

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.417 of 2017

Khursheed Anwar, Son of Ghulam Rabani, resident of Mohalla-Christan Quarter, Dargah Mohalla, Bettiah, P.S.-Bettiah Town and District-West Champaran

-----Opposite party Ist party-petitioner

Versus

1. Md. Sayeed Akhtar , son of Tufail Ahmad
2. TufailAhmad, Son of late Md. Saleh Both resident of village-Harpur Tola Bhogri, P.O. _ Birwa, PS- Majhaulia and District-West Champaran, at present residing at Sariswa Bazar, P. S. Majhaulia, and District-West Champaran

..... petitioners/Opposite parties

3. Md. Naseem Akhtat Son of Tafail Ahmad resident of village-Harpur tola Bhogari, P.O. Birwa, P.S. Majhaulia and District-West Champaran, at present residing at village and P.O-Sariswa Bazar, P.S. Majhaulia and District-West Champaran.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Mohammed Abu Haidar
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT AND ORDER

3 30-08-2017 The petitioner is the decree holder in Title Suit No. 204 of 2005, which was decreed *ex parte* in his favour by the learned Sub Judge-I, Bettiah at West Champaran, by judgment and decree, dated 04.03.2006. He is aggrieved by an order, dated 30.09.2016 passed in Misc. Case No. 16 of 2016, whereby an application filed by judgment debtor Opposite party No.1 for setting aside the said *ex parte* decree, under Order 9 Rule 13 of the Code of Civil Procedure, 1908



(hereinafter referred to as the Code) has been admitted. The petition which was filed by the Opposite party No.9 under Order 9 Rule 13 of the Code has been brought on record by way of Annexure in the present case.

2. The sole plea, which has been taken on behalf of the petitioner is that the Court below has admitted the said application under Order 9 Rule 13 of the Code without condoning the delay, inasmuch as the said application was filed nearly 10 years after the date of decree. He has submitted that the Opposite party No.1 had the knowledge of the passing of the decree in the year 2008 itself when the records of the title suit before the Court below were inspected on his behalf by his learned Counsel.

3. Article 123 of the Schedule of the Limitation Act prescribes 30 days as period of limitation for filing an application to set aside decree passed *ex parte* or to rehear an appeal decree or hear *ex parte* from the date of decree or where such summons or notice were not duly served, when the applicant had knowledge of decree.



4. From the application filed on behalf of Opposite party No.1 before the Court below under Order 9 Rule 13 of the Code, it appears that he took specific plea that summon or notice was not duly served and the application under Order 9 Rule 13 was filed immediately after he got the knowledge of the said decree. In such circumstance, there was no occasion for the Court below to have considered the question of limitation at that stage, there being specific plea on behalf of Opposite party No.1 that the application was being filed immediately after he got the knowledge of the decree. In view of the pleading in the application under Order 9 Rule 11 of the Code, it could not be said that the petition was barred by limitation. The principle underlining under Order 7 Rule 11 (d) of the Code can be usefully applied in my view, which requires that a plaint shall be rejected where 'it appears from the statement in the plaint to be barred by any law'.

5. Clearly, at the time of admission of a plaint, the Court is to confine itself, for the purpose of application



of Order 7 Rule 11 (d) to the statements made in the plaint. As has been noted above, in view of the statements made in the application under Order 9 Rule 13 of the Code, the said application could not be said to be barred by law of limitation.

6. The Supreme Court in case of ***Popat and Kolecha Property Vs. State Bank of India Staff Association*** reported in ***(2005) 7 SCC 510*** has emphasized that statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11. It is well settled that where an application is barred by any law, the averments made in the application alone have to be seen and they have to be assumed to be correct. This view finds strength from the Supreme Court's decision in case of ***Ramesh B. Desai Vs. Bipin Vadilal Mehta*** reported in ***(2006) 5 SCC 638***, where the Court held that unless it became apparent from the reading of the petition that the same is barred by limitation, the petition cannot be rejected at the very threshold.



7. Whether the said petition under Order 9 Rule 13 of the Code is barred by limitation is a mixed question of law and fact, which will have to be determined with advertance to any objection being raised at the appropriate stage by the contesting parties.

8. This application, in my view, is misconceived.

9. The impugned order, therefore, does not require interference by this Court.

10. This application has, accordingly, no merit and it is dismissed.

(Chakradhari Sharan Singh, J)

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