

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20718 of 2013

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Kamal Prasad @ Kamal Yadav Son Of Late Prasadi Yadav Resident Of Village +
P.O. & P.S. Alauli, District - Khagaria

.... Petitioner/s

Versus

1. Smt. Kishori Devi Wife of Sri Narendra Mohan Jha.
2. Narendra Mohan Jha Son of Radha Krishna Jha.
3. Birendra Mohan Jha Son Of Radha Krishna Jha all Resident Of Village -
Sanhauli, P.S. Chitragupta Nagar (Khagaria) District – Khagaria.
4. Chandra Kishore Prasad Yadav Son of Kamal Prasad @ Kamal Yadav Resident
of Village + P.O. & P.S. Alauli District – Khagaria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dronacharya, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 10-02-2017

Heard Mr. Dronacharya, learned counsel appearing on
behalf of the petitioner and Mr. Bishweshwar Ram, learned counsel
appearing on behalf of the contesting respondents.

By the impugned order, the learned court below has turned
down the prayer of the defendant-petitioner for recalling the order by
which the suit has been posted for ex parte hearing against the
defendant.

Mr. Dronacharya, learned counsel for the petitioner has
submitted that the petitioner was prevented by sufficient reason as he



was suffering from suspected cancer and he was under treatment with regard to which the medical documents substantiating the plea were also filed before the learned court below. It has been further submitted that the learned court below without going into the sufficiency of the cause as furnished by the petitioner has arbitrarily and mechanically rejected the prayer and directed for ex parte proceeding.

Learned counsel for the contesting respondents, however, has submitted before the Court that in view of the provision as contained under Order 9 Rule 11 C.P.C. the court has the jurisdiction to pass the order impugned. Learned counsel for the contesting respondents has further supported the impugned order.

After considering the submissions and perusal of the materials on record including the impugned order, it is manifest that the suit was posted for ex parte hearing by order dated 19.02.2013. However, the petition (Annexure-1) was filed on behalf of the defendant-petitioner on 19.03.2013 itself praying for recall of the said order. The petitioner assigned the explanation for his non-appearance on 19.02.2013 and in support of the same had produced the medical documents. It does not appear that the learned court below has at all taken into consideration those documents which have also been annexed with the present application. This Court finds that the learned court below has acted with material irregularity in passing the



impugned order refusing the prayer of the petitioner for recall of the earlier order dated 19.02.2013 fixing the suit for ex parte hearing. This Court also finds that the petitioner has furnished cogent explanation for non-appearance on 19.02.2013 and the same is acceptable. In any view of the matter, as the suit has been filed for declaration of title over immovable property, in such a case the endeavor of the court should generally be to decide the matter on merits and not by default or by way of ex parte proceeding.

In result, the present application is allowed and the impugned order passed by the learned court below is set aside. The application (Annexure-1) dated 19.03.2013 is allowed and the order dated 19.02.2013 posting the suit for ex parte hearing is recalled. The petitioner is allowed to participate in the proceeding of the suit in accordance with law.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	18.02.2017
Transmission Date	

