

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.1959 of 2009

1.DEENA NATH SETH.
2.RAMADHAR SETH
BOTH SONS OF SRI RAGHUNANDAN SETH.
3.SURJA DEVI @ SARITA DEVI @ SAROJ DEVI W/O DEENA NATH SETH.
4.KAUSHILYA DEVI, W/O RAMADHAR SETH. ALL ARE RESIDENT OF VILLAGE BHABUA, WARD NO. 8(new) P.S. BHABUA, DISTRICT KAIMUR AT BHABUA.

... .. Petitioner/s

Versus

1.MD. NASIM RAYEEM @ MD. NASIM RAINE SON OF LATE ABDUL RAHIM RAYEEN, R/O WARD NO. 4,(OLD) 14(NEW) POLICE STATION BHABUA, DISTRICT KAIMUR(BHABUA)

.....opposite party/plaintiff/opponent 1st set.

2.(A) SANTOSH JAISWAL
(B) RAVI KUMAR JAISWAL
3. HARI SHANKAR PRASAD SONS OF LATE SARJU SAH.
4. SHYAMJEET PRASAD, SON OF MUNNA PRASAD.
5.PRADEEP PRASAD SON OF SARJU PRASAD.
ALL ARE RESIDENT OF BHABUA WARD NO. 4(OLD)7 (NEW) POLICE STATION BHABUA, DISTRICT KAIMUR, BHABUA.

... Opponent 2nd Set.... Opposite Party/Defendant 2nd Set. ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Waliur Rahman, Adv & Mr. Ranjeet Choubey, Adv
For the Respondent/s	:	Mr.Sunil Kumar Tiwari, Adv, Md. Abu Shajar, Adv & Mr. Abu Haidar, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 17-10-2019

Heard learned counsel for the parties.

2. This civil revision petition has been filed against the order dated 17.08.2009 passed by learned Munsif/Civil Judge (Jr. Division), Bhabhua, in Review Petition No. 1 of 2009 arising out of judgment and decree dated 12.06.2009 and 03.07.2009 in Title Suit No. 44 of 2006, which was filed by plaintiff-Opposite party for declaration of his right, title and



interest over the suit land and also for declaration that the disputed wall between the plaintiffs and defendants and part of which was damaged by the defendants be restored at the expense of defendants and further to grant damage of Rs. 1,000/-. The operative part of the order reads as follows:-

"That suit be & same is decreed partly on contest with cost with the direction that defendant shall construct & restore the suit wall in its original status at this own cost in the presence of Court Officer & plaintiff both. At present there is no finding on point title with respect to suit wall."

3. Thereafter defendant-petitioner filed a review petition for review of the order, however, subsequently he filed a petition to withdraw the review petition for the reason that the plaintiff and defendants both have preferred appeal against the judgment and decree dated 17.08.2009, which is pending for adjudication before the Appellate Court, however, in spite of prayer for withdrawal of said review petition, the learned court below has decided the review petition and reviewed the order as impugned in this revision petition.

4. Once the petition for withdrawal of review petition was filed by the defendant-petitioner there was no occasion for the trial court to pass any order except to permit the defendant-



petitioner to withdraw his review petition or if the learned court below refused permission to withdraw review petition it ought to have given sufficient reasons for not allowing the defendant-petitioner to withdraw the review petition. However, the court below heard and passed order on review petition beyond the ambit and scope of review jurisdiction against which present revision petition has been filed. Once the prayer to withdraw the review petition was made by the defendant-petitioner, the court had no option but to pass order of withdrawal of the review petition, as such the order as impugned was without jurisdiction and is accordingly, set aside.

The civil revision petition is allowed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.12.2019
Transmission Date	NA

