

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5616 of 2011

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JAI NARAYAN YADAV, son of Sri Rajadhar Yadav, resident of village Kachhra, P.O. Bankatta, P.S. Benipatti, District-Madhubani

... .. Petitioner/s

Versus

1. WOKIL KAMAT Son of Bhuneshwar Kamat, resident of village-Bankatta, P.O. Bankatta, P.S. Benipatti, District-Madhubani
2. Ram Ekbal Kamat
3 (I) Jay Kumari Devi, wife of Late Ram Balak Kamat
3.(II).n Babulu Kamat
3(III), Raju Kamat
3(IV) Pintu Kamat
3(V) Guniya Kumar8i
3(VI) Rani Kumari, All minor under the Guardainship of mother Jay Kumari Devi
All of them are resident of village Bankatta, PO Bankatta, P.S. Banipatti, District Madhubani

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramesh Kumar ChoudharyRAMESH
KUMAR CHOUDHARY
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

7 11-10-2017 Petitioner is the plaintiff.

2. This application has been filed under Article 227 of the Constitution of India against an order, dated 20.01.2011 passed in Misc. Appeal No. 07 of 2008 by the learned Additional District Judge, F.T.C-IV, Madhubani, whereby he has allowed the appeal preferred by the respondents against an order, dated 21.06.2008 passed by the learned Additional Munsif, Madhubani in Misc. Case No. 03 of 2008. The said Misc. Case No. 03 of 2008 was filed by the contesting



respondents under Order 9 Rule 13 and Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code), seeking setting aside of an *ex parte* judgment and decree dated 30.04.2004.

3. The order passed by the learned First Additional Munsif in Misc. Case No. 03 of 2008 has been brought on record by way of Annexure-1 to this application, from which it appears that the said application has been rejected only on the ground of limitation. The reason, which has been assigned in the said order is that against the judgment and decree dated 30.04.2004, Misc. Case was filed on 09.03.2008, i.e., more than three years after the said judgment and decree, without any application of condonation of delay. Accordingly, at the stage of admission itself, learned Additional Munsif, Madhubani dismissed the said Misc. Case No. 03 of 2008. The said order has been set aside by the appellate Court by the impugned judgment and order on the ground that the Court below passed the order without application of judicial mind.

4. Learned counsel appearing on behalf of the petitioner has submitted that the learned Additional Munsif had rightly rejected the application, seeking setting aside of the *ex parte* judgment and order, the same being barred by limitation.



He has drawn my attention to Article 123 of the Schedule to Limitation Act, 1963 (hereinafter referred to as the Act) to submit that limitation period for filing an application to set aside the decree passed *ex parte* is only 30 (thirty) days and, therefore, there was no illegality or infirmity in the order passed by the learned Additional Munsif. He has accordingly, submitted that the appellate Court below wrongly interfered with the said order.

5. Language of Article 123 of the Act is clear. It provides period of limitation of 30 days for filing an application to set aside a decree passed *ex parte* or to rehear appeal *ex parte*, but the time from which the period begins to run has been prescribed as the 'date of the decree' or 'where the summons for notice was not duly served, from when, the applicant had knowledge of the decree'.

6. It is not evident from the order of the learned Additional Munsif that the said application seeking setting aside of the abatement was filed beyond 30 days from the date the contesting respondents acquired knowledge about the passing of the *ex parte* judgment and decree. In such circumstance, therefore, the interference by the appellate Court by passing the impugned order, is justified. The impugned order does not



require interference.

7. As a natural consequent of the order, which is impugned in the present case, the concerned Court shall be required to pass and order afresh in Misc. Case No. 03 of 2008 on the application filed by the concerned respondents under Order 9 Rule 13 of the Code.

8. It is stated at the bar that the Sub Divisional Court, Benipatti in the district of Madhubani has now territorial jurisdiction over subject matter. Learned Munsif, Benipatti is directed to expedite disposal of said Misc. Case No. 03 of 2008 and dispose it of within a period of six months from the date of communication of the present order.

8. Learned counsel for the petitioner submits that no separate notice will be required to be issued to him in the said Misc. Case No. 03 of 2008 and the petitioner shall appear before the Court below by way of Vakalatnama.

9. This application stands disposed of accordingly.

(Chakradhari Sharan Singh, J)

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