

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1431 of 2018

1. Mahesh Manjhi.
2. Mallu Manjhi.
3. Manai Manjhi.
4. Kanhaiya Manjhi.
Sl.Nos. 1 to 4 are Sons of Late Gulabi Manjhi.
5. Most. Gulabia Devi, Wife of Dhanesh Manjhi.
6. Rajesh Kumar Manjhi.
7. Umesh Manjhi @ Umesh Kumar Manjhi.
8. Bideshi Kumar Manjhi
Sl.Nos. 5, 6 and 7 are Sons of Late Dhanesh Manjhi.
9. Kushwanti Devi, Daughter of Late Dhanesh Manjhi.
All are resident of Village- Bhitbherwa, P.O. Bhitbherwa, P.S.
and District- Gopalganj.

... .. Petitioners

Versus

1. Yogendra Pandit, Son of Late Gokhula Pandit.
2. Kamal Pandit, Son of Late Mathua Pandit.
Sl. Nos.1 and 2 are Resident of Village- Bhitbherwa, P.O. Bhitbherwa, P.S.
and District- Gopalganj.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Mrigendra Kumar, Advocate
For the Respondents	:	Mr. Kamala Prasad Roy, Advocate Mr. Satya Ranjan Sinha, Advocate

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

3 12-10-2018 Heard both sides.

The petitioners have filed this civil miscellaneous petition for quashing the order dated 20.02.2017, passed by the learned Sub-Judge-1st, Gopalganj in Misc. Case No.10 of 2017 by which the learned Sub-Judge dismissed the petition of the petitioners filed under Order IX Rule 13 of the CPC on the ground that since the defendants-petitioners appeared and contested the suit by filing WS, the petition under Order IX



Rule 13 of the CPC is not maintainable and the order dated 21.06.2018, passed in Misc. Appeal No.07 of 2017, by which the learned District Judge, Gopalganj dismissed the miscellaneous appeal preferred against the order dated 20.02.2017 on the same ground that the miscellaneous petition itself under Order IX Rule 13 is not maintainable.

The learned counsel for the petitioners submits that Order IX Rule 13 speaks that on any petition in which a decree is passed *ex-parte* against the defendant, the court may hold an enquiry and if the court finds that the summons was not duly served on the defendant and the defendant was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree as against him upon such terms as to costs, payment into the court or otherwise as it thinks fit. It is submitted that the petitioners in fact did not appear in the suit. The signatures of the petitioners were forged on the power as well as on the Written Statements and that amounts to non-appearance of the petitioners in the suit and the suit shall be deemed to have been decided *ex-parte* but I find no force in the submission of the learned counsel for the petitioners. Order IX Rule 13 says that in any case in which a decree is passed *ex-parte* against a defendant, he may apply to



the court by which the decree was passed for an order to set it aside but in the present case the decree is not passed *ex-parte*. The defendants-petitioners appeared and filed Written Statement. The suit was decided on merit on contest. Order IX Rule 13 does not speak about the circumstances in which as claimed by the defendants that their signatures were forged on the power as well as on the Written Statement, therefore, this case does not come within the purview of order IX Rule 13 rather the petitioners have got remedy either to file appeal or suit for setting aside the judgment and decree obtained by practicing fraud.

Considering the facts aforesaid, I do not any merit in this civil miscellaneous petition and the same is accordingly dismissed. Petitioners, if so advised, may file suit or appeal for redressal of their grievance.

(Prabhat Kumar Jha, J)

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