

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No.918 of 2014

Kanhaiya Lal Jaiswal S/o Lakhpat Lal Aged About 67 Years R/o Laluram Colony, T.P. Nagar, P.O. & P.S. Korba, Tehsil - Korba, District Korba C.G.

---- Petitioner

Versus

1. Smt. Jugal Kishori Yadav W/o Ramgopal Yadav R/o Village & Tehsil Katghora, Distt. Korba C.G.
2. Smt. Puniya Bai W/o Kartik Das R/o Village Katghora, Tehsil - Katghora, District Korba C.G.

---- Respondent

For Petitioner	:	Shri Sanjay Patel, Advocate
For Respondents	:	Shri Vikram Dixit, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

17/03/2016

Heard.

2. Challenge in this petition is to the impugned order on the ground that the order has been passed against the petitioner recording that he has refused to take notice but he was not served with the notice.
3. Learned counsel for the petitioner submits that for the purpose of service of notice, provisions contained in Civil Procedure Code are applicable. Therefore, in a case, where it is said that notice was refused to be taken, provisions contained in Order V Rule 17 CPC required affixation of notice on the building, which has not been done, therefore, the order impugned is liable to be set aside.
4. On the other hand, learned counsel for respondents submits that the record contains service report of the process server, which shows that the petitioner refused

to take notice and the same has also been signed by witness.

5. The issue, which arises for consideration, is whether the petitioner was actually served with the notice or not. This would require the evidence to be recorded of Process Server and other witnesses. In addition, requirement of law of affixation of notice under Order V Rule 17 CPC would also be relevant. As adjudication of this issue requires recording of oral evidence, I am not inclined to examine the issue.

6. Considering that the petitioner is having remedy under Section 35 of the Land Revenue Code, 1959 for setting aside ex parte order, this petition is finally disposed off. It is observed that if the petitioner moves an application under Section 35 of the Land Revenue Code, 1959 before the Board of Revenue, the Board of Revenue shall hold proper enquiry and record evidence of the process server and other witnesses and afford opportunity to the petitioner to cross-examine those witnesses and thereafter, decide the matter. Record of the Board of Revenue be remitted forthwith. It is made clear that if the petitioner applies before the Board of Revenue for setting aside ex parte order within a period of 60 days, the application shall be treated as within limitation and shall be decided on merits.

SD/-
Manindra Mohan Shrivastava
Judge