

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9489 of 2014

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1. Mandodari Devi D/o Late Lakshman Rai
 2. Chandra Deep Rai
 3. Vishwash Rai Both S/o Late Lakshman Rai, Residents of Village Dewadhia, P.O. & P.S. Ekma, District Saran.

.... Petitioner/s

Versus

1. Akshya Lal Sharma
2. Chhotelal Sharma Both S/o Late Ramadhar Sharma
3. Most. Lakhpati Devi W/o Late Ramadhar Sharma
4. Aashapati Devi W/o Lakshuman Thakur and D/o Late Ramadhar Sharma
5. Gyani Devi W/o Sheo Maya Sharma
6. Parasnath Sharma S/o Late Ritu Raj Sharma
- All Residents of Village Dewadhia, P.O. & P.S. Ekma, District Saran.

.....Respondent 1st set

7. Sakaldeep Rai S/o Late Alagu Rai
8. Gupnath Rai
9. Buddhu Rai
10. Ishwar Rai S/o Late Ochhahi Rai
11. Smt. Kamla Devi W/o Babua Prasad Rai and D/o Late Ochhahi Rai, All Resident of Village Dewadhia, P.O. & P.S. Ekma, District Saran.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Nagendra Rai and Navin Nikunj, Advs.
For the Respondent/s : Mr. Bishwajeet Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 23-02-2018

This application has been filed to set aside the order dated 22nd February 2014 passed by the learned Munsif-I, Chapra in Miscellaneous Case No. 15 of 2012 whereby and whereunder the learned Munsif refused to admit the miscellaneous case.

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



3. The facts giving rise to this application are that the respondent 1st set filed Title Suit No. 154 of 1993 against the father of petitioners for declaration of their title over 5 dhurs land as mentioned in schedule-I of the plaint. The said suit after contest was decreed on 03.05.2007 with costs. The cost amount was quantified at Rs.802.45 paisa. The respondent 1st set filed Execution Case No. 4 of 2008 for realization of cost of Rs.802.45 paisa. In the execution case, the decree holder prayed for realisation of cost by putting the land mentioned in schedule-I of the execution petition on auction sale. The land measuring 10 dhurs of plot no. 6714 and 8 dhurs of plot no. 6712 were mentioned in schedule-I of the execution case and the value of said land was assessed at Rs.1,000/-. The execution case proceeded and the land mentioned in the execution petition was sold on auction. The petitioners after getting knowledge about the auction sale, filed Miscellaneous Case No. 15 of 2012 under Order XXI Rule 89 read with section 47 of Code of Civil Procedure. The learned Munsif as per order dated 22nd February 2014 refused to admit the miscellaneous case.

4. Learned counsel for the petitioners submits that the father of these petitioners was an old man suffering from illness since 2008 and he died on 21.01.2012 on account of said ailment. The petitioners were residing outside the village. Out of above petitioners,



petitioner no. 1 is daughter of original defendant, Chandradeep Rai and was residing at her *Sasural*. Petitioner nos. 2 and 3 were residing in West Bengal and Delhi in connection with their livelihood. The petitioner no. 3 is Postal Peon posted at Delhi. The execution case proceeded *ex parte* as neither any notice was issued nor served on the petitioners. The service report on record is collusive. The petitioners had no knowledge about the institution of execution case. The decree holder is a litigant person and he valued the land at a nominal price in the execution petition. The petitioner had assessed the value of said land measuring 5 dhurs at Rs.15,000/- in the year 1993 but in the execution case, the decree holder has valued an area of 18 dhurs which is adjoining to the aforesaid 5 dhurs land at Rs.1,000/- which *prima facie* shows that he anyhow wants to grab the land of the petitioners at a very nominal price. The decree holder even after lapse of more than 10 years has assessed area 18 dhurs at Rs.1000/-. The court below has not given any opportunity to the petitioners to adduce oral or documentary evidence and dismissed the case without considering the submission of the petitioner.

5. The learned counsel for the respondents on the other hand submits that the petitioners are daughter and son of original defendant. The father of the petitioners was contesting the case and so the petitioners had full knowledge about the pendency of



title suit as well as the execution case. The petitioners in spite of knowledge did not appear and so the court below has rightly dismissed the miscellaneous case.

6. From perusal of impugned order it appears that the court below considering the report of process server and Nazir accepted the report as valid service and dismissed the miscellaneous case. The petitioners were not given any opportunity to adduce either oral or documentary evidence. The specific case of the petitioners is that they had no knowledge about the institution of execution case. They were residing at different places quite away from their village. There is nothing on record to show that they were aware about the pendency of execution case.

7. In view of above facts, the impugned order dismissing the case in *limine* is not sustainable and accordingly set aside and this application is allowed. The matter is remitted to the court below to dispose of the matter in accordance with law after giving opportunity to the petitioners.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06/03/2018
Transmission Date	

