

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.147 of 2014

1. Sk. Iftakhar Ahmad
2. Sk. Reyaz Ahmad
3. Sk. Nesar Ahmad
4. Sk. Tanweer Ahmad

All sons of Late Sk. Abdullah, All Resident of village- Meghua, P.O.-
Bahlolpur, P.O. and Anchal Kalyanpur, District- East Champaran.

... .. Petitioner/s

Versus

1. Syed Mozazir Ali
2. Afroz Ali
3. Aisha Eqbal
4. Rashada Chatari
5. Zakia Tabassum
6. Alia Khatoon, All sons and daughters of Late Dr. S.M. Ali Resident of Gali
No.4, Greater Azad Enclave, Mohalla- Dhuvra, Civil Line, P.No.202002,
P.S.- Kewarjee, P.O.- Aligarh, District- Aligarh U.P.
7. Sk. Jamil Ahmad, Son of Late Sk. Nezamuddin, recognized agent of Syed
Monazir Ali, Opposite Party no.1 hereto Resident of Village- Hari Pakri,
Sheikh Toli, P.S.- Majhauria, District- West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Atif Inam, Adv.
For the Respondent/s : Mr.Khatim Reza, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
CAV JUDGMENT

Date : 26-07-2019

Heard the parties.

2. This Civil Revision is directed against the
order dated 08.07.2014 passed in Misc. Case No. 01 of 2013



passed by Sub-Judge-III, Bettiah, West Champaran by which learned court below has set aside the ex parte decree dated 29.03.2012 passed in Title Suit No. 228 of 2002.

3. Plaintiffs/petitioner had filed aforesaid suit for Specific Performance of Contract against the father of opposite party no.1 as well as for restraining him from executing any further sale deed as well as from interfering with the plaintiff's possession over the suit land.

4. Defendant (father of O.P. no.1) appeared in the suit and filed written statement on 05.04.2004. However, thereafter, defendant (father of O.P. no.1) did not appear and suit proceeded under Order 17 Rule 2 of the Code of Civil Procedure.

5. Plaintiff adduced evidence both oral and documentary and on basis of which learned Sub-Judge-III, decreed the suit by judgment and decree dated 12.03.2012 and 29.03.2012.

6. On 04.01.2013 son of defendant (O.P. No.1) along with opposite party no.2 filed an application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside the judgment and decree dated 12.03.2012 and 29.03.2012 and learned court below set aside the ex parte



decree aggrieved by which present revision petition has been filed by plaintiff/petitioner.

7. It was submitted on behalf of learned counsel for the plaintiff/petitioner that application under Order 9 Rule 13 of the Code of Civil Procedure was not maintainable as opposite party no. 1 had sold the property to opposite party no.2 and he has no interest left in the suit property whereas opposite party no.2 is purchaser subsequent to judgment and decree and were not party in the Title Suit.

8. Opposite party no. 2 examined four witnesses and produced six documentary evidences which were marked as Exhibit-1 to Exhibit-6 in respect of their application filed under Order 9 Rules 13 of the Code of Civil Procedure. Plaintiff/petitioner also examined six witnesses on their behalf.

9. The learned court below after considering and appreciating the evidences found that defendant remained ill since 2006 and ultimately died on 18.08.2012 as such O.P. No. 1 and O.P. No. 2 have shown sufficient cause for non-appearance of defendant in the suit at subsequent stage of proceeding.

10. It has been submitted on behalf of the



plaintiff/petitioner that application under Order 9 Rule 13 of the Code of Civil Procedure is to be filed within 30 days from the date of decree whereas same was filed after eight months and no application for condonation of delay was filed.

