

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.7312 of 2013

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Smt. Basanti Devi W/O Sri Gopal Narayan Singh, R/O Village- Ashopur, P.S.-
Danapur, District- Patna, at present residing at Murlichak Jagdeopath, P.S.-
Gardanibagh (Hawai Adda), District-Patna.

.... Petitioner

Versus

1. Dinesh Kumar S/O Sri Jawahar Rai, R/O Mohalla- Naya Tola Saguna, P.S.-
Danapur, District- Patna.
2. Bijendra Kumar S/O Sri Narendra Rai, R/O Mohalla- Naya Tola Saguna, P.S.-
Danapur, District- Patna.

.... Respondents

with

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Civil Writ Jurisdiction Case No. 5430 of 2015

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Smt. Basanti Devi W/o Sri Gopal Narain Singh, resident of Ashopur, P.S.-Danapur,
District-Patna at present Murlichak Jagdeo Path, P.S. -Gardanibagh (Hawai Adda),
District-Patna.

.... Petitioner

Versus

1. Dinesh Kumar S/o Sri Jawahar Rai
 2. Bijendra Kumar S/o Sri Narendra Rai
- Both resident of Naya Tola, Saguna, P.S.- Danapur, District-Patna.

.... Respondents

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Appearance :

(In CWJC No.7312 of 2013)

For the Petitioner/s : Mr.Nawal Kishore Prasad, Advocate

For the Respondent/s : Mr.Jeetendra Narayan, Advocate

(In CWJC No.5430 of 2015)

For the Petitioner/s : Mr. Nawal Kishore Prasad, Advocate

For the Respondent/s : Mr. Mr.Jeetendra Narayan, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 21-08-2018

These two writ applications have been filed against orders
dated 13.02.2013 and 12.01.2015 passed by Munsif, Danapur, Patna
in Miscellaneous Case No.01 of 2012 and so both the applications are
being disposed of by this common order.



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

3. The petitioner Basanti Devi filed Title Suit No.111 of 1995 which was dismissed in default. Thereafter the petitioner filed a Miscellaneous Case No.04 of 2008 for its restoration which was also dismissed in default on 05.06.2009. Thereafter the petitioner filed another Miscellaneous Case No.01 of 2012 for restoration of Miscellaneous Case No.04 of 2008. In the said miscellaneous case, the respondents in spite of notice did not appear and so the case was fixed for ex-parte hearing. Subsequently the respondents appeared and filed a petition to recall the order dated 03.09.2012 whereunder the case was fixed for ex-parte hearing. The prayer of respondents was allowed and the respondents were permitted to contest the case subject to payment of cost of Rs.700/- as per order dated 13.02.2013. The petitioner has filed C.W.J.C. No.7312 of 2013 for setting aside the said order.

4. During pendency of miscellaneous case as well as pendency of C.W.J.C. No.7312 of 2013, the petitioner did not produce any witness and so the Miscellaneous Case No.01 of 2012 was dismissed in default on 12.01.2015. The petitioner filed C.W.J.C. No.5430 of 2015 for setting aside the said order.

5. After hearing both sides and on perusal of documents on



record, I find that the respondents had gone outside the State in connection with their livelihood and on getting information about pendency of miscellaneous case they appeared and filed petition to recall the order fixing the case for ex-parte hearing. The court below on being satisfied with the reasons assigned for not appearing earlier allowed the petition of the respondents subject to payment of cost.

6. In view of above facts and circumstances, I find that the court below has not committed any jurisdictional error in allowing the petition of the respondents to contest the case. Thus, C.W.J.C. No.7312 of 2013 appears devoid of merit and is, accordingly, dismissed.

7. So far C.W.J.C. No.5430 of 2015 is concerned, it has been filed for setting aside the order whereunder Miscellaneous Case No.01 of 2012 was dismissed. It appears that after filing of C.W.J.C. No.7312 of 2013, the case remained pending for evidence of petitioner. It has been submitted that the petitioner is an old lady and she was unable to move to the court and so a petition was filed for appointment of an Advocate Commissioner to record the evidence of petitioner. The said petition was rejected by the court below on 05.10.2012 with a direction to the petitioner to examine other witnesses and the matter of appointment of Advocate Commissioner would be considered at later stage. According to the petitioner, she



had no knowledge about the said order and so no witness could be produced in the case.

8. In the facts and circumstances of the case and for the ends of justice, the impugned order dismissing the Miscellaneous Case No.01 of 2012 is set aside and C.W.J.C. No.5430 of 2015 is, accordingly, allowed. The Miscellaneous Case No.01 of 2012 is directed to be restored to its original file.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	25.08.2018
Transmission Date	

