

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18865 of 2013

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Radhey Shyam Choudhary @ Parshuram Choudhary son of Late Ramchalitar Choudhary, presently residing at C/O Sri Ramji Paswan, Village & P.O. Saine, P.S. Belsar, District Vaishali.

.... Petitioner

Versus

1. Anil Kumar Choudhary son of Late Ram Naresh Choudhary, resident of Mohalla- Hathrasganj, P.O. Hajipur, P.S. Hajipur Town, District- Vaishali, present address Andarkila, Nakhash, P.O. Hajipur, P.S. Town Hajipur, District- Vaishali.
2. Beliram Choudhary son of Late Ram Chalitar Choudhary resident of Mohalla- Hathrasganj, P.O. Hajipur, P.S. Hajipur Town, District- Vaishali.
3. Sanjay Kumar Choudhary son of Chandradeo Choudhary, resident of Mohalla- Hathrasganj, P.O. Hajipur, P.S. Hajipur Town, District- Vaishali, present address Andarkila, Nakhash, P.O. Hajipur, P.S. Town Hajipur, District- Vaishali.
4. Smt. Kanti Devi daughter of Late Ramchalitar Choudhary, wife of Amira Choudhary resident of village- Ataullahpur, P.O. and P.O. Lalganj, District- Vaishali.
5. Smt. Ram Sakhi Devi daughter of Late Ram Chalitar Choudhary, wife of Saryug Prasad resident of Mohalla Juran Chapra Main Road, P.O. Brahampura, P.S. Muzaffarpur Town, District-Muzaffarpur.
6. Smt. Kalawati Devi daughter of Late Ram Chalitar Choudhary, wife of Krishna Mohan Prasad resident of Mohalla Juran Chapra Main Road, P.O. Brahampura, P.S. Muzaffarpur Town, District-Muzaffarpur.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Bipin Kumar Sinha, Advocate
For the Respondent/s : Mr. Dhanendra Choubey, Advocate
Mr. Vijay Kumar @ V.K. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 29-08-2018

Petitioner before this court is defendant no.2 in Partition Suit No. 373 of 2000 pending in the court of Sub-Judge VIII, Hajipur (Vaishali). He has filed this writ application for quashing the order dated 24.06.2013 whereby and whereunder the learned court below refused to recall the order dated 18.11.2010 whereunder the suit was



fixed for ex-parte hearing.

2. Heard learned counsels for the petitioner and the respondents.

3. It has been submitted that the respondent no.1 filed the suit for partition of joint family property against the petitioner and others. This petitioner was residing at different place. He was posted at Vaishali Kshetriya Gramin Bank, Prataptand Branch from August 2005 to 5th June 2011. The notices were issued against the petitioner on the address given in the plaint and none of the notice was served on him. The suit was fixed for ex-parte hearing in absence of the petitioner. The petitioner got knowledge about the suit from one of his villagers and after inspection of record he filed a petition to recall the said order. The learned court below without considering the submission of petitioner and examining the service report rejected the petition of the petitioner.

4. Learned counsel for the respondents, on the other hand, submits that the petitioner was noticed also through Gazette publication and when the defendant did not appear, the suit was fixed for ex-parte hearing.

5. Be that as it may, the petitioner admittedly was posted at a different place in connection with his bank service during the relevant period. Now he wants to contest the suit by filing written



statement. The court below rejected the prayer of the petitioner observing that no written statement was filed by that time which shows the negligence of the petitioner in contesting the suit. This observation of court below is not sustainable in view of the fact that he had no occasion to file written statement as the order was not recalled.

6. In the facts and circumstances stated above, the impugned order refusing to recall the order dated 18.11.2010 fixing the case for ex-parte hearing is set aside and this writ application is allowed subject to payment of cost of Rs.5,000/- by the petitioner to the plaintiffs before the court below.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	31.08.2018
Transmission Date	

