

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1037 of 2018

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Jai Prakash Mandal Son of Late Narayan Mandal, Resident of Village-
Tulsipur, P.O.- Tulsipur, P.S.- Kharik Bazar, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Additional Musif Iind, Naugachia, Bhagalpur through Registrar Civil Court Naugachia.
3. Sushil Mandal, Son of Late Narayan Mandal,
4. Upendra Mandal, Son of Late Hari Narayan Mandal, Respondent no.3 and 4 are resident of Village and P.O.- Tulsipur, P.S.- Kharik, District- Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Mrityunjay Kumar
For the State	:	Mr. Abhay Kumar Kashyap, AC to GP18
For Res. Nos. 3-4	:	Mr. Dineshwar Prasad Singh

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

7 29-11-2022 The petitioner is aggrieved by orders, dated 14.02.2008, 08.02.2013 and 16.02.2018, passed in Title Suit No. 46 of 1999, by which the learned Additional Munsif-II, Naugachia, has refused to recall the order by which the suit was fixed for ex-parte hearing.

Learned Counsel for the petitioner submits that the petitioner has filed a petition on 01.02.2013 in title Suit No. 46 of 1999, for recall of the order, dated 14.02.2008, but the same was dismissed by learned Additional Munsif-II, vide order, dated 08.02.2013. Thereafter, the petitioner filed review petition on 05.07.2013, which was also dismissed vide order, dated



16.02.2018.

Learned Counsel for the petitioner submits that summons was not served upon him personally; rather, the same was received by his brother, who is the plaintiff himself. The suit has been filed by the plaintiff against the State of Bihar for correction in the survey entry, which has wrongly been recorded in the name of State of Bihar instead of the plaintiff.

Learned Counsel for the respondents submits that the respondent no. 3-plaintiff made the petitioner as a party, being the brother of plaintiff no. 1, but he is trying to delay the disposal of the suit with mala fide intention and has deliberately not appeared despite service of summons upon him. He next submits that a separate suit has been filed by the petitioner, bearing Title Suit No. 66 of 2002, in which the plaintiff no. 1 has been made defendant. The suit has been filed for setting aside the sale deed executed by the plaintiff no. 1 of the present suit in favour of plaintiff no. 2.

I have heard learned Counsel for the parties concerned and have gone through the materials on record.

From perusal of the impugned order, it transpires that there is dispute with regard to service of summons properly upon the petitioner-defendant no. 2.



Taking into consideration the fact that the petitioner is willing to contest the suit and there is dispute with regard to service of summons upon him, as such, I am of the opinion that in the interest of justice, the order, dated 14.02.2008, passed in Title Suit No. 46 of 1999, should be recalled.

Accordingly, the orders, dated 14.02.2008, 08.02.2013 and 16.02.2018, passed in Title Suit No. 46 of 1999, are set aside and the petitioner is directed to file his written statement, if so advised, within a period of ninety days from today, failing which he shall be debarred from filing written statement.

In the result, this application is allowed.

Needless to say that the petitioner-defendant no. 2 will co-operate in the disposal of the suit.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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