

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.39 of 2015

Sunil Kumar Mishra s/o Sonanand Mishra, Resident of village- Singhwara,
Tole Lalpur P.O P.S- Singhwara District- Darbhanga.

... .. Petitioner/s

Versus

1. Jagannath Mishra s/o Late Anand Mohan Mishra Resident of village-
Singhwara, Tole Lalpur P.O P.S- Singhwara District- Darbhanga.
2. Anand Kumar Mishra s/o Late Shankar Mishra Resident of village-
Singhwara, Tole Lalpur P.O P.S- Singhwara District- Darbhanga.
3. Maho Devi w/o Ramchandra Mishra
4. Indrasan Devi w/o Kameshwar Mishra both resident of village P.O.-
Kahariya P.S.- Keoti District- Darbhanga
5. Chandrika Devi W/o Devendra Jha Resident of village- Sanahpur P.O.-
Bharwara, P.S.- Singhwara District- Darbhanga.
6. Smt. Urmila Devi w/o Nirsan Jha Resident of village P.O- Kaligaon Via-
Bharwara P.S.- Singhwara District Darbhanga.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Bishwa Nath Chaudhary, Adv
For the Respondent/s	:	Mr.Ranjan Kumar Jha, Adv
	:	Mr.Chaudhary Prem Kumar Thakur, Adv

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 05-04-2019

Heard learned counsel for the parties.

2. The petitioner had filed T.S.No.16 of 1998 for recovery of possession. The suit was dismissed ex parte on 06.03.2003. Thereafter, the petitioner filed Title Appeal No.15 of 2003 against dismissal of the suit. The appeal was heard and allowed ex parte on 28.02.2005 setting aside dismissal of the suit and decreed the suit. Thereafter, the petitioner filed Execution Case No.08 of 2009 and on notice in execution case, the opposite party No.1 filed Misc. Case No.04 of 2010 under Order 9 Rule 13



C.P.C. for setting aside the ex parte judgment passed in Title Appeal No.15 of 2003 on the ground that summons were not served. By the impugned order dated 04.03.2015, the ex parte judgment passed in Title Appeal No.15 of 2003 was set aside on the ground that the learned court below was satisfied that summons were not served on the respondents of the suit. The said order is challenged in this civil revision.

3. Learned counsel for the petitioner submits that title of the petitioner on the suit land was already decided in an earlier instituted suit vide T. S.No.45 of 1993 and the present suit was only for recovery of possession as the plaintiff was dispossessed after declaration of title in the earlier suit. Therefore, no claim of the defendant remained to be adjudicated.

4. The only issue before this Court is whether the learned court below has acted with material irregularity or illegality in exercise of jurisdiction in setting aside the judgment and decree passed ex parte in title appeal aforesaid. The learned court below has discussed in detail in the impugned order that summons were not served on the respondents of the appeal. The record also reveals that there is no service report of summons issued through ordinary process or registered post against the respondents. The report of the process server that a notice of the



summons was hanged on the house of the respondents is not verified on affidavit as required under Order 5 Rule 19 C.P.C. Therefore, there was no material before the learned court below for recording satisfaction under Rule 20 Order 5 C.P.C. that there was reason to believe that the defendants was keeping out of way for the purpose of avoiding service nor the learned court below has recorded as such before accepting the proposal of the appellant to publish notice against the respondents in daily newspaper. The learned court below has further recorded that the publication was made in a newspaper (Aaj) which was not widely circulating in the area. Therefore, in my view, there is ample material on the record to substantiate that no case of fixing the title appeal for ex parte hearing was made out. The learned court below has set aside the ex parte decree which would lead to adjudication of the dispute on contest. Hence, I do not find any merit in this civil revision application.

5. Accordingly, this civil revision application stands dismissed.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
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Transmission Date	NA

