

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.15362 of 2015

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Luchan Sah Son of Late Ganesh Sah, resident of village- Chausa, P.S.- Chausa,
District – Madhepura.

.... Petitioner/s

Versus

Sri Narayan Sah son of late Bhola Sah, resident of village - Chausa, P.S.- Chausa,
District – Madhepura.

.... Respondent/s

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Appearance :

For the Petitioner/s : M/s Dinesh Prasad Verma and Rohit Kumar, Adv.

For the Respondent/s : Mr. Sharda Nand Mishra, Adv.

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

Date: 13-08-2018

Petitioner before this Court is defendant of T.S. No. 47
of 2012 pending in the court of learned Civil Judge, Junior Division,
Udakishunganj (Madhepura). He has filed this application for
quashing the order dated 24.07.2015 whereby and whereunder the
prayer of the petitioner to recall the order dated 07.01.2014 and give
an opportunity to contest the case was rejected.

2. Heard learned counsels for the petitioner as well as
the respondent.

3. The respondent filed the aforesaid suit for declaration
of revisional survey in the name of father of the petitioner is wrong,
illegal and not binding on the plaintiff besides confirmation of his
possession. The petitioner did not appear before the court below, in



consequence of which, the suit was fixed for ex parte hearing. The petitioner appeared on 01.08.2014 and filed a petition praying therein to recall the order dated 07.01.2014 whereunder the suit was fixed for ex parte hearing.

4. On perusal of impugned order and documents on record it appears that the suit was filed on 07.05.2012. The learned court below ordered for issuance of summons on 06.06.2012. Subsequently the court ordered to issue notice by registered post. The court below on the prayer of the plaintiff and without waiting service report ordered for gazette publication for appearance of the petitioner. It further appears that the petitioner did not appear in consequence of gazette publication and so the suit was fixed for ex parte hearing as per order dated 07.01.2014. Subsequently, the suit was dismissed in default on 29.01.2014 and the respondent filed a Miscellaneous Case No. 16 of 2014 for restoration of suit to its original file. The court below allowed the said miscellaneous case and restored the suit to its original file as per order dated 16.05.2014 and fixed the case for evidence. The order sheet of the lower court shows that evidence of witnesses was recorded on 04.07.2014, 08.07.2014, 15.07.2014 and 18.7.14 and when the evidence was going on, the defendant appeared and filed petition on 01.08.2014 to recall the order dated 07.01.2014.

5. It has been submitted that there is nothing on record



to show that the notices either through court process or registered post were served on any of the defendants. The suit was dismissed and it was restored to its original file on 16.05.2014. After restoration of said suit, no notice was issued against the petitioner for his appearance. The learned court below after restoring the suit ought to have noticed the petitioner. The order fixing the case for evidence without giving any notice to the petitioner after dismissal of suit in default is illegal and not sustainable in the eyes of law.

6. In view of above facts, the impugned order refusing to recall the order fixing the case for ex parte hearing is set aside and this application is allowed. The court below is directed to give an opportunity to the petitioner to contest the case in accordance with law.

(Sanjay Kumar, J)

Mahesh/-

AFR/NAFR	NAFR
CAV DATE	N/A
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