

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.600 of 2017

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1. Bina Keshri @ Bina Devi W/o Sri Anil Prasad keshari, daughter of Satya Narayan Keshri Resident of Village- Chowk Bazar, Near Rirpa Rampur, P.S.- Kotwali, District- Munger, at Present Address sector 80 New Quarter No. 3/90, Bokaro Steel City (Jharkhand).

.... Appellant/s

Versus

1. Gopal Kr. Modi Son of late Vidhyanath Modi
2. Smt. Rita Devi Wife of Sri Gopal Kr Modi both the resident of Mohalla Shayampur, P.S. Kotwali munger, Sub Post Office Basudevpur, within Town Munger sub Registry and District Munger.
3. Lalan Pd. Keshri @ Shushil Prasad Keshri
4. Dablu Pd. Keshri both sons of late Satyanarayan Pd. keshri resident of Mohalla:- Chowk Bazar, Kispro Rampur, Police Station Kotwali District- Munger
5. Bijay Pd. Keshri @ Babloo Pd. Keshri Son of late Satyanarayan Pd. Keshri Resident of Mohalla- chow Bazar, Kispro Rampur, Police Station- Kotwali, District- Munger.
6. Shanti Devi widow of late Satya Narayan Pd. Keshri both resident of Mohalla- chowk Bazar, near Rampur Police Kotwali, District- Munger.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Deep Nishi
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

3 10-01-2018 Heard both sides.

The petitioner filed this petition for setting aside the order dated 16.01.2017 passed in Title Suit No.67 of 2001.

Petitioner is defendant No.5 in Title Suit No.67 of 2001. The petitioner could not appear in the suit as according to the petitioner she did not receive any notice. The petitioner filed a petition on 08.12.2016 to recall the order dated 15.12.2008 fixing



the case ex.-parte against the petitioner and allowed him to file written statement. But the learned Sub Judge rejected the petition of the petitioner on 16.01.2017. Being aggrieved by the aforesaid order, the petitioner preferred this petition.

The learned counsel for the petitioner submits that there is nothing on record to show that the petitioner ever received any notice of Title Suit No.67 of 2001. Notice was sent on wrong address of the petitioner. Petitioner did not get good relation with his other family members and that why he did not get knowledge about the pendnecy of the suit. But the learned Sub Judge without any cogent reason rejected the petition for recalling the ex.-parte hearing of the suit.

Mr. Harshwardhan Sahay, the learned counsel, appearing on behalf of the respondents-plaintiffs very fairly submitted that the suit should be decided on merit on contest but it is dilatory tactics of the petitioner-defendant No.5 who did not appear even after having knowledge of the suit. Now, the defendant No.5 has appeared, if he is allowed to contest the suit, a direction be issued to dispose of the suit within two months.

Having considered the submissions of both sides, I find that the learned Sub Judge has committed jurisdictional error by rejecting the petition of the petitioner-defendant No.5 for recalling



the order dated 15.12.2008 fixing the suit for ex.-parte hearing. There is nothing on record to show that the petitioner received any notice issued against him. There is no material on record to show that the petitioner having knowledge about the pendency of the suit and he did not appear in spite of having knowledge about the pendency of the suit. Accordingly, this Civil Misc. petition is allowed and the order dated 16.01.2017 passed in Title Suit No.67 of 2001 is set aside and the petitioner is allowed to contest the suit by filing written statement within two weeks from the date of receipt of this order. The learned Sub Judge shall make all efforts to dispose of the suit within four months thereafter.

(Prabhat Kumar Jha, J)

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