

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.437 of 2016

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1. Jagdamba Pd. Mishra, S/O Late Sarbdeo Pd. Mishra, R/O Vill. & P.O. Narainpur, P.S.- Bagaha, Distt.- West Champaran

.... Appellant/s

Versus

1. Sunaina Devi, W/O Late Poshu Yadav
2. Nisha Devi, D/O Late Poshu Yadav
3. Om Prakash Yadav
4. Jai Prakash Yadav
5. Gautam Yadav
6. Piralal Yadav
7. Ravindra Kumar Yadav
8. Rakesh Yadav All S/O Late Poshu Yadav, R/O Vill.- Narainpur, P.S.- Bagaha, Distt.- West Champaran

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Dubey

For the Respondent/s : Mr. P.N. Mishra

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

4 29-11-2017

Heard both sides.

The petitioner has filed this Civil Misc. petition against the order dated 08.03.2016 passed by the learned Additional District Judge-III, Bagaha, West Champaran in M. A. No. 03/2015 whereby the learned Additional District Judge set aside the order dated 06.02.2015 passed by learned Sub-Judge-II, Bagaha in Misc. case No. 11 of 2006 by which the learned Sub-Judge has dismissed the petition under Order 9 Rule 13 of the Code of Civil Procedure for setting aside ex parte judgement in Title Suit No. 17 of 1991.



The learned counsel for the petitioner assailed the order on the ground that Title Suit No. 17 of 1991 was filed for declaration of right, title of the plaintiff/ petitioner over the suit property and for recovery of possession. During the pendency of the suit, some of the respondents entered into compromise with the petitioner/ plaintiff but the respondents did not get any notice and the suit was decreed on compromise as well as ex parte against the respondents. The learned counsel for the petitioner submits that the respondents have full knowledge about the pendency of Title Suit No. 17 of 1991 and this fact is crystal clear from the fact that the respondent/defendant filed written statement in Title Suit No. 16 of 1998 in the year 2003 in which he has stated that he had knowledge about the pendency of Title Suit No. 17 of 1991. The written statement was filed in Title Suit No. 16 of 1998 after restoration of Title Suit No. 17 of 1991, which was earlier dismissed for default, but the learned Additional District Judge did not appreciate the facts. Order 9 Rule 13 of the C.P.C. says that ex parte decree cannot be set aside on mere irregularity in service of notice and without showing the fact that the defendant had no knowledge and he was duly prevented from appearing on the date fixed for hearing in the suit but the written statement filed by the defendant in Title Suit No. 16 of 1998, that too after restoration of



Title Suit No. 17 of 1991, shows that the defendant had full knowledge about the pendency of the suit. It is further submitted that defendant did not make other defendants as party in the petition filed under Order 9 Rule 13 of the C.P.C.

On perusal of the order of the learned Additional District Judge, I find that the learned Additional District Judge rightly set aside the order dated 06.02.2015 by Sub-Judge-II in Misc. case No. 11 of 2006. Title Suit No. 17 of 1991 was dismissed for default but after restoration the court should have issued notice to the defendants but no notice was issued to any of the defendants, although some of the defendants thereafter entered into compromise but without service of notice to defendants, respondents No.1 to 8 herein, the suit was fixed for ex parte hearing. Thus I do not find any jurisdictional error in the order and judgement.

Accordingly, I do not find any merit in this Civil Misc. petition and the same is dismissed.

(Prabhat Kumar Jha, J)

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