

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.99 of 2018

=====

Sri Ramshankar Prasad Singh, Son of Late Jagdish Prasad Singh, Resident of Village & P.O. Krishnawara, P.S. Patepur, District Vaishali.

... ..Plaintiff/Opposite Party/Petitioner

Versus

Sri Satya Narayan Prasad Singh, Son of Late Bindeshwari Prasad Singh, Resident of Village Baligaon, P.O. Baligaon, P.S. Baligaon, District Vaishali.

... .. Defendant/Applicant/Opposite Party

=====

Appearance :

For the Petitioner/s : Mr. Bal Bhushan Choudhary
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL JUDGMENT

Date : 12-09-2018

Heard Mr. R.K.P. Sinha, the learned counsel appearing on behalf of the petitioner.

2. The petitioner has filed this civil revision petition against the order dated 19.04.2018, passed by Smt. Aarti Singh, Sub-Judge-I, Muzaffarpur in Misc. Case No.12 of 2013 whereby the learned Sub-Judge set aside the ex-parte judgment and decree dated 31.01.2013, passed in Title Suit No.39 of 2012.

3. The petitioner entered into an agreement with the opposite party to sell Plot No.372, Khata No.179, area 5 decimals situated in village Manjhauli Khetal, P.S. Sadar, District Muzaffarpur by a registered deed of agreement on 27.09.2011 for consideration of Rs.12,00,000/-. The petitioner paid Rs.10,00,000/- to the opposite party and the opposite party, defendant of the suit, promised to



execute the sale deed by 28.02.2012 after getting remaining balance consideration amount but the defendant did not execute the sale deed. The petitioner filed Title Suit No.39 of 2012. In spite of service of summon through process of the court the defendant did not appear. The notice was published in the daily newspaper and ultimately the suit was fixed for ex-parte hearing. The suit was decreed ex-parte on 31.01.2013 directing the defendant to execute the registered sale deed after taking remaining consideration amount within three months. The plaintiff filed Execution Case No.5 of 2013. The judgment debtor-petitioner appeared on 20.03.2013 and on 24.07.2013 the judgment debtor informed the court that a petition under Order IX Rule 13 of the CPC has been filed for setting aside the ex-parte judgment and decree passed on 31.01.2013 in Title Suit No.39 of 2012. Both sides adduced their evidence and after hearing both sides, the learned Sub-Judge vide order dated 19.04.2018 allowed the miscellaneous petition and set aside the ex-parte judgment and judgment passed in Title Suit No.39 of 2012.

4. Being aggrieved by the order aforesaid, the petitioner filed this civil revision.

5. Mr. R.K.P. Sinha, the learned counsel appearing on behalf of the petitioner submits that the notice was duly served on the defendant-opposite party by the process server and thereafter the court ordered for publication of notice in the daily newspaper. The



court being satisfied with the mode of publication fixed the case for ex-parte hearing but the learned Sub-Judge has erroneously held that there is no proper service of notice on the defendant-opposite party. The process server was not examined.

6. On perusal of the order of the learned court below, I find no illegality in the order. The notice was issued through the process server. The process server reported that the defendant refused to make his signature on the acknowledgment but it transpired that in view of the report of the process server, the process server should have been examined as provided under Order V Rule 17 but the process server was not examined nor the process server filed the service report on affidavit showing valid service of notice on the defendant.

7. Having considered the facts aforesaid, I do not find any merit in this civil revision petition. Accordingly, the same is dismissed.

(Prabhat Kumar Jha, J)

S.KUMAR/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.09.2018
Transmission Date	NA

