

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.104 of 2016

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Raj Kumar Khetan, Son of Late Ramswaroop Khetan, Resident of Village-Jamalpur, P.S.- Gogri, District-Khagari.

.... Plaintiff-Petitioner.

Versus

1. Lagni Devi, Wife of Late Jagdambi Mandal @ Jagdambi Singh.

2. Rajaram Mandal.

3. Sikandar Mandal.

4. Ranjeet Mandal.

5. Malka Mandal.

Nos.2 to 5 are sons of Late Jagdambi Mandal @ Jagdambi Singh.

6. Reeta Kumari, D/o Late Jagdambi Mandal @ Jagdambi Singh.

All Nos.1 to 6 are resident of Village-Pakrail Bind Toli, P.S.-Gogri, District-Khagaria.

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Jagdish Prasad Bhagat, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-07-2017

Heard Mr. Jagdish Prasad Bhagat, learned counsel
appearing for the petitioner.

No body is present on behalf of the opposite parties
when this matter has been called out.

This revision application has been filed assailing
the order dated 24.08.2013 passed by the court below in Misc.Case
No. 06/2011 whereby the learned court below has allowed the said
miscellaneous case and after setting aside the ex parte decree passed
in T.S.No. 01/1999 has restored the said suit to its original position.

The matrix of facts discloses that the present
petitioner as plaintiff filed T.S.No.01/1999 for specific performance



of contract against the judgment. The said suit was eventually decreed ex parte by judgment and decree dated 31.03.2006 and 21.04.2006 respectively as the defendant failed to appear. It , however, transpires that the Miscellaneous Case No. 06/2011 has been filed on behalf of the defendants under Order 9 Rule 13 C.P.C. praying for setting aside the ex parte decree. By the impugned order, the learned court below has allowed the miscellaneous case and restored the T.S.No.01/1999 to its original position after setting aside the ex parte decree.

After considering the submissions on behalf of the petitioner and perusal of the impugned order, the error committed by the learned court below is manifest when the learned court below has proceeded to set aside the ex parte decree after considering the merits of the respective cases of the parties but omitted to record the sufficiency of cause as envisaged under Order 9 Rule 13 C.P.C. It is apparent that the learned court below has further also recorded the finding that the agreement for sale as propounded by the plaintiff-petitioner in the suit was fabricated, forged and illegal document. Such a course was definitely beyond ambit and scope of Order 9 Rule 13 C.P.C. As such, it is held that the impugned order is erroneous and deserves to be set aside. It is so done.

In result, this revision application is allowed, the impugned order is set aside and the matter is remitted back to the



learned court below for decision afresh in Misc.Case No.06 of 2011 in accordance with law after granting opportunity of hearing to the parties afresh. The learned court below is enjoined to take up the matter expeditiously and dispose of the said case preferably within a period of six months from the date of receipt/production of a copy of this order.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.07.2017
Transmission Date	

