

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.193 of 2019

Binay Kumar Sahay @ Binoy Kr. Sahay age 73 years (M) Son of Late Maheshwer Sahay Resident of Mohalla-Babu Tola, P.O.-P.S. Banka, District Banka, At Present A-201, 2nd Floor Prestiline Medows, Pune trade Center, Opp-Uvale Nager Bus Stop, Wagholi Pune.

... .. Petitioner

Versus

1. The State Of Bihar
2. Sunil Kumar Singh @ Sinha Son of Late Anant Kumar Singh Resident of Village-Kajro, P.O.-P.S. Amarpur, District-Banka
3. Aashis Kumar Singh Son of Late Anant Kumar Singh Resident of Village-Kajro, P.O.-P.S. Amarpur, District-Banka
4. Aditya Kumar Singh Son of Late Anant Kumar Singh Resident of Village-Kajro, P.O.-P.S. Amarpur, District-Banka
5. Ranju Devi Daughter of Late Anant Kumar Singh Resident of Village-Kajro, P.O.-P.S. Amarpur, District-Banka
6. Renu Devi Daughter of Late Anant Kumar Singh Resident of Village-Kajro, P.O.-P.S. Amarpur, District-banka
7. Sarita Singh Daughter of Late Anant Kumar Singh Resident of Village-Kajro, P.O.-P.S. Amarpur, District-Banka
8. Babita Singh Daughter of Late Anant Kumar Singh Resident of Village-Kajro, P.O.-P.S. Amarpur, District-Banka

... .. Respondents

Appearance :

For the Petitioner : Mr. Sandeep Patil, Advocate
For the Respondent/s : Mr. Sajid Salim Khan (Sc25)

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 29-03-2019



This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 22.11.2018 passed by the learned Sub-Judge-II, Banka in Title Suit No. 29 of 1991 whereby he has declined to accept the written statement filed by the petitioner.

2. Learned counsel for the petitioner submitted that the order impugned is erroneous in law. The summon was not served upon the defendant properly. Hence, the written statement could not be filed earlier. However, upon knowledge, when the written statement was filed, the court below has wrongly declined to accept it.

3. Per contra, learned counsel for respondent no. 4 submitted that the application is hit by misjoinder and non-joinder of the parties, as many of the necessary parties, who are legal heirs of late Maheshwar Sahay have not been impleaded in this case on whose application, the judgement and decree passed in Title Suit No. 29 of 1991 has been set aside and the said suit is restored to its original file by order dated 21.08.2017. He has further contended that the written statement filed by the petitioner on 02.02.2018 was rightly declined to be accepted by the court below as it had been filed without any affidavit for condonation of delay of about 21 years.



4. Learned counsel for the State has supported the contentions of the learned counsel for respondent no. 4. He has submitted that the court below after hearing the parties and considering the case of the petitioner has rightly passed the order on 22.11.2018 in consonance with the provisions of Order VIII, Rule 1 of the Code of Civil Procedure (for short 'CPC').

5. Having heard the parties and perused the record, I find that the petitioner being one of the defendants in Title Suit No. 29 of 1991 did receive summons for his appearance, but he chose not to appear either on 26.02.1998 or on 19.03.1998. Thus, in his absence, the suit proceeded ex-parte and, ultimately, vide order dated 30.11.2011, it was disposed of.

6. Being aggrieved by the ex-parte order, another defendant, namely, Subodh Kumar Sahay filed Misc. Case No. 01 of 2013 before the court of Sub-Judge for setting aside the ex-parte order passed in Title Suit No. 29 of 1991. He had also preferred Misc. Appeal no. 29 of 2014 before the learned District Judge and the same was allowed on 21.08.2017.

7. On perusal of the order dated 21.08.2017 passed by the learned District Judge, Banka, it would appear that the petitioner, being respondent no. 5, had appeared in Misc. Appeal No. 29 of 2014 and had filed his objection regarding



maintainability of the said appeal. He had chosen to support the order whereby the suit was dismissed ex-parte. He deliberately and knowingly did not file written statement after the summon was duly served upon him. The suit had proceeded against him ex-parte before the trial court.

8. It would be relevant to note here that order 9 rule 13 of the Code of Civil Procedure (for short 'CPC') stipulates that when an ex-parte decree is passed against the defendant, he may apply to the court by which decree was passed for an order to set it aside and if he satisfies that summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing, the court shall make an order setting aside the decree against him upon such term as to cost payment to court or otherwise as it thinks fit and shall appoint a day for proceeding with the suit.

9. The petitioner did not plead that summon was not duly served upon him or that he was prevented by sufficient cause from appearing when the case was called for hearing.

10. In absence of either of the aforesaid two grounds having been taken, no illegality can be found with the order impugned.



11. In that view of the matter, I am not inclined to interfere with the order impugned. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.04.2019
Transmission Date	

