

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14250 of 2013

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Smt. Tetari Devi, Wife of Dinesh Pandey, resident of Village- Nima, P.S.- Chouri, P.O.- Puhara, At Present resident of Jagdeo Nagar, P.S.- Nawada, P.O.-Anaith, District- Bhojpur.

.... Petitioner

Versus

1. Smt. Sulakshana Devi, W/O Badri Narayan Choudhary, resident of Maniuch, P.O.- Maniuch, P.S.- Sandesh, District- Bhojpur. At Present resident of Jagdeo Nagar, P.S. Nawada, Ara, P.O.- Anaith, District- Bhojpur, Pin- 802301
2. Nirmala Kumari W/O Sri Birendra Kumar, Resident of Nima, P.S.- Sahar (Chouri). At Present resident of Jagdeo Nagar, P.S.- Nawada Ara, P.O.- Anaith, Pin- 802301, District- Bhojpur.
3. Ajay Kumar Singh S/O Late Suraj Singh Alias Suresh Prasad Singh, resident of Mohalla- Anaith, Kasbe Ara, At Present resident of Jagdeo Nagar, P.S.- Nawada, Ara, P.O.- Anaith, Pin- 802301, District- Bhojpur

.... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Anish Chandra Sinha, Advocate Ms. Sanghmitra Ghosh, Advocate Mr. Krishna Murari, Advocate
For the Respondent/s	:	Mr. Ashok Kr. Mishra, Advocate Mr. Varun Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL JUDGMENT
Date: 02-05-2018

This writ application has been filed for setting aside the order dated 18.05.2013 passed by Ad-hoc Additional District Judge- V, Bhojpur at Ara in Miscellaneous Appeal No.53 of 2004 as well as the order dated 15.10.2004 passed by learned Munsif II, Ara in Title Suit No.151 of 2003 whereby and whereunder the petitioner has been restrained from making any construction or blocking disputed passage.

2. Heard learned counsel for the petitioner and the



respondents.

3. The petitioner filed Miscellaneous Appeal No.53 of 2004 before the court of District Judge, Bhojpur at Ara for setting aside the order of injunction passed against her by the learned Munsif II, Bhojpur in Title Suit No.151 of 2003. The appeal was transferred to the court of Ad-hoc Additional District Judge-V, Bhojpur at Ara. The matter was placed for hearing on 14.05.2013 on which date the matter was heard in part and the next date was fixed on 18.05.2013 for further argument. The court below without hearing the petitioner dismissed the miscellaneous appeal.

4. The learned counsel for the petitioner submits that the miscellaneous appeal was dismissed without hearing which is apparent from the order sheet dated 14.05.2013 and 18.05.2013 itself. The learned advocates of District Bar Association, Ara had abstained from court work on account of death of an advocate. In this regard, the learned counsel annexed Annexure 8 which is certificate of District Bar Association, Ara. The learned counsel for the petitioner further annexed order sheet of Sessions Trial No.665 of 2007 to show that on 18.05.2013 the case was adjourned on account of non-appearance of learned counsels. The learned counsel has further annexed daily cause list of 18.05.2013 to show that the advocates did not appear before the court below and all the cases were adjourned.



Thus, the documents on record particularly the order sheet dated 14.05.2013 shows that the case was fixed for argument but on 18.05.2013 the case was decided without hearing the parties. Thus, this petitioner has seriously been prejudiced.

5. In view of above facts, the impugned order dismissing the miscellaneous appeal without hearing the petitioner is legally not sustainable and is accordingly set aside. This writ application is allowed and the court below is directed to pass order after hearing both sides.

(Sanjay Kumar, J)

Harish/-

AFR/NAFR	
CAV DATE	
Uploading Date	08.05.2018
Transmission Date	

