

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.240 of 2017

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Kauleshwar Sah @ Kawaleshwar Sah, Son of Late Brij Bihari Sah, Resident of Mohalla- Gausganj (Gangipul Par), Kasabe-Ara, Police Station- Ara (Town), District- Bhojpur at Ara.

... .. Defendant-Petitioner-Appellant-Petitioner
Versus

Sunita Devi, Wife of Rakesh Singh, Resident of Village- Bakhorapur, Police Station- Barahara, District- Bhojpur.

... .. Plaintiff-Respondent-Respondent-Opposite Party

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Singh
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 26-09-2018

Heard Mr. Arun Kumar Singh, the learned counsel appearing on behalf of the petitioner and Mr. Rajendra Narayan, the learned Senior counsel appearing on behalf of the sole opposite party.

2. The petitioner filed this civil revision petition against the order dated 11.09.2017, passed by learned 2nd Additional District Judge, Bhojpur at Ara in Misc. Appeal No.31 of 2016 by which the miscellaneous appeal has been dismissed confirming the order dated 29.11.2016, passed in Misc. Case No.18 of 2011 which was filed for setting aside the judgment and decree passed in Title Suit No.331 of 2010.

3. Factual matrix of the case is that sole opposite party filed Title Suit No.331 of 2010 for declaration of title over the suit



premises and for declaration that the defendant-petitioner is in permissive possession of the suit premises and further relief for vacating the suit premises. The suit was decreed ex-parte on 20.05.2011. The petitioner filed Misc. Case No.18 of 2011 stating therein that he had no knowledge about the pendency of the Title Suit No.331 of 2010 and he never received any notice nor put any signature on any acknowledgment of receipt of notice (Ghoswara). The learned Sub-Judge-VI, Ara, Bhojpur vide order dated 29.11.2016 dismissed the petition of the petitioner filed under Order IX Rule 13 that from perusal of the evidence on record as well as the report of the expert with regard to signature on Ghoswara and the admitted signature of the petitioner on Vakalatnama, it transpired that it was the petitioner who put the signature on the Ghoswara and this fact shows that the petitioner had received notice but did not appear in the court to contest the suit. The petitioner filed miscellaneous appeal and the learned 2nd Additional District Judge, Bhojpur, Ara also dismissed the miscellaneous appeal of the petitioner holding that on the basis of the evidence it is manifestly clear that the petitioner had received notice and, therefore, he had knowledge about the pendency of the suit but he did not appear. Against these two orders, the petitioner filed this civil revision.



4. Mr. Arun Kumar Singh, the learned counsel appearing on behalf of the petitioner submits that of course there is a concurrent finding of facts of the signature of the petitioner on the Ghoswara but from the evidence of the opposite party no.1 as well as the expert opposite party witness no.4, Dr. Sharda Nand Singh, it would appear that the opposite party no.1 has stated that she also put signature on the Ghoswara but the signature of opposite party no.1-plaintiff does not appear on Ghoswara. Similarly, the evidence of the expert shows that there is no scientific basis for coming to the conclusion that the signature of the petitioner appearing on Ghoswara is similar to the admitted signature of the petitioner appearing on Vakalatnama but on perusal of the orders as well as the deposition of the witnesses, I find that the process server served the notice on the petitioner, sole defendant of the suit and the process server reported that the defendant received notice and put signature. The process server did not say that the plaintiff also put signature on the Ghoswara. The moot question to be decided in the petition filed under Order IX Rule 13 is whether the defendant had knowledge about the pendency of the suit. The evidence of the process server as well as the evidence of the expert, opposite party witness no.4 shows that the signature of the petitioner appearing on Ghoswara tallied with his admitted



signature on Vakalatnama and this fact itself shows that the petitioner-defendant received notice but did not appear in court to contest the suit, therefore, I find that the orders does not require any interference.

5. Accordingly, this civil revision petition is dismissed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.09.2018
Transmission Date	NA

