

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.351 of 2019**

Dhirendra Thakur Son of Late Ramayodhya Thakur resident of Balua Tal
Gopal Pur P.S. Motihari Town, District- East Champaran.

... .. Petitioner

Versus

1. Anil Kumar Mishra Son of Late Gudar Mishra resident of Village and P.O.
Manguraha, P.S. Govind Ganj, District- East Champaran.

... .. Plaintiff/Respondent 1st set

2. Parmatma Mishra Son of Late Ramakant Mishra resident of Village and P.O.
Belwa More, P.S. Lauriya, District- West Champaran at present resident of
Mohalla- Balua Tal Motihari, P.S. Motihari Town, District East Champaran.

... .. Defendant/Respondent 2nd set

Appearance :

For the Appellant/s	:	Mr.Vijay Shankar Shrivastava
For the Respondent/s	:	Mr.

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 21-06-2019

Heard Mr. Vijay Shankar Shrivastava, learned
counsel for the petitioner.

2. In the present application the petitioner has
challenged part of the order dated 12.10.2018 passed in Misc.
Case No. 14 of 2017 whereby the application of the petitioner
filed for setting aside auction sale and sale certificate has been
dismissed as not maintainable.

3. Learned counsel appearing for the petitioner
submitted that as far as the petitioner is concerned, he had no
knowledge about the Money Suit No. 9/88/3/1992 as well as
judgment and decree dated 31.05.1996 and 07.06.1996



respectively. He was not impleaded as party in the aforesaid suit. He had also no knowledge about Execution Case No. 4 of 2005. He came to know about the said suit only after the Nazir and peon along the Advocate Commissioner visited the house and shop of the petitioner on 16.07.2017 for delivery of possession over the Schedule-II of Misc. Case No. 14 of 2017. In that view of the matter, the prayer of the petitioner could not have been rejected by the court below on the ground of limitation.

4. On perusal of the order impugned, it would be manifest that three miscellaneous petitions vide Misc. Case Nos. 13, 14 and 15 of 2017 were filed on 27.07.2017 on behalf of Mukesh Kumar, Dharendra Thakur and Sudhir Kumar Verma respectively under Order 21 Rule 97 of the Code of Civil Procedure (for short 'CPC') in Execution Case No. 4 of 2005 with a common prayer to declare full right, title and confirmation of possession of the applicants over the land detailed in Schedule -II of the three petitions and also for setting aside auction sale proceeding and sale certificate regarding the land detailed in Schedule- II of the petition.

5. After hearing the parties, the first part of the relief prayed for in miscellaneous cases regarding declaration of right,



title and confirmation of possession over the land detailed in Schedule-II was allowed as the same was found maintainable under Order 21 Rule 97 of the CPC. However, the second relief regarding setting aside auction sale and sale certificate was dismissed as not maintainable as the same was found to be hit by law of limitation as per the provisions of Article 99 of the Limitation Act.

6. It is an admitted position that auction sale was confirmed on 13.12.2013 and the sale certificate was prepared on 07.02.2014.

7. Article 99 of the Limitation Act provides that the period of limitation for setting aside a sale by a civil or revenue court or a sale for arrears of Government revenue or for any demand recoverable as such arrears would be one year when the sale is confirmed or would otherwise have become final and conclusive had no such suit been brought.

8. In the instant case, the sale was confirmed on 13.12.2013 and the miscellaneous application was filed by the petitioner for setting aside auction sale on 27.07.2017. Apparently, the application was barred by law of limitation. The petitioner did not file any application for condonation of delay. Under the circumstances, if the court below has dismissed the



application filed by the petitioner for setting aside auction sale as not maintainable under Order 21 Rule 90 of the CPC being barred by limitation, no illegality can be found with the order.

9. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	24.06.2019
Transmission Date	

