions on behalf of the petitioner in support of this revision application.

From the perusal of the impugned order, it is transparent that in paragraphs-6 and 7 the appellate court below has recorded that there was no evidence to show as to when, where and by whom summons through ordinary process and registered post were served upon the defendant. It has also been found by the appellate court below that on 22.05.1998 when the suit was fixed for ex parte hearing, the said date itself was not a date for hearing of the suit. It has also been found that the plaintiffs have failed to adduce cogent evidence establishing the valid service of summons upon the defendant including the non-examination of the process server or postal peon in support of the valid service. The appellate court has also examined the deposition of the witnesses of the plaintiff and has found that none of those witnesses have stated a word about valid service of summons

upon the defendant.

The above findings of facts are based upon the appreciation of evidence and this Court therefore, does not find any error of jurisdiction or material irregularity committed by the court below in passing the impugned order.

The revision application is, accordingly, dismissed.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
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