

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1429 of 2016**

1. Sabitri Devi, W/o Late Ram Narain Jha,
2. Subhash Chandra Jha, Son of Late Ram Narain Jha,
3. Harish Chandra Jha, Son of Late Ram Narain Jha,
4. Bipin Chandra Jha, Son of Late Ram Narain Jha,
5. Indu Devi, D/o Late Ram Narain Jha, All resident of village -
Nagarpara, P.S. Bihpur, District - Bhagalpur

... .. Appellant/s

Versus

1. Rateneshwar Jha, Son of Late Ram Kinker Jha,
2. Ganeshwar Jha @ Gyaneshwar, Son of Late Ram Kinker Jha,
3. Bachneshwar Jha, Son of Late Ram Kinker Jha, All resident of village -
Nagarpara, P.S. Bihpur, District - Bhagalpur

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ranjan Kumar Jha
For the Respondent/s : Mr.

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER**

4 30-11-2018 Heard the learned counsel for the petitioners.

The petitioners, who are wife, sons and daughter of Late Ram Narian Jha, have filed this Civil Misc. petition against the order dated 02.09.2000 passed in Misc. case No. 1/1986 by which the petition of the petitioners filed under Order IX Rule 13 of the Code of Civil Procedure to set aside the ex parte judgement and decree passed in Title Suit No. 18 of 1968 has been dismissed on the ground that summon was issued to Late Ram Narian Jha at his permanent address and the notice was also published in the daily newspaper but he did not appear in the suit, therefore, the ex parte judgement and decree is not



liable to be set aside and further against the order dated 29.06.2016 passed in Misc. Appeal No. 36 of 2000 by learned Additional District Judge-I, Bhagalpur by which the appeal of the petitioners has been dismissed and the order dated 02.09.2000 passed in Misc. Case No. 1/1986 was confirmed.

The learned counsel for the petitioners submits that Late Ram Narain Jha was one of the defendants in Title Suit No. 18 of 1968 which was decreed ex parte on 06.09.1972. When Late Ram Narian Jha came to know after filing of the execution case for execution of ex parte judgement and decree passed in Title Suit No. 18 of 1968, being Execution Case No. 10 of 1978, he filed petition under Order IX Rule 13 of the C.P.C. The decree holder took the plea that Late Ram Narian Jha appeared in the suit by executing vakalatnama and filing written statement but on enquiry it transpired that he did not appear in the suit and signature on vakalatnama and written statement were forged and no notice was served on him as he was residing in Muradabad (Uttar Pradesh). It is further submitted that no summon was issued to Late Ram Narian Jha nor any publication was made in any newspaper having circulation in Muradabad but the learned Munsif held that since summon was sent on the permanent address and notice was also published in



the daily newspaper in view of the provision under Order V Rule 14 of the C.P.C. notice shall be deemed to have been validly served on Late Ram Narian Jha and on such finding the petition to set aside the ex parte judgement and decree has been dismissed. It is further submitted that the learned Additional District Judge also dismissed the appeal without appreciating the facts that Late Ram Narian Jha was never noticed nor any summon was sent to his address at Muradabad where he was residing during his service tenure. Even the publication was made in the newspaper having circulation in Bhagalpur and Late Ram Narian Jha had no knowledge about the pendency of the suit but the learned Additional District Judge without appreciated the facts and materials on record confirmed the finding of learned Munsif as if he was hearing the revision. Order 41 Rule 33 of the C.P.C. requires the court to reappraise the material and evidence available on record and also judge the finding whether the same is perverse and based on material irregularity but learned appellate court failed to exercise his jurisdiction.

Having considered the submission of petitioners and on perusal of records, it is evident that Ram Narain Jha was made defendant in Title Suit No. 18 of 1968 but somebody



impersonated Ram Narain Jha and put his signature on power as well as on written statement and filed written statement but when Ram Narain Jha appeared and filed petition under Order IX Rule 13 of the C.P.C. for setting aside the ex parte judgement and decree passed in Title Suit No. 18 of 1968 and disputed the genuineness of the signature on power and written statement, signatures of Ram Narain Jha on power and written statement have been examined by the expert and it was found that signature of Ram Narain Jha was forged but again learned Munsif held that under Order V Rule 14 of the C.P.C since notice was published in daily newspaper published in the region of Bhagalpur it shall be deemed that defendant had knowledge about the pendency of the suit. I find that this finding of Munsif is erroneous as the case of Ram Narain Jha was that he was residing in Muradabad, U.P. with his family members and no notice was ever sent to his residential address situated in Muradabad nor notice was published in daily newspaper circulated in the region of Muradabad. Therefore, the finding of Munsif is erroneous in view of the fact that Ram Narain Jha specifically pleaded that before institution of the suit he was residing in Muradabad and never visited his village home during the pendency of the suit. Therefore, he had no knowledge about



the pendency of the suit. There is no material to show that Ram Narain Jha had any information from any source about the pendency of the suit. Thus, I find that the order of learned Additional District Judge passed on 29.06.2000 in Misc. Appeal No. 36 of 2000 and the order of learned Munsif dated 02.09.2000 passed in Misc. case No. 1/1986 are erroneous and illegal and not sustainable. Accordingly, both the orders are set aside. The ex parte judgement and decree passed in Title Suit No. 18 of 1968 is set aside and the suit is restored to its original file. This Civil Misc. petition is, thus, allowed.

(Prabhat Kumar Jha, J)

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