

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.842 of 2017

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Vidyawati Devi @ Smt. Vidyawati Singh, Wife of Sri Chandra Shekhar Prasad Singh, Resident of Sector 4 D, Quarter No.1040, Bokaro Steel City, P.S.- Sector-4, District- Bokaro, Now Resident of Sector 9 Street 13 Quarter No.582, Bokaro, Steel City, P.S. Haria, District- Bokaro. Appellant.

Versus

Raju Singh @ Raju Kumar Singh, Son of Sri Surendra Singh, Resident of Village- Baikhatpur, P.S.- Khusroopur, District- Patna. Respondent.

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Appearance :

For the Appellant : Mr. Ramashankar Singh, Adv.
For the Respondent : Mr. Ajay Kumar Singh, Adv.
Mr. Rajnish Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 01-12-2017

Heard learned counsel for the appellant and
learned counsel for the respondent on this miscellaneous appeal.

2. This miscellaneous appeal has been preferred against the order dated 17.08.2017 passed by the Sub Judge-IV, Patna City, Patna in Misc. Case No.01 of 2015, whereby the learned lower court dismissed the petition filed by the petitioner/appellant for setting aside the *ex parte* decree passed against her.

3. The factual matrix of the case is that respondent-Raju Singh alias Raj Kumar Singh had filed Title Suit No.112 of 2012 against the appellant-Vidyawati Devi @ Smt. Vidyawati Singh for specific performance of contract on the basis of the agreement for sale dated 04.02.2011 allegedly executed by the appellant in favour of the respondent. The said suit was decreed *ex*



parte on 16.12.2013 as the defendant/appellant did not turn up in the said suit, despite service of notice and for setting aside the aforesaid *ex parte* decree the appellant filed Misc. Case No.01 of 2015.

4. Respondent put his appearance in the said case and filed rejoinder. Both the parties adduced their evidence in buttress of their case and after hearing the parties and perusing the record, the learned lower court rejected the aforesaid petition filed by the appellant for setting aside the *ex parte* decree dated 16.12.2013 vide impugned order.

5. Being aggrieved and dissatisfied with the aforesaid order, the appellant has filed this miscellaneous appeal.

6. It is submitted by learned counsel for the appellant that the appellant is residing in Bokaro along with her husband as her husband is in police department. At the time of sending notice through the process server or through the registered post as also at the time of publication of the notice in the newspaper, she was not present at the Patna rather at the Bokaro and hence no service of summon of the suit was made on her. The report of the process server and postal peon regarding refusal to receive summon sent to her is false and collusive as the aforesaid persons never met with her. She got knowledge of the aforesaid decree during the



process of execution of the said decree. It is also submitted that she never executed any agreement of sale in favour of the respondent and the aforesaid agreement of sale is forged and fabricated document. It is further submitted that she has adduced ample evidence to substantiate the fact that the summon was not validly served upon her but the learned lower court disagreeing with her case has wrongly rejected her petition for setting aside the *ex parte* decree, vide impugned order which is liable to be set aside. Learned counsel for the appellant also submitted that she is ready to pay the cost of the suit etc. to the respondent.

7. On the other hand, it is submitted by learned counsel for the respondent that summon in the suit was served upon the appellant validly as both the process server as well as the postal peon taking the summon approached the appellant and met her personally but after going through the contents of the summon and knowing the factum of filing the suit against her, she refused to receive the same and consequently the process server got pasted the summon on the conspicuous part of the building in presence of the two witnesses and returned the same with the aforesaid endorsement, while the postal peon also returned the summon sent through registered post with endorsement of refusal. Even though the court taking utmost precaution got the summon served upon the appellant



through publication of the same in the newspaper namely 'Dainik Jagran' which has wide circulation in Patnacity where the appellant is residing. Hence, the summon was duly served upon the appellant by the aforesaid modes but despite service of notice she did not turn up in the case and took part in the proceeding. Accordingly, the suit decreed *ex parte* against her. It is further submitted that both the process server and the postal peon in their affidavit filed before the court have supported the factum of service of notice upon the appellant. It is also submitted that husband of the appellant by filing affidavit in the learned court below has admitted that the appellant used to visit to Patna oftenly to receive the rent from the tenant. Thus, the notice was validly served upon the appellant but despite valid service of notice she deliberately and knowingly opted to refrain from the proceeding, hence the learned court had no option but to proceed *ex parte* against the appellant and pass the *ex parte* decree, which is liable to be sustained and the learned lower court has rightly rejected the aforesaid petition of the appellant. It is further submitted by learned counsel for the respondent that on the basis of *ex parte* decree sale deed has been executed in his favour by exhausting execution process and the appellant has also failed to establish sufficient cause for setting aside the aforesaid *ex parte* decree. Hence, the impugned order passed by the learned lower court dismissing the petition of the



appellant for setting aside ex parte decree is correct and legal and is liable to be upheld and this appeal is liable to be dismissed.

