

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.283 of 2018**

Amit Kumar Son of Rajeshwar Tiwari Resident of Village-Bhawanipur, P.O.-  
Thikaha Bhawani, P.S.-Sangrampur, District-East Champaran (Bihar).

... .. Defendant No.5-Opposite Party-Petitioner  
Versus

1. Sunil Kumar Son of Rajeshwar Tiwari Permanent Resident of Village-Bhawanipur, P.O.-Thikaha Bhawal, P.S.-Sangrampur, District-East Champaran (Bihar) at Present Residing at House No. 64(B), Laxmi Nagar, New Delhi-1100092.

... ..Respondent 1<sup>st</sup> Set

2. Rajeshwar Tiwari Son of Late Bacchu Tiwari.
3. Smt. Kanti devi Wife of Rajeshwar Tiwari
4. Anil Kumar Son of Rajeshwar Tiwari Sl. No. 2 to 4 are Permanent Resident of Village-Bhawanipur, P.O.-Thikaha Bhawal, P.S.-Sangrampur, District-East Champaran (Bihar), At Present Residing at Sakin Pradeep Hotel, Balisarai, P.S.-Nagar Motihari, District-East Champaran (Bihar)
5. Deepak Kumar @ Ajay Kumar Son of Rajeshwar Tiwari Permanent Resident of Village-Bhawanipur, P.O.-Thikaha Bhawal, P.S.-Sangrampur, District-East Champaran (Bihar) at Present Residing at Jay Mangal Anupam Champaran Mahila Mahavidyalaya, New Agarwa, P.O.-Mothiarh, P.S.-Motihari, District-East Champaran (Bihar).

... ..Defendants-Opposite Parties-Respondents 3<sup>rd</sup> Set

6. Abhishek Kumar Son of Rajeshwar Tiwari Resident of Village-Bhawanipur, P.O.-Thikaha Bhawani, P.S.-Sangrampur, District-East Champaran (Bihar).

... ..Plaintiff-Opposite Party-Respondent 4<sup>th</sup> Set

**Appearance :**

For the Appellant/s : Mr. Prabhat Kumar Dipak  
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**  
**ORAL ORDER**

2      09-10-2018

Heard the learned counsel for the petitioner.

The petitioner has filed this civil miscellaneous petition against the order dated 06.11.2017, passed in Misc. Case No.09 of 2017 by which the learned Sub-Judge-VIII, Motihari allowed the petition of the respondent filed under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure and set aside the judgment and decree passed ex-parte on 30.07.2016 in Partition Suit No.1133 of 2014.



The learned counsel for the petitioner submits that no notice was served on the petitioner in the miscellaneous case and the miscellaneous case was fixed for ex-parte hearing on mere assumption that the petitioner was appearing in the final proceeding but petitioner was knowingly not appearing in the miscellaneous proceeding but I find from the order dated 28.10.2017 that the service report of notice served on the petitioner was received and the service was accepted as valid service. The court recorded the finding that the petitioner did not appear in the miscellaneous case although he was appearing in the proceeding for preparation of final decree pending in the same court. From the perusal of the record, it appears that the learned Sub-Judge found that no notice was served on the respondents on the correct address and the respondents had no knowledge about the pendency of Partition Suit No.1133 of 2014. Accordingly, after appreciating all the facts set aside the ex-parte judgment and decree passed in Partition Suit No.1133 of 2014.

I do not find any error in the order impugned. Accordingly, this civil miscellaneous petition is dismissed.

**(Prabhat Kumar Jha, J)**

S.KUMAR/-

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|

