

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No. 88 of 2015

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1. Ramawati Devi, Daughter of Late Baidyanath Singh
2. Sunita Devi, Daughter of Late Baidyanath Singh
3. Rinku Kumari, Daughter of Late Baidyanath Singh All above are Resident of Village- Dhongaha, P.O.- Bajahiyan, Police Station- Dariyapur, District- Saran at Chapra.

.... Petitioners

Versus

1. Sona Devi, Wife of Late Kanhaiya Singh
2. Shesh Narayan Singh, Son of Late Kanhaiya Singh
3. Krishna Narayan Singh, Son of Late Kanhaiya Singh
4. Gyanti Devi, Daughter of Late Kanhaiya Singh All are residents of Village- Chainpurwa, P.O.- Narao, Police Station- Awatar Nagar, at present Trilok Chak, P.O. and P.S.- Dighwara, District- Saran at Chapra.

.... Opposite parties

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Appearance :

For the Petitioner/s : Mr. Bindhyachal Singh, Adv.
Mr. Kumar Manvendra, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT
Date: 04-08-2017

Heard learned counsel for the petitioners and perused the record.

Petitioners are aggrieved by the order dated 07.09.2011 passed by the Additional District Judge, F.T.C. V, Saran at Chapra in Misc. Appeal No. 32 of 2006 by which and whereunder the learned Additional District Judge allowed the Misc. Appeal No. 32 of 2006 setting aside the order dated 07.07.2006 passed by the Munsif in Misc. Case No. 06 of 1998.

The record goes to show that petitioners filed Title Suit



No. 230 of 1994 against the opposite parties for declaration of their right, title and possession and the notices were issued in the aforesaid title suit through registered post and subsequently, the publication of notice was made in weekly Jan Adalat newspaper but even then the opposite parties did not appear and thereafter, the learned Munsif proceeded to hear the matter ex parte and subsequently, the suit was decreed ex parte vide order dated 17.02.1998. However, within one month of passing order dated 17.02.1998, the opposite parties filed petition under Order 9 Rule 13 and Section 115 of the C.P.C. for setting aside the order dated 17.02.1998 and on the basis of aforesaid petition, Misc. Case No. 06 of 1998 was registered. However, the learned Munsif by passing detailed order dated 07.07.2006 dismissed the aforesaid petition filed under Order 9 Rule 13 of the C.P.C. and, thereafter, the aforesaid order of learned Munsif was challenged by the opposite parties in Misc. Appeal No. 32 of 2006 which was allowed by the learned Additional District Judge passing impugned order.

Learned counsel appearing for the petitioners submits that learned Additional District Judge failed to take note of this fact that in original suit, not only registered notices were sent but the notices were published in newspaper and after taking note of the aforesaid fact, the learned Munsif accepted the aforesaid service. He further submitted



that the learned Additional District Judge set aside the order passed in Misc. Case No. 06 of 1998 only on the ground that lis of the parties should be decided on merit but failed to take note of this fact that the opposite parties deliberately avoided their appearance in Title Suit No 230 of 1994.

Having heard the aforesaid contention, I went through the record. I find that learned Additional District Judge having considered the evidences available on the record of Misc. Case No. 06 of 1998 came to conclusion that summons were not validly served upon the opposite parties. The learned Additional District Judge has mentioned in his impugned judgment that the learned Munsif was not satisfied with the service of notice but subsequently, he accepted the service upon the opposite parties and even then he passed order for publication of gazette. The learned Additional District Judge also noticed in his judgment that the newspaper, in which the notice was published, was not widely circulated in the area in which the opposite parties were residing and moreover, the said newspaper was a weekly newspaper and publication of notice in weekly newspaper is not permissible under the law because Order 5 Rule 20 (1-A) prescribes the publication of notice in daily newspaper. In the present matter, admittedly, the notice was published in weekly newspaper but learned Munsif failed to take note of the said fact and committed error in



dismissing the miscellaneous case. Therefore, I find that the learned Additional District Judge has passed a well discussed judgment and there is no need to interfere into the impugned judgment.

On the basis of aforesaid discussions, I am of the opinion that there is no merit in this revision petition and accordingly, this revision petition stands dismissed on admission stage itself. However, since the petitioners had filed Title Suit No. 230 of 1994 in the year 1994, the concerned court should expedite the trial of aforesaid title suit and try to dispose of the same as early as possible.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	11.08.2017
Transmission Date	N.A.

