

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.737 of 2018

=====

Saroj Devi, Wife of Nagendra Prasad, Resident of Village- Hajiyapur, Ward No.10, P.O. and P.S.- Gopalganj, District- Gopalganj.

... .. Appellant/s

Versus

1. Mithilesh Devi, Wife of Late Yogendra Prasad,
2. Anil Kumar Srivastava, Son of Late Yogendra Prasad,
3. Sachin Kumar Shrivastava, Son of Late Yogendra Prasad,
4. Deepak Kumar Srivastava, Son of Yogendra Prasad,
5. Savita Shrivastava, D/o Late Yogendra Prasad, Above all are resident of Village- Hajiyapur, Ward No.10, P.O. and P.S.- Gopalganj, District- Gopalganj.
6. Murli Manohar Shrivastava, Son of Late Nagendra Prasad,
7. Dharmendra Kumar, Son of Late Nagendra Prasad,
8. Ratnesh Kumar, Son of Late Nagendra Prasad,
9. Hemant Kumar, Son of Late Nagendra Prasad,
10. Runjhun Devi, Wife of Mithilesh Kumar Sinha, D/o Late Nagendra Prasad,
11. Shalim Devi, Wife of Jayant Kumar, Daughter of Late Nagendra Prasad, Above all are resident of Village- Hajiyapur, Ward No.10, P.O. and P.S.- Gopalganj, District- Gopalganj.
12. Deepmala Devi, wife of Santosh Kumar, D/o Late Nagendra Prasad, Resident of Mohalla- Garkha Dhala, Near Airport, P.O. + P.S. Chpra Town, District- Chpra (Saran)
13. Shobha Devi, wife of Arbind Kumar, D/o Late Nagendra Prasad, Resident of Mohalla- Dahiyawa, P.S. Chapra, District- Chapra (Saran)
14. Indu Devi, wife of Umesh Chandra Verma, R/o Kalpanapuri Colony, Prabhat Co-operative Society, Baridih, Basti, Jamshedpur, Jharkhand

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr.Dr. Alok Kumar Sinha, Adv.
For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 24-09-2019

Heard the parties.



This miscellaneous appeal has been filed against the order dated 23.07.2018 passed by the Fast Track Court-2, Gopalganj in Miscellaneous Case No. 02 of 2011, by which the application filed by the appellant under Section 263(B) of the Indian Succession Act for revocation of grant of Probate in Probate Case No. 29 of 2008 has been allowed and case has been fixed for re-hearing after giving opportunity to the other side to file their objection to the Will for which Probate Case No. 29 of 2008 has been restored to its original file.

On the petition filed by the opposite party there is a specific finding of the court that there has been no valid service of summons on the opposite parties who are the near relatives and notice upon them has to be validly served. There is specific finding of the court below that only because of non-return of registered notice, the notice was deemed to have been validly served against the opposite party which is in conflict with the provisions of issuance of summons and against Order 5 Rule 19 of C.P.C. and as such it has set aside ex parte order. The case is being placed for fresh hearing after giving opportunity to the other side.

Having heard the counsel for the appellant as well as after perusing the order passed by the court below, this court



does not find any error or infirmity in the order of the court below by which ex parte order has been set aside.

Accordingly, the miscellaneous appeal is dismissed.

(S. Kumar, J)

Rajiv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.12.2019
Transmission Date	NA

