

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.792 of 2017

Udai Krishna Prasad Son of Sri Ram Krishna Prasad Resident of Village-
Pamara, Police Station- Tharthari, District- Nalanda.

... .. Appellant/s

Versus

1. Dr. Jai Krishna Prasad Both are Sons of late Bisheswer Dayal Resident of Village- Pamara, Police Station- Tharthari, District- Nalanda.
2. Annapurna Sinha Wife of Sri Chandra Kumar Sinha , and daughter of Ram Krishna Prasad Resident of Mohalla- Man Singh Path, Chitra Gupta Nagar, P.S.- Patrakar Nagar, District- Patna.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Sunil Kumar Alias Sharma
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

5 03-01-2019 Heard Mr. Sunil Kumar Sharma, learned counsel for the petitioner and Mr. J.S. Arora, learned senior counsel for the respondents.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for quashing the order dated 01.04.2017 passed in Misc. Case No.05 of 2002, as contained in Annexure-10 to this application, whereby the learned Sub-Judge-1st, Hilsa, Nalanda had dismissed an application filed by the petitioner under Order 9 Rule 4 of the Code of Civil Procedure (for short 'CPC') for restoration of Title Suit No. 15 of 1997.

3. Learned counsel for the petitioner submitted that the impugned order passed by the court below is not sustainable in



law as the reasons assigned by him for dismissal of the miscellaneous case are perverse. He contended that the court below has refused to entertain the petitioner's application filed under Order 9 Rule 4 of the CPC for restoration mainly on the ground that the order dated 11.04.2002 whereby the suit was dismissed was an order of rejection of plaint under Order 7 Rule 11 (e) and (f) of the CPC. He submitted that Rules 11(e) and (f) under Order 7 were inserted in the CPC with effect from 01.07.2002. Hence, the said provisions were not applicable to the suit, which was filed in the year 1997 and was dismissed for non-compliance of the court's order vide order dated 11.04.2002.

4. Per contra, Mr. J.S. Arora, learned senior counsel appearing on behalf of the respondents submitted that apart from the aforestated ground there were other relevant grounds on the basis of which the court found the miscellaneous application filed by the petitioner fit to be dismissed. He contended that the miscellaneous application was neither signed by the petitioner nor the verification part was signed by him. Thus, the court below has rightly dismissed the miscellaneous case filed by the petitioner.

5. In reply to the contention advanced by the learned senior counsel, learned counsel for the petitioner submitted that



verification of pleadings can be done by any person acquainted with the facts of the case and it is not necessary for the party himself to swear the affidavit. In support of his submission, he has placed reliance on a decision of this Court in the matter of ***Gulab Chand Sao @ Gulab Chand Vrs. Ram Lal Sao [1986 PLJR 162]***.

6. Having heard the parties, I find substance in the submission made by the learned counsel for the petitioner.

7. In ***Gulab Chand Sao*** (Supra), by the impugned order the court below had rejected the affidavit filed on behalf of the defendant on the ground that it was not sworn by the defendant himself. After taking into consideration Rule 15 (1) of Order 6 of CPC, this Court came to the conclusion that the court below erred in law in holding that the affidavit filed by another person should not be accepted. The findings given in the said case are as under:

“4. Learned counsel for the petitioner contends that there is no provision in the Act as to who will swear an affidavit. In this connection, he refers to Rule 15(1) of Order 6 of the Code of Civil Procedure (hereinafter referred to as the Code) which runs as follows:-

“15. verification of pleadings

(1) Save as otherwise provided by any



law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case.

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5. It is clear that an affidavit can be sworn by some other person who is acquainted with the facts of the case. It is stated that the affidavit filed before the court below disclosed that the person who swore the affidavit was acquainted with the facts of the case. In this circumstance, it is contended that the affidavit filed by a person, acquainted with the facts of the case, should be accepted in accordance with the provisions of Order 6, Rule 15 of the Code.

6. In my opinion, there is sufficient substance in the contention of the learned counsel of the petitioner. Section 14 (4) of the Act requires that the defendant should file an affidavit. It is not mentioned in that section that the affidavit should be sworn by the defendant.”

8. In view of the ratio laid down in ***Gulab Chand Sao*** (Supra), I am of the opinion that simply because the petitioner had neither personally sworn affidavit nor verified the pleading at the foot of the miscellaneous petition, the same could not have been made a ground for dismissal of the miscellaneous case.



Furthermore, the miscellaneous case had been filed for restoration of the partition suit, which was dismissed due to non-compliance of the court's order. Since it was not a case of rejection of claim, I fail to understand as to how the court below came to a conclusion that the suit was dismissed under Order 7 Rule 11 (e) and (f) of the CPC. That apart, the provisions prescribed under Order 7 Rule 11 (e) and (f) were inserted in the CPC with effect from 01.07.2002 whereas the suit itself had been dismissed due to non-compliance of the court's order on 11.04.2002. In that view of the matter, I find the reason assigned by the court below for dismissal of the miscellaneous petition to be perverse. Hence, the order passed by the court below cannot be sustained. It is set aside accordingly.

9. The application stands allowed.

(Ashwani Kumar Singh, J)

pradeep/sneha

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