

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.789 of 2010

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Pramod Mishra

.... Petitioner/s

Versus

Ras Narain Kunwar & Ors.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sameer Ranan

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

23 08-08-2018

Heard both sides.

This Civil Revision is filed against the order dated 22.07.2010 passed by learned Sub-Judge-I, Sitamarhi in Title Suit No.173/2004 by which the entire suit has been dismissed under Order IX Rule V of the C.P.C.

The only question arises for consideration in this case is whether the suit can be dismissed as a whole for non-compliance of the earlier order for issuance of summon for defendant no.1, 6 and 7. Under Order-IX Rule V of the C.P.C. which reads as follows -

where, after a summons has been issued to the defendant, or to one of several defendants, and returned unserved, the plaintiff fails, for a period of seven days from the date of return made to the court by the officer ordinarily certifying to the court returns made by the serving officers, to apply for the issue of a fresh summons the court shall make an Order that the suit be dismissed as against such defendant, unless the plaintiff has within the said period satisfied the court that-



- (a) he has failed after using his best endeavours to discover the residence of the defendant who has not been served, or
- (b) such defendant is avoiding service of process, or
- (c) there is any other sufficient cause of extending the time, in which case the court may extend the time for making such application for such period as it thinks fit.

From bare perusal of this provision, it appears that learned court can dismiss the suit against those defendants for whom plaintiff failed to file requisition for fresh summon and not the entire suit should have been dismissed. Therefore, I find that learned Sub-Judge-I, Sitamarhi has committed jurisdictional error in dismissing the entire suit.

Accordingly, the order dated 22.07.2010 passed in Title Suit No.173/2004 is set aside and the Title suit is restored to its original file.

This Civil Revision is allowed.

(Prabhat Kumar Jha, J)

Amit/-

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