

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Miscellaneous Appeal No.147 of 2015**

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Rabindra Jha Son of Late Mukteshwar Jha resident of Village- Kachhua ,  
Bhishm Tola, Post- Chakauti, Police Station- Jalley, District- Darbhanga.

... .. Appellant/s

Versus

1. Kapileshwar Singh and Anr Son of Late Raj Kumar Shubheshwar Singh  
residnet of Rambagh Palace , Police Station- LNMU, District - Darbhaga.
2. Uday Nath Jha , representing Maharani Kamsundari Devi Wife of Late  
Maharajdhairaj Dr. Kameshwar Singh of Darbhanga Raj, resident of Kalyani  
Niwas , Police Station- LNMU, District- Darbhanga.

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr.Baidya Nath Thakur, Adv  
For the Respondent/s : Mr.Kapileshwar Kumar, Adv

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**CORAM: HONOURABLE MR. JUSTICE S. KUMAR**  
**ORAL JUDGMENT**

**Date : 31-07-2019**

Heard learned counsel for the parties.

This miscellaneous appeal has been filed for setting aside the order dated 01.04.2015 passed in Miscellaneous Case No. 1 of 2015 by Adhoc Additional District Judge-IV, Darbhanga, by which a petition filed by applicant-petitioner under Order 43 Rule 1(t) and Order 41 Rule 21 read with Section 151 of CPC for rehearing of Title Appeal No. 15 of 2007, was rejected for want of jurisdiction to review its own order.

Plaintiff/petitioner filed Title Suit No. 6 of 2002 in the



court of learned Sub-judge-I, Darbhanga, against the trustee of the estate of Maharajdhiraj Kameshwar Singh for declaration of his title over the suit properties and that the RS Khatiyani and entry made in the record of rights is incorrect.

Defendants appeared and filed their written statement denying the claim of plaintiff and on contest the suit was decreed by learned Sub-judge-I, Darbhanga, declaring the right, title and possession of the plaintiff over the suit land.

Aggrieved by the judgment and decree of the trial court defendant no. 1 Dwarika Nath Jha, filed First Appeal No. 49 of 2003 before High Court, however, since the valuation of the suit was less than Rs. 1 Lacs the appeal was remanded to the District Judge, Darbhanga and accordingly, the Title Appeal No. 15 of 2007, was registered in the court of District Judge, Darbhanga, which was transferred to the Adhoc Additional District Judge-IV, Darbhanga. During pendency of First Appeal appellant Dwarika Nath Jha died and Raj Kumar Subheshwar Singh, Kapileshwar Singh and Vidyanand Jha, were substituted. However, Raj Kumar Subheshwar Singh died but no substitution was made in Title Appeal No. 15 of 2007.

By judgment and decree dated 15.12.2014 and 03.01.2015 Title Appeal No. 15 of 2007 was allowed and the



suit was dismissed and when petitioner came to know about the aforesaid judgment and decree, he filed Miscellaneous Case No. 1 of 2015 in the court of Adhoc Additional District Judge-IV, Darbhanga, under Order 43 Rule 1(t) and Order 41 Rule 21 read with Section 151 of CPC for rehearing of the appeal as its judgment and decree was passed ex parte without even issuing notice to petitioner (sole respondent) in said appeal. However, Miscellaneous Case No. 1 of 2015 was dismissed on the ground that appellate court had no jurisdiction to review its own order.

Order 41 Rule 21 of CPC reads as follows:-

21 . Re-hearing on application of respondent against whom ex parte decree made— Where an appeal is heard ex parte and judgment is pronounced against the respondent, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that the notice was not duly served or that he was prevented by sufficient cause from appearing when the appeal was called on for hearing, the Court shall re-hear the appeal on such terms as to costs or otherwise as it thinks fit to impose upon him.

The order dated 01.04.2015 passed by the Appellate Court in Miscellaneous Case No. 1 of 2015, dismissing the miscellaneous case is not sustainable and accordingly set aside. The matter is remanded to Appellate Court of Adhoc Additional District Judge-IV, Darbhanga to decide the Miscellaneous Case No. 1 of 2015, filed by respondent-petitioner for rehearing of the appeal decided ex parte against him after hearing and



granting sufficient opportunity to both the parties.

The miscellaneous appeal is allowed.

LCR of this case be returned to the court concerned  
forthwith.

**(S. Kumar, J)**

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| AFR/NAFR          | NAFR       |
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