

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19459 of 2013

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1. Ram Dayal Sharma
 2. Bishun Dayal Sharma
 3. Dhan Raj Singh
 4. Madheshwar Sharma
 5. Chandeshwar Sharma

All are sons of Late Sarabdeo Singh, resident of village- Nathupur, Police Station- Bihta, District- Patna.

6. Mostt. Madhu Devi Wife of Late Jugeshwar Sharma, resident of village- Nathupur, Police Station- Bihta, District- Patna.
7. Ram Babu Sharma S/o Late Ram Karan Singh, resident of village- Nathupur, Police Station- Bihta, District- Patna.
8. Lallu Singh S/o Late Ram Karan Singh, resident of village- Nathupur, Police Station- Bihta, District- Patna.
9. Birendra Singh S/o Late Ram Karan Singh, resident of village- Nathupur, Police Station- Bihta, District- Patna. Petitioner/s

Versus

Sabha Nand Sharma Son of Late Braj Nandan Singh, resident of village- Nathupur, Police Station- Bihta, District- Patna. Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.D. Yadav, Adv.

For the Respondent/s : Mr. Anil Kumar, GP-26

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 18-12-2017

This application has been filed for setting aside the Judgment dated 25th March 2013 passed by the learned Additional District Judge-IV, Danapur in Title Appeal No. 52 of 2011 whereby and whereunder the learned Appellate Court allowed the appeal filed by the respondent and remitted back the matter to the court of Munsif for fresh hearing and passing the order in accordance with law.

2. Heard learned counsels for the petitioners as well as the respondent.

3. It appears that the respondent filed Title Suit



No.55 of 1995 on the file of learned Munsif. The petitioner (defendant) appeared and filed a petition under Order VII Rule 11 (d) of Code of Civil Procedure to reject the plaint in view of the fact that the plaintiff's earlier suit bearing T.S. No. 18 of 1989 was already dismissed. The plaintiff had filed T.S. No. 18 of 1989 against the petitioner which was dismissed in default on 31.05.1991. The petitioner did not take any step for restoration of the said suit rather he filed another suit bearing T.S. No. 55 of 1995 and so the suit of the plaintiff was barred under the provision of Order IX Rule 9 of Code of Civil Procedure.

4. The learned Munsif, after hearing both sides, rejected the plaint considering the fact that the earlier suit filed by the plaintiff was dismissed in default.

5. The learned counsel for the respondent on the other hand submitted that the respondent filed T.S. No. 18 of 1989 for declaration of his title over the suit land and injunction to restrain the defendant from going over the suit land and not to disturb in peaceful possession of the plaintiff. In the said suit, a compromise petition was filed. As per office report, the plaintiff and defendant were directed to remove the defects in the compromise petition. Both the parties left taking interest, as a result of which, the defects could not be removed and the suit was dismissed for default as per order dated 31.05.1991.



Thus, it is apparent that the suit was not decided on merit, rather it was dismissed for default as parties did not remove the defects in the compromise petition as pointed out by the office. According to Order IX Rule 4 of Code of Civil Procedure, the plaintiff has right to file a fresh suit or the court may restore the suit to original file. In the present case, the plaintiff opted to file a fresh suit which in my view is not barred by Order IX Rule 9 of Code of Civil Procedure.

6. The learned District Judge while allowing the appeal filed by the respondent, has observed that both the parties were absent and the provision of Order IX Rule 4 of Code of Civil Procedure is not applicable in the present case and so the learned Munsif has erred in rejecting the plaint against the provision of law. The learned Appellate Court has rightly set aside the order of Munsif and remitted back the matter for fresh hearing and passing order in accordance with law.

7. In view of above facts, I do not find any jurisdictional error in allowing the appeal. This application is devoid of merit and is, accordingly, dismissed.

(Sanjay Kumar, J)

Maresh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	23.12.2017
Transmission Date	