11. Miscellaneous Case was filed on behalf of opposite party nos. 1 and 2 giving rise to Misc. Case No. 01 of 2013 filed under Order 9 Rule 13 of the Code of Civil Procedure, for setting aside order dated 12.03.2012 and decree dated 29.03.2012 passed in Title Suit No. 228 of 2002 and to decide the title Suit after giving opportunity to opposite party nos. 1 and 2 to contest it. It was submitted on behalf of opposite party nos. 1 and 2 that father of petitioner was defendant in Title Suit No. 228 of 2002 which was filed on 05.10.2002 in the court of Sub-Judge 1st Bettiah by plaintiff/petitioner. His father Syad Md. Ali resided in Aligarh and died on 18.08.2012 after prolong illness and left behind two sons Syed Monazir Ali (opposite party no.1) and Afroz Ali and four daughters. He has further stated that he came to Bettiah to sell 12 Bighas and 13 Kathas of land situated in Hari Pakdi and executed 10 registered sale deeds on 24.12.2012 and also gave possession to the purchaser and while on 25.12.2012, he was on Bettiah Railway Station to



catch a train for Aligarh when plaintiff/petitioner Iftekhhar Ahmad met him and said that he has got an ex parte decree against his father in Title Suit No. 228 of 2002 dated 12.03.2012 and showed him a copy of said judgment and decree upon which he became puzzled as his late father never informed about said case to him or to any of the family members and thereafter having got knowledge about the ex parte decree he asked opposite party no. 2 Sheikh Jamil to file an application for setting aside the ex parte judgment and decree passed in Title Suit no. 228 of 2002 against his father and thereafter Seikh Jamil inspected the case record through his lawyer and got the knowledge of ex parte decree on 04.01.2013 and thereafter he came to know that due to illness his father left doing pairvi in Title Suit no. 228 of 2002 as a result of which ex parte judgment and decree was passed against him.

12. Title Suit was pending in the court of Sub-Judge 1st however same was transferred on 05.08.2010 but no information or intimation was ever given with respect to change of court and the case was decided ex parte in the transferred court. It was further submitted that due to illness father of opposite party no.1 died in Aligarh as such he was



not in a position to do pairvi of his case however he never informed about the pendency of said case to opposite party no.1 or any of his family members and as such prayed for setting aside the ex parte decree and permit opposite parties to contest, the Title Suit filed by plaintiff/petitioner in the interest of justice.

13. The application filed by opposite parties under Order 9 Rule 13 of the Code of Civil Procedure was opposed by plaintiff/petitioners on the ground that initially they had appeared in this case and also filed their written statement and thereafter left doing pairvai and as such ex parte judgment and decree was passed against defendant and there is no sufficient cause shown by opposite parties for setting aside the ex parte decree.

14. After hearing the parties and considering the evidence on record the trial court has found that opposite parties have been able to satisfy that defendant was prevented for sufficient reason from appearing in the Title Suit No. 228 of 2002 when it was called for hearing and same was decided ex parte against him as such allowed the application under Order 9 Rule 13 of the Code of Civil Procedure filed on behalf of opposite party.



15. Opposite parties were not party in the Title Suit as such 30 days period from the date of decree under Article 123 of the Limitation Act will not be applicable for filing the application under Order 9 Rule 13 of the Code of Civil Procedure but it would be 30 days from the date of knowledge of ex parte decree, even otherwise no objection was raised by the plaintiff/petitioner that Misc. Case was barred by limitation and same cannot be permitted to be taken in Civil Revision petition. Even otherwise the court has dealt in detail with the merit of the case finding sufficient reasons by which defendant was prevented from appearance when the case was taken up in the court below and on being satisfied has allowed, the petition filed by opposite parties, as such even if there was any delay in filing the petition same will be deemed to have been condoned by the court below. Although opposite party no.1 was not party in the Title Suit but being legal heir and representative of deceased sole defendant is entitled to file petition under Order 9 Rule 13 of the Code of Civil Procedure in view of Section 146 of the Code of Civil Procedure.

16. Learned counsel for the opposite party has relied upon a judgment of Apex court in the case of **Bhagmal**



& Ors vs. Kunwar Lal & Ors since reported in AIR 2010 SC 2991, in which it has been held that for setting aside the ex parte decree 30 days period is to be counted from the date of knowledge of passing of ex parte decree.

17. This court does not find any jurisdictional error or irregularity in the order as impugned accordingly, this Civil Revision is dismissed.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	14.05.2019
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