

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8618 of 2012

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1. Maheshwar Pandey Son Of Late Surajdeo Pandey Resident Of Village Belao P.S. Barbiga District Sheikhpura
2. Lala Pandey Son Of Late Surajdeo Pandey Resident Of Village Belao P.S. Barbiga District Sheikhpura
3. Most. Maya Devi Wife Of Vedmani Pandey Resident Of Village Belao P.S. Barbiga District Sheikhpura
4. Vermani Pandey Son Of Maheshwar Pandey Resident Of Village Belao P.S. Barbiga District Sheikhpura
5. Ramshrey Pandey Son of Maheshwar Pandey
6.. Vinod Pandey Son Of Maheshwar Pandey Resident Of Village Belao P.S. Barbiga District Sheikhpura
7. Pankaj Pandey Son Of Maheshwar Pandey Resident Of Village Belao P.S. Barbiga District Sheikhpura Petitioner/s

Versus

1. Dharmshila Devi W/o Brajendra Pandey, D/o late Ram Padarath Pandey Resident of Village- Kaundi, P.O. Daruara, P.S. Noorsarai, District- Nalanda.
2. Deji Kumari D/o late Sachchidanand Pandey, W/o Suman Kumar Pandey Resdient of Village- Makdumpur, P.O. Chabelapur (Bihar Sharif), P.S. Bihar Sharif, District- Nalanda.
3. Devi Kumari D/o late Sachchida Nand Pandey, W/o Bhola @ Pravin Pandey Resident of Village- Kamta, P.O. Hathiyawan, P.S. Sheikhpura, District-Sheikhpura.
4. Chanchal Kumari D/o late Sachchidanand Pandey Resident of Village- Belao, P.O. & P.S. Barbiga, District- Sheikhpura.
5. Shobha Devi W/o Madhusudan Pandey, D/o late Ram Padarath Pandey Resident of Village- Latu, P.O.- Hulasganj, P.S. Hulasganj, District- Jehanabad.
6. Most. Manorama W/o late Sachchidanand Pandey, S/o late Ram Padarath Pandey Resident of Village & P.O. Belao, P.S. Barbiga, District- Sheikhpura.
7. Arvind Kumar Kaushik S/o late Ram Padarath Pandey Resident of Village & P.O. Belao, P.S. Barbiga, District- Sheikhpura.
8. Smt. Kamla Devi W/o late Chandrika Dutt Sharma
9. Ajay Kumar Kaushik S/o late Chandrika Dutt Sharma Both Residents of Village & P.O.- Belao, P.S. Barbiga, District- Sheikhpura.
10. Sarla Devi D/o late Chandrika Dutt Sharma, W/o Ram Swaroop Pandey Resident of Village- Hero, P.O. Nagwan, P.S. Meskaur, District- Nawada.
11. Shambhu Nath Pandey Son Of Late Brijkishore Pandey

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rizwanul Haque
For the Respondent/s : Mr. Ganpati Trivedi, Sr. advocate

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER



17 08-05-2018

Heard both sides.

The petitioners have filed this petition against the order dated 30.03.2012 passed in Title Suit No. 43 of 2009 by the Civil Judge, Senior Division, Sheikhpura whereby the learned Civil Judge rejected the petition of the petitioners/ defendants filed under Order 9 Rule 6 (Rule 7) read with Section 151 of the C.P.C. for recalling the order for ex parte hearing of the suit.

The learned counsel for the petitioners submits that petitioners are defendants. The suit was posted for ex-parte hearing. When the petitioners came to know about the ex-parte hearing of the suit they filed petition on 18.05.2011 for recalling the order for ex-parte hearing of the suit.

The sole question arises for consideration when the suit is posted for hearing the petition under Order IX Rule 6/ Rule 7 of the C.P.C is maintainable?

Admittedly the suit was fixed for ex-parte hearing and after hearing the plaintiffs the suit was fixed for judgement. The petitioners filed a petition on 18.05.2011 for recalling the ex-parte order for hearing the suit. Order 9 Rule 7 of the C.P.C. says that when the suit is fixed for ex-parte hearing and the defendant, at or before such hearing, appears and assigns good reasons for his previous non appearance, he may, upon such terms as the court directs as to costs or otherwise, be heard in answer to the suit as if he had appeared on the day fixed for his appearance but Rule 7 of Order 9 does not speak about the maintainability of a petition under Rule 7 of Order 9 when the suit is fixed for judgement after hearing ex-parte.

It has been held by the Apex Court in the case of ***Bhanu Kumar Jain v. Archana Kumari*** reported in (2005) 1



SCC, while referring to the case of **Arjun Singh v. Mohindra Kumar, AIR 1964 SC 993**, in paragraph 16 that “*Order 9 Rule 7 of the Code postulates an application for allowing a defendant to be heard in answer to the suit when an order posting a suit for ex-parte hearing was passed, only in the event, the suit had not been heard; as in a case where hearing of the suit was complete and the court had adjourned a suit for pronouncing the judgement, an application under Order 9 Rule 7 would not be maintainable*”.

Having considered the facts aforesaid, I find no jurisdictional error or illegality in the order of learned Civil Judge Senior Division. Accordingly, this petition is dismissed.

The petitioners have got remedy after pronouncement of judgement either to file appeal against ex-parte judgement or file petition under Order 9 Rule 13 of the C.P.C. for setting aside the ex-parte judgement.

(Prabhat Kumar Jha, J)

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