

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.128 of 2015

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Ramraj Kumar son of Shree Raghubansh Sharma resident of village-Penta, P.S. Ghosi and District-Gaya.

.... Petitioner/s

Versus

1. Bagedan Prasad son of late Brijnandan Prasad.
2. Rampati Devi wife of Bagedan Prasad, both are resident of Mohalla Moriyaghat, P.S. Kotwali and District Gaya and at present resident of village-Dariagaon, P.S. Baddi (Sasaram) and District-Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Partha Sarthy, Adv.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 18-01-2017

Heard Mr. Partha Sarthy, learned counsel for the petitioner. Learned counsel for the petitioner has made his submissions on merits as well of this revision application along with the I.A. No. 66 of 2017 which has been filed for stay of the further proceeding of the suit.

This revision application has been filed on behalf of the plaintiff-petitioner praying for setting aside the order passed in the Misc. Case. No. 36 of 2015 (10 of 2006) by which the learned court below has allowed the prayer of the defendant-opposite parties for setting aside the ex parte decree passed in the suit.

The suit was filed for specific performance of contract



against the defendant-opposite parties. Admittedly, the suit was decreed ex parte on 18.08.2003. The defendant-opposite parties filed a petition thereafter upon which the Misc. Case No. 36 of 2015 (10 of 2006) was initiated. The learned court below, after considering the pleadings and evidence of the parties, has allowed the Misc. Case No. 36 of 2015 (10 of 2006) and set aside the ex parte decree passed in the suit by the impugned order.

Mr. Partha Sarthy, learned counsel for the plaintiff-petitioner has submitted that the learned court below has not taken into consideration the evidence led on behalf of the parties including the oral evidence on behalf of the defendant-opposite parties (petitioner in the miscellaneous case) which clearly shows that the defendant-opposite parties had the knowledge of the suit. It has also been contended that there was valid service of summons upon the defendant-opposite parties and the learned court below in the suit after considering the material including the report of the process server had recorded the fact regarding the valid service of summons. Learned counsel has also submitted that the defendant-opposite parties is bent upon to harass the plaintiff-petitioner inasmuch as he executed the sale deed of the suit land in favour of his wife after the execution of the agreement for sale in favour of the plaintiff-petitioner.

After considering the submissions and the perusal of the



impugned order, it is manifest that the learned court below has passed the order after considering the material evidence adduced on behalf of the parties in the miscellaneous proceeding. The learned court below has also taken into notice the fact that the postal peon was not examined in support of the report regarding refusal of the notice by registered post. It has been further also taken into notice that no steps for substituted service of notice was taken. Considering the totality of the facts and circumstances, the learned court below has exercised its discretion in allowing the prayer as made on behalf of the defendant-opposite parties after imposing cost. In the background of the aforesaid facts, this Court is not persuaded to hold that the learned court below has committed error of jurisdiction or material irregularity in passing the impugned order.

This revision application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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