

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.211 of 2013

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Saadat Kamal

.... Petitioner/s

Versus

Sultan Ahmad

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

7 22-02-2017 Heard the learned counsel, Mr. Ashok Kumar for the petitioner and the learned counsel, Mr. Raghunandan Kumar Singh for the respondent.

Perused the order passed by the trial court as well as by the lower appellate court impugned in this Civil Revision application.

It appears that the suit was dismissed on 10.09.1996 on the ground that nobody appeared when the suit was called on. The petitioner then filed miscellaneous case for restoration of the Title Suit No.106 of 1993 being Misc. Case No.73 of 1996. The trial court rejected the miscellaneous case holding that the plaintiff is not diligently prosecuting the suit. The plaintiff-petitioner thereafter filed miscellaneous appeal before the lower appellate court. The lower appellate court considered the fact that in fact, the suit has not been filed by the plaintiff and pairvi has not being



done by the plaintiff herself.

It is admitted fact that suit filed by the plaintiff was at the very initial stage. There is no provision in C.P.C. for filing hajiri or doing pairvi. Since the case was at the very initial stage, there was no question of calling the suit for hearing arises. From perusal of the order dated 10.09.1996, it appears that the court below only held that the defendant appeared and nobody appeared on behalf of the plaintiff and no pairvi has been done. It appears that the plaintiff has lost her interest and the court below dismissed the title suit.

As stated above, both the courts below have not considered the fact that for what purpose, the suit was fixed on 08.09.1996. What for the suit was called for. What step the plaintiff was required to do on the said date. Under which provision the parties were required to file hajiri. Whether the plaintiff has not complied the order of the court below. Nothing has been stated by the trial court and only said that when the suit is called, nobody appeared on behalf of the plaintiff and, therefore, the court below presumed that the plaintiff has got no interest to prosecute the suit.

In my opinion, therefore, the trial court itself has passed the order dismissing the suit on surmises and conjectures. The



lower appellate court also without considering the legal position has dismissed the miscellaneous appeal.

Thus, the order passed by both the courts below i.e. order dated 29.11.1997 passed by trial court in Misc. Case No.73 of 1996 and the order passed by the appellate court in Misc. Appeal No.5 of 1998 dated 12.08.2013 are hereby set aside. The order dismissing the plaintiff's suit i.e. dated 10.09.1996 is hereby set aside and the plaintiff's suit is restored to its original file.

Accordingly, this Civil Revision application is allowed.

(Mungeshwar Sahoo, J)

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