

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.143 of 2017

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Punam Verma @ Shrivastav Punaben Wife of Girish Chandra Shrivastav @ Girish ChandraLal, Daughter of Late Bipin Bihari Verma, Resident of Village- Gangouli, P.S.- Kasimabad, District- Gajipur, Uttar Pradesh presently residing at Bhidhanjan Society, Thanagadh- 4, Thanagadh- 363530, Tal- Chotila, District- Surendra Nagar, Gujarat.

... .. Appellant/s

Versus

1. Sumeshwar Prasad and Ors Son of Late Bhuneshwar Prasad, Resident of Mohalla- Tari Paschim Tola, Ara, P.S.- Ara Nagar, Ward No. -02-5, District- Bhojpur.
2. Vijay Shankar Verma
3. Durgesh Nandan Verma
4. Sanjay Verma
5. Mrityunjay Kumar Verma Sl. Nos. 2 to 5 are the Sons of Late Bipin Bihari Verma, Resident of Mohalla- Tari Paschim Tola, Ara, P.S.- Ara Nagar, Ward No. -02-5, District- Bhojpur.
6. Kumud Verma W/o Vinay Kumar Sinha D/o Late Bipin Bihari Verma, Resident of Village Akawana, P.S. and P.O. Badhhara District- Bhojpur.

... .. Respondent/s

with

Miscellaneous Appeal No. 144 of 2017

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Punam Verma @ Shrivastav Punamben Wife of Girish Chandra Shrivastav @ Girish ChandraLal, Daughter of Late Bipin Bihari Verma, Resident of Village- Gangouli, P.S.- Kasimabad, District- Gajipur, Uttar Pradesh presently residing at Bhidhanjan Society, Thanagadh- 4, Thanagadh- 363530, Tal- Chotila, District- Surendra Nagar, Gujrat.

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6. Kumud Verma W/o Vinay Kumar Sinha D/o Late Bipin Bihari Verma, Resident of Village Akawana, P.S. and P.O. Badhhara District- Bhojpur.

... .. Respondent/s

Appearance :

(In Miscellaneous Appeal No. 143 of 2017) &(In Miscellaneous Appeal No. 144 of 2017)

For the Appellant/s	:	Mr. Ram Suresh Ray, Sr. Adv & Mr. Krishna Bihari, Adv
For the Respondent No.1:		Mr. Ram Naresh Sharma, Adv & Mr. Uday Kumar, Adv
For the Respondent no.3,4:		Mr. Aditya Shankar, Adv & Mr. Sanchit Srivastava, Adv

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

Date : 28-08-2019

Heard learned counsel for the parties.

These two miscellaneous appeals have been filed for setting aside the judgment and order dated 09.12.2016 passed by learned Additional District Judge-3rd, Ara passed in Miscellaneous Case No. 1 of 2015 and Miscellaneous Case No. 2 of 2015, by which miscellaneous case has been dismissed.

Appellant had filed Miscellaneous Case No. 1 of 2015 and Miscellaneous Case No. 2 of 2015 in the court of learned Sub-Judge-Ara, Bhojpur under Order 41 Rule 21 of CPC for rehearing of Title Appeal No. 38 of 2006 and Title Appeal No. 39 of 2006, which was decided *ex parte* against the appellant.

Plaintiff (Bhuneshwar Ram) had filed Title Suit No. 95 of 1990 for declaration of his title and confirmation of



possession over the suit land against defendant-Bipin Bihari Verma @ Kanti Mohan Verma(father of appellant) whereas Title Suit NO. 278 of 1992 was filed by plaintiff-Bipin Bihari Verma @ Kanti Mohan Verma(father of appellant) against Bhuneshwar Ram for declaration of title on the basis of grant of probate in favour of Bipin Bihari Verma @ Kanti Mohan Verma and for recovery of possession of suit land and also to declare the sale deed executed by Narmadeshwar Prasad as illegal and inoperative. Both the suits were tried and decided together by judgment and decree dated 07.08.2006 passed by learned Sub-Judge-II, Ara, Bhojpur and Title Suit No. 278 of 1992 was decreed whereas Title Suit No. 95 of 1990 was dismissed.

Against the judgment and decree passed by the trial court Sumeshwar Prasad s/o Bhuneshwar Ram preferred two appeals giving rise to Title Appeal NO. 39 of 2006(arising out of Title suit No. 95 of 1990) and Title Appeal No. 39 of 2006(arising out of Title Suit No. 278 of 1992) and both were heard together and allowed by a common judgment and decree dated 27.03.2015 passed by 3rd Additional District Judge, Ara, Bhojpur. The judgment and decree of court below was set aside and Title Suit No. 95 of 1990 was decreed and Title Suit NO. 278 of 1992 was dismissed. During pendency of Title Appeal



respondent- Bipin Bihari Verma @ Kanti Mohan Verma (father of appellant) died leaving behind three sons and two daughters who were substituted as respondents in Title Appeal No. 38 of 2006 and Title Appeal No. 39 of 2006 including the present appellant. However, it is an admitted fact that the other substituted heirs of deceased Bipin Bihari Verma @ Kanti Mohan Verma (father of appellant) appeared in the appeal and contested the appeal but appellant in spite of valid service of notice did not chose to appear and contest the Appeal No. 38 of 2006 and Appeal No. 39 of 2006.

A petition was filed in the court of learned Additional District Judge-3rd, Ara by petitioner Poonam Verma w/o Harish Chandra Srivastava and d/o late. Bipin Bihari Verma @ Kanti Mohan Verma under Order 41 Rule 21 of CPC giving rise to Miscellaneous Case No. 1 of 2015 and Miscellaneous Case No. 2 of 2015 stating therein that the father of petitioner was respondent in Title Appeal No.38 of 2006 and Title Appeal No. 39 of 2006 and he died during the pendency of title appeal and petitioner was substituted in the said appeal as respondent, however, no notice was served upon her and she resides in Ahemdabad in Gujarat and although summons were published in the daily newspaper but same was not in circulation in



Gujarat as such no notices were validly served upon her hence, the decision of Title Appeal No. 38 of 2006 and Title Appeal No. 39 of 2006 be set aside and matter be heard afresh.

Opposite parties appeared and filed their reply in which it was stated that opposite party no. 2 to 6 are the sons, brother and sister of the petitioner and they have contested the Appeal and petitioner Poonam Verma deliberately did not appear and as such miscellaneous case should be dismissed. It was further submitted that other contesting opposite parties have preferred second appeal before Patna High Court being Second Appeal No. 144 of 2015 and Second Appeal No. 95 of 2015 against judgment and decree passed in Title Appeal No. 38 of 2006 and Title Appeal No. 39 of 2006, which is pending before the Hon'ble High Court. The court has observed that from perusal of the record, it appears that notices were validly served upon the applicant (appellant) and has recorded its satisfaction that notices have been validly and duly served upon the applicant (appellant) and rejected the case of petitioner-appellant.

After hearing learned counsel for the appellant and learned counsel for the respondents and considering the materials available on record, this Court does not find any illegality or error or infirmity in the order dated 09.12.2016



passed by the learned Additional District Judge-3rd, Ara in
Miscellaneous Case No. 1 of 2015 and Miscellaneous Case No.
2 of 2015, requiring any interference by this Court.

Accordingly, both the miscellaneous appeals are
dismissed.

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.12.2019
Transmission Date	NA

