

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21998 of 2013

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1. Chandrika Parbat son of Late Anand Kishore Parbat resident of Mohalla - Dahiyawan Yola, P.O. Chapra, P.S. Chapra Town, District – Saran.
 2. Chandra Bhushan Parbat son of Late Anand Kishore Parbat resident of Mohalla - Dahiyawan Yola, P.O. Chapra, P.S. Chapra Town, District – Saran.

... .. Petitioners

Versus

1. Rajendra Prasad Agrawal son of Late Sri Nath Prasad Agrawal resident of Mohalla - Dahiyawan Yola, P.O. Chapra, P.S. Chapra Town, District - Saran
2. Birendra Prasad Agrawal son of Late Sri Nath Prasad Agrawal resident of Mohalla - Dahiyawan Yola, P.O. Chapra, P.S. Chapra Town, District - Saran

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Mahesh Narayan Parbat, Sr. Advocate Mr. Ved Prakash Srivastav, Advocate Mr. Bhanu Prakash, Advocate
For the Respondent/s	:	Mr. Anuj Kumar Shrivastava, Advocate Mr. Rajshekhar, Advocate

CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date : 30-11-2018

Petitioners are plaintiffs in Title Suit No.599 of 2010 pending in the court of Subordinate Judge VIII, Saran at Chapra. They have filed this writ application for quashing the order dated 25.07.2013 whereby and whereunder the learned court below recalled the order which was fixed for judgment and gave an opportunity to the defendants file written statement and contest the suit.

2. Heard learned counsels for the petitioners as well as the respondents.



3. It appears that the petitioners filed the aforesaid suit on 18.09.2010 for specific performance of contract against the defendants. The suit was admitted for hearing on 19.01.2011 and it was transferred to the court of Subordinate Judge VIII, Saran at Chapra. The case was fixed for ex-parte hearing as per order dated 21.01.2011. The court below recorded the evidence of plaintiffs and fixed the case on 31.05.2011 for judgment.

4. The learned counsel for the petitioners submits that the court below has no jurisdiction to recall the date of judgment when it was heard ex-parte and fixed for judgment under the provision of Order 9 Rule 7 of CPC. In support of his contention, the learned counsel relied on ruling reported in AIR 1964 Supreme Court 993 and 1970 BLJR 519.

5. The learned counsel for the respondents, on the other hand, submits that the court below considering the gross irregularity in the trial has rightly given an opportunity to the defendants to contest the case. The learned counsel referred the order sheet to show as to how the trial proceeded before the court below.

6. On perusal of order sheet of court below, it appears that the suit was filed on 18.09.2010 and it was admitted for hearing in the month of January, 2011. The notices were issued



against the defendants but service report was not found satisfactory which is apparent from the perusal of order dated 06.04.2011. The plaintiffs were directed to file requisites for notice on defendants through registered post and on the following day i.e. 21.04.2011 the court below confirmed service report as validly served and fixed the case on 07.05.2011 for appearance of defendants. The plaintiffs filed hajri on the following day (i.e. on 07.05.2011) and the court below adjourned the case to 31.05.2011 for appearance of defendants. The plaintiffs filed a petition on 21.05.2011 (wrongly mentioned as 21.1.11 in the order sheet) and got the date recalled and fixed the case for ex-parte hearing on 23.05.2011. The plaintiffs examined their witnesses on two consecutive dates and after argument the court below fixed the case for judgment on 31.05.2011. The learned counsel for the respondents submitted that the court below had no jurisdiction to recall the date 31.05.2011 without giving any notice to the defendants for fixing the case for ex-parte hearing. The defendants were under impression that the date 31.05.2011 has been fixed for their appearance which is apparent from order dated 07.05.2011. It appears that the learned court below considering the said irregularity has rightly recalled the date fixing the case for judgment and gave an opportunity to the defendants to contest the



case. The provisions cited by the learned counsel for the petitioners are not applicable in the present case in view of the fact that the court below has committed gross error in recalling the date without giving any notice to the defendants.

7. In view of above fact, I do not find any merit in this writ application and is accordingly dismissed.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.12.2018
Transmission Date	

