

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.561 of 2010

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1. Sachida Nand Tiwary S/O Jagarnath Tiwary Resident of Village Kushi Harpur Mani, P.S. Kanti, Sub Division And Munsifi Muzaffarpur West, District Muzaffarpur.
 2. Sakaldeo Thakur, S/O Late Deni Thakur Resident of Village Kushi Harpur Horil, P.S. Kanti, Sub Division and Munsifi- Muzaffarpur West, District- Muzaffarpur.

... .. Appellant/s

Versus

1. Nandu Sah S/O Late Ram Saran Prasad Resident Of Village Motipur, P.O. and P.S. Motipur, Sub Division And Munsifi Muzaffarpur West, District Muzaffarpur.
2. Krishana Devi D/O Late Ram Saran Prasad Resident Of Village Motipur, P.O. And P.S. Motipur, Sub Division And Munsifi Muzaffarpur West, District Muzaffarpur.
3. Vijay Kumar S/O Late Ram Saran Prasad Resident Of Mohalla Brahampura, P.S. Brahampura, P.O. M.I.T., Anchal Mushahari, District Muzaffarpur.
4. Lal Babu Sah S/O Late Ram Saran Prasad Resident Of Village Mehshi, P.S. Mehshi, District East Champaran.
5. Kishore Devi @ Kishori Devi D/O Late Ramsaran Prasad Resident of Village Rohua, P.O. Rohua, P.S. Mushahari, District Muzaffarpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Shri Hari Kishore Thakur, Advocate
For the Respondent/s	:	Mr. Dharendra Kumar Jha, Advocate
		Mr. Pradeep Kumar Sinha, Advocate
		Mrs. Punam Shrivastava, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 24-01-2019

Heard learned counsel for the parties.

2. This miscellaneous appeal has been preferred against the judgment dated 30.04.2010 passed in Misc. Case No.1 of 2007 by the learned Sub-Judge-V, Muzaffarpur.

3. The appellants are purchaser from Kaushalya Devi and Vijay Kumar through registered sale deed dated



18.06.1999 in Revisional Survey Plot No. 1315 and 1316. A partition suit bearing Partition Suit No. 45 of 2000 was filed by respondent Nos. 1 and 2 herein against Kaushalya Devi and Vijay Kumar as well as a co-sharer Lal Babu Sah. In that suit, the appellants were also arrayed as proforma defendant. The partition suit was decreed ex parte against the appellants allowing prayer of the plaintiff of the suit to partition two-third share.

4. The appellants challenged the ex parte decree by filing Miscellaneous Case No. 01 of 2007 under Order IX Rule 13 of the Code of Civil Procedure before the court below. The miscellaneous case was dismissed by the impugned order dated 30.04.2010 on the ground that appellants were simply proforma defendants and they will get only what the vendor of the appellants would get in partition.

5. The appellants have challenged herein the impugned order only on the ground that in the suit never any personal service of notice was there. Hence, substantial injustice would be done to the appellants, who were bona fide purchaser for consideration prior to filing of the partition suit.

6. To controvert, learned counsel for the respondents submits that notices against the appellants were



published in the daily newspaper on 06.06.2003 and thereafter the matter was heard ex parte and ex parte judgment was passed. Hence, sufficient notice to the appellants would be presumed under the law, in view of the provisions of service of summon through substituted service under Sub-rule 2 of Rule 20 of Order V of the Code of Civil Procedure.

7. The appellants claimed to have purchased 1 katha and 12 dhur from Kaushalya Devi and Vijay Kumar in Revisional Survey Plot Nos. 1315 and 1316 whereas the final decree prepared in the partition suit would show that each branch of the three co-sharers including branch of Kaushalya and Vijay Kumar got 1 katha 6 dhur in both the plots. The law is well settled that no one can transfer a better title than he himself has. Therefore, the appellants would legally get what the vendor of the appellants got in the partition suit.

8. Considering the entire facts and circumstances of the case aforesaid, interference with the impugned order would cause injustice to the parties to the partition suit which has already culminated after preparation of final decree and no injustice would be caused or has been caused to the appellants as the vendor of the appellants have got the same plots which the appellants purchased though the area of purchased land



would be shorter than the sale deed depicts.

9. However, it is made clear that the appellants would be at liberty to participate in the Execution Case No. 02 of 2007, if it is pending, to identify the actual location of the land of Kaushalya Devi and Vijay Kumar which the appellants have purchased.

10. With the aforesaid observation, this appeal stands disposed of.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.01.2019
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