

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.213 of 2019

1. Saudagar Tanti
2. Yamuna Tanti
Both sons of Late Masudan Tanti, Resident of Village-Lathane, P.S. and Dist. Jamui
... .. Plaintiffs- Petitioners
- Versus
1. The State of Bihar through Collector, Jamui
2. A.D.M. Jamui
3. Anchal Adhikari, Jamui, all P.S. and Dist. Jamui
..... Defendant 2nd Set- Appellants-Respondents
4. Ashtik Kumar, son of Beni Mandal, Resident of Village-Lathane, P.S. and Dist. Jamui
..... Defendant 1st set-Respondent- Respondent
5. Kapurwa Devi, Wife of Direndra Tanti Resident of Village-Chhedlahi P.S. Gidhaur Dist.-Jamui,
... .. Plaintiff-Respondent
-

Appearance :

For the Petitioner : Mr. Prabhat Ranjan Singh, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 05-04-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioners for setting aside the impugned order dated 09.10.2018 passed in Title Appeal No. 14 of 2016 arising out of Title Suit No. 56 of 1995 by the learned Additional District Judge-III, Jamui whereby and whereunder limitation petition preferred by Appellants-Respondents has been allowed with cost of Rs. 5,000/- and the delay in filing the instant appeal has been condoned.



3. Learned counsel appearing for the petitioners submitted that the appellate court below mechanically condoned the delay in filing the first appeal preferred after nine years on 27.04.2016. There is no denial either of the service of notice upon the Appellants-Respondents or upon the learned Government Pleader. It cannot be accepted that even after accepting the copy of the plaint at the direction of the court concerned, the learned Government Pleader would not have been informed the State officials. The petitioners complied with each and every order and direction of the trial court for the service of notice and the learned trial court proceeded with the trial of the suit only after being satisfied that the notice has properly been served upon the respondent-State. He has submitted that the court below ought not to have been condoned the delay of about a decade without any plausible and sustainable explanation.

4. Having heard learned counsel for the petitioners and carefully perused the materials on record, it would be manifest that in the Title Appeal No. 14 of 2016 a plea was taken on behalf of the Appellant-State that though the government officials were parties in Title Suit No. 56 of 1995, neither notices nor any information were given to them regarding filing of the aforesaid title suit. The appellants got knowledge of the judgment and decree



of the court after receiving the order of the Collector contained vide Letter No.192 dated 09.02.2016. The information regarding the judgment and decree passed in the title suit was, for the first time, given to the Collector in Misc. Case No. 41 of 2013 wherein a copy of the said judgment was filed on 27.11.2015. After receiving aforementioned letter, the Government Pleader took steps for filing of the appeal and filed the same after obtaining the required documents and certified copies. It was also pleaded that Title Suit No. 56 of 1995 was filed without prior notice under Section 80 of the Code of Civil Procedure. Thereafter, no notice was served on the government officials so as to make them aware about the pendency of the suit.

5. On such plea taken by the State an application for condonation of delay of about nine years in filing the appeal was preferred by the Appellant-Respondent before the appellate court.

6. The petitioners contested the application filed for condonation of delay. It was contended by the petitioners that only after obtaining required permission from the court the suit was filed without service of notice under Section 80 of the Code of Civil Procedure. Thereafter, notices were issued to all the concerned government officials, but the same returned unserved due to refusal to accept notice. Hence, the notices were deemed to



be validly served. Later, on 24.07.2006, the Government Pleader was called by the court and was made aware about the pendency of the suit, who put his signatures on the record.

7. After hearing the parties, the court below allowed the limitation petition and condoned the delay caused in filing the appeal vide impugned order dated 09.10.2018 assigning the following reasons for allowing the limitation petition:-

“Having heard the parties and after perusal of records, this court finds that though, there is non-compliance of Section 80 of C.P.C. in the initiation of Title Suit No. 56 of 1995, but the same was filed with the permission of the court, which is legally permissible in the eye of law. After the admission of the aforesaid title suit notices were issued to all the concerned parties including the Government officials. Order-sheet dated 08.11.1995 shows that the summons returned on the refusal of government officials. Whereas, the defendant No. 1st i.e. respondents second set appeared on 19.09.1995. At this point a question bogs the mind of this court that there appears absolutely no reason for the refusal of the notices sent from the court by the concerned officials. More over as per the prevalent procedure the notices are received by the concerned offices and not by the Government officials personally. Even, the plaint of the Title



Suit No. 56 of 1995 shows that the concerned officials were made a party through their designation and not by name. **Even, if it is believed that the notices were refused by the concerned officials or their offices the proper procedure was to treat the service as valid service and proceed *ex-parte*, which was not done in the present case. Had the court proceeded *ex-parte* there would have been chance for the State to come in any miscellaneous proceeding or appeal and explain its absence. The notice to the Government pleader who was not appointed by the State in this particular case at no stage and under no circumstances can ever be said to be notice to the State. The procedure adopted by the court below is alien to the known legal concept. The Government pleader was admittedly not appointed by the State to conduct the Title Suit No. 56 of 1995 and therefore, he was a stranger to the suit whose knowledge can not be taken to be that of the State.** Therefore, at this Stage if we ignore the refusal of notices by the concerned officials, then the very first knowledge of the title suit as well as the impugned judgment came to the knowledge of the collector on 27.11.2015 that is the date of the final order passed in Miscellaneous Case No. 41 of 2013. In the aforesaid order the learned collector directed the



concerned officials to appeal before the appropriate forum against the impugned judgment. Thereafter, the letter dated 09.02.2016 was issued to the learned Government Pleader and the present appeal was filed after completion of the formalities. The present appeal is directed against the judgment and decree, by which the title of the defendant first set was declared on large area of government land, which is admittedly *Gair Majrui* in nature. Though, the defendant first set who was the plaintiff in the Title Suit is claiming declaration not only against the official but also against the entire village and the defendant second set was impleaded in the title suit in representative capacity, but the mandate of Order 1 Rule 8 of C.P.C. was not followed. No public notices were issued. Therefore, the title of large area of *Gair Majrui* public land was declared in favour of the respondent first set without any proper representation of parties.

However, at this stage it is too early to enter into the merits of the appeal, but considering the manner of notices and the acknowledgment of the government pleader, which has been considered as the knowledge to the State, this court is of the view that chance should be given to the State to present its case. Though, it does appear from the records that State officials have not been very careful, rather have been very



casual in dealing with the case concerned. For the ends of justice this limitation petition is allowed on the cost of Rs.5,000/- which shall be deposited/paid within the period of thirty days from today” (emphasis mine).

8. The aforesaid reasons assigned by the appellate court for condoning the delay are neither unreasonable nor unsustainable. On the facts and in circumstances of the case, in the exercise of discretionary jurisdiction, if the appellate court came to the conclusion that notices were not served properly to the Appellant-Respondents, no error can be found with the order impugned.

9. In that view of the matter, I am not inclined to interfere with the impugned order in the exercise of supervisory jurisdiction under Article 227 of the Constitution of the India.

10. The application is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/R.Ranjan-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.04.2019
Transmission Date	NA