8. From perusal of the record, it appears that summon in the title suit was sent to the appellant through both the processes i.e. through process server and the registered post with A/D. Appellant got filed affidavit of both the process server and postal peon in the learned court below. The process server has deposed that he had approached the appellant and met with her personally and tried to serve the summon upon her but after going through the summon she refused to take and returned it to him then he pasted it on the western entrance of the house in presence of the two witnesses, namely, Anil Singh and Raju Singh, who happens to be her tenant and respondent respectively and returned the summon along with his endorsement to the court. The postal peon has also deposed that he met the appellant, summon of the appellant was handed over to her but she refused to receive it and thereafter he returned the same with the endorsement of 'refusal' to the office. The aforesaid aspect of the case eloquently indicate that summon in the suit was sent to the appellant through the aforesaid processes but she refused to receive the same. From perusal of the record it appears that besides the aforesaid mode of service the court has also taken care to get the summon served upon appellant through publication and got the same published in the daily



newspaper 'Danik Jagran' which has wide circulation in Patna City where the appellant is said to have been residing. Thus, the summon also appears to have been served upon the appellant through substituted service.

9. The appellant has taken the stand that she was not residing at Patnacity at the time of service of summon by the aforesaid modes rather she was residing in Bokaro along with her husband who is in police department, so there was no question of meeting the aforesaid process server and the postal peon with her. As a matter of fact, they never met with her and she never refused to receive any summon from them and as she was not residing at the Patna City at the relevant time rather at the Bokaro, she had no knowledge of the publication of the summon in 'Danik Jagran' and she never gone through the said paper. She has also filed the voter identity card and gas connection receipt in buttress of her case. But the aforesaid documents filed by the appellant had not been legally brought on record by exhibiting the same as evident from the impugned order. Moreover, from perusal of the impugned order, it appears that the husband of the appellant, by filing affidavit in the aforesaid miscellaneous case, has stated that his wife has been living in Bokaro. She resided at Patna since 1996 to 2001 and constructed the house. He has also stated that his daughter had been studying at



Patna since 2011 to 2014. After 2001 his wife used to come to Patna to collect the rent from the tenants. The aforesaid notice was served upon the appellant sometimes in the year 2012. As it is the admitted case of the appellant that she used to visit to Patna because her daughter used to live in Patna and she oftenly used to pay visit there to collect rent from the tenants where the aforesaid summon was served upon her by the said modes. The burden to prove that at the relevant time of service of summon upon her by the aforesaid modes she was not present in the Patna squarely lies on her shoulder but the appellant has miserably failed to discharge the aforesaid burden. Thus, I find that the summon of the suit was validly served upon the appellant and the appellant had full knowledge of filing and pending of the aforesaid suit against her. The Hon'ble Apex Court in the case of **Mst. Bhabia Devi v. Permanand Prasad Yadav** reported in **AIR 1997 Supreme Court 1919** has been pleased to rule that facts and evidence of process server, however, revealed that petitioner refused to put her sign or thumb impression on summon when they were handed to her. She also refused to acknowledge the registered, service indicative of refusal to accept notice. Hence, the *ex parte* decree was rightly passed.

10. In the aforesaid facts and circumstances of the case, I find and hold that the appellant, despite knowledge of the filing



and pendency of the aforesaid suit against her deliberately and knowingly refused to receive summon which was validly served upon her and she did not take pain to put her apperance in the case and contest it accordingly the *ex parte* decree was passed against her. The appellant has also failed to substantiate sufficient cause for setting aside the aforesaid *ex parte* decree. Hence, the impugned order passed by learned Lower Court dismissing her application for setting aside *ex parte* decree is not suffering from any illegality or invalidity and does not warrant any intervention of the Court and the same is accordingly upheld.

11. Accordingly, this miscellaneous appeal is dismissed.

12. I.A. No.7244 of 2017 filed by the appellant for stay of the execution of the *ex parte* decree also stands rejected as the appeal has already been dismissed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

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