

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.146 of 2013

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1. Ramashankar Chaudhary
2. Umashankar Chaudhary Both 1 to 2 are sons of Late Bhabhuti Chaudhary
3. Sarswati Devi W/o Late Bhabhuti Chaudhary
4. Janki Devi
5. Ram Swaro Devi Both 4 to 5 are D/o Late Bhabhuti Chaudhary
6. Jagar Nath Chaudhary
7. Rameshwar Chaudhary Both Sons of Late Dhenukh Chaudhary
8. Sheopati Devi W/o Late Dhenukh Chaudhary
9. Most. Girja Devi @ Most Guria Devi W/o Late Awadh Bihari Chaudhary
10. Rajesh Chaudhary S/o Late Awadh Bihari Chaudhary All R/o village - Gaighat , P.S. - Andar , District- Siwan l

.... Petitioner/s

Versus

1. Prabhawti Devi
2. Lagni Devi
3. Premiya Devi All 1 to 3 are D/o Late Gorakh Singh
4. Most. Kunti Devi W/o Late Brijnath Singh
5. Manager Singh
6. Sanjar Singh
7. Ranjan Singh All 4 to 7 are the sons of Late Baijnath
8. Sunaina Devi
9. Asha Kumari
10. Rinki Kumari @ Pushpakumari 8 to 10 are daughter of Brijnath Singh
11. Bindeshwari Singh S/o Late Bishun Singh
12. Patia Devi D/o Late Suraj Chaudhary
13. Kalpatia Devi D/o Late Surajdeo Chaudhary
14. Manager Chaudhary
15. Jawahar Chaudhary Both 14 to 15 are sons of Late Shyamdeo Chaudhary
16. Janki Devi @Janki Kuer W/o Late Shyamdeo Chaudhary
17. Sheomati Devi @ Shivti Devi W/o , D/o Late Shyam Deo Chaudhary All R/o Village - Gaikhat, P.S. - Andar , Distt. - Siwan.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. YOGENDRA PRASAD SINHA
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT
Date: 08-08-2018

Heard both sides.

The petitioners have filed this civil revision petition against



the order dated 03.07.2013 passed by 1st Additional District Judge, Siwan in Misc. Appeal No.16 of 2008 by which he affirmed the order dated 25.09.2008 passed by Munsif I, Siwan in Misc. Case No.162 of 1996.

The factual matrix of the case in short is that Gorakh Singh(now deceased) filed Title Suit No.366 of 1992 against Bhabhuti Chaudhary for declaration of title and recovery of possession over the lands as contained in Schedule I of the plaint. The suit was posted for ex parte hearing due to non-appearance of the defendants. Later on, defendants appeared and filed written statement but did not pray for recalling the ex parte order. The defendants never appeared even after filing written statement and the suit was decreed ex parte on 02.09.1996. The petitioner-descendants of Bhabhuti Chaudhary and others filed petition under Order IX Rule 13 C.P.C. for setting aside the ex parte decree but the learned Munsif dismissed the Miscellaneous Petition of the petitioner. The petitioners thereafter preferred Misc. Appeal No.16 of 2008 but the same was also dismissed by the impugned order.

Mr. Rajendra Narain, learned senior counsel appearing on behalf of the petitioners submits that on the ground of illness, the petitioners could not appear in the suit but both the Courts without taking into consideration the unavoidable circumstances of the



petitioners for their non-appearance during the pendency of the suit dismissed the Miscellaneous Case as well as Miscellaneous Appeal.

On the contrary, Mr. Vinay Kirti Singh, learned senior counsel appearing on behalf of the respondents submitted that admittedly the defendants appeared in the suit and filed written statement. The suit was decided ex parte under Order XII Rule 6 C.P.C. and, therefore, the Miscellaneous Petition filed under Order IX Rule 13 C.P.C. for setting aside the ex parte decree is not maintainable. The option before the petitioners is to file appeal against the aforesaid judgment and decree passed ex parte.

Having considered the submissions of both sides and on perusal of the orders, I find that during the pendency of the suit, the petitioners appeared and filed written statement. Petitioners never filed any petition for recalling the order fixing the case ex parte hearing. The petitioners although appeared in the suit and filed written statement but thereafter the petitioners stopped appearing in the suit and ultimately the suit was decided ex parte in view of the provisions as contained in Order XII Rule 6 C.P.C., therefore, the petition filed under Order IX Rule 13 C.P.C. is itself not maintainable for setting aside any judgment and decree passed under Order XII Rule 6 C.P.C. Besides this fact, both the Courts found that the petitioners remained negligent in the Court while the suit was pending and even after filing



written statement the defendants never appeared.

Having considered the facts aforesaid, I find no merit in this civil revision petition. Accordingly, this civil revision petition is dismissed.

(Prabhat Kumar Jha, J)

Saurabh/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	18.08.2018
Transmission Date	

