

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.148 of 2020

Sulekha Devi @ Sulekha Kumari Daughter of Ram Yatan Singh @ Sri Ramjatan Yadav and Wife of Dharmbir Kumar Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.

... .. Petitioner/s

Versus

1. Ramishwar Singh Son of Late Sahdeo Gope Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
2. Ramyatan Singh Son of Late Sahdeo Gope Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
3. Mahabir alias Arvind Prasad Son of Late Sahdeo Gope Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
4. Muneshwar Prasad Son of Late Sahdeo Gope Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
5. Anirudh Kumar Son of Ramishwar Singh Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
6. Sunil Kumar Son of Ramishwar Singh Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
7. Arun Kumar Son of Ramyatan Singh Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
8. Niwas Kumar Son of Ramyatan Singh Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
9. Chandan Kumar Son of Babu Arun Kumar And under the guardianship of Babu Arun Kumar, Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
10. Beauty Kumari Daughter of Arun Kumar And under the guardianship of Babu Arun Kumar, Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
11. Ashish Kumar Son of Babu Niwas Kumar And under the guardianship of Babu Niwas Kumar, Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
12. Ayub Raj Son of Babu Niwas Kumar And under the guardianship of Babu Niwas Kumar, Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
13. Tannu Son of Babu Niwas Kumar And under the guardianship of Babu Niwas Kumar, Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
14. Nitish Kumar Son of Mahabir Prasad @ Arvind Prasad Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
15. Bhushan Kumar Son of Muneshwar Prasad Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
16. Prashansha Kumari Daughter of Muneshwar Prasad Resident of Village-



- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
17. Anshu Kumar Daughter of Muneshwar Prasad Resident of Village- Dehlichak, Birnama, Post office- Sirnama, P.S.- Chandi, District- Nalanda.
 18. Rinku Kumar Daughter of Ramishwar Prasad, W/o Ramwali Yadav Resident of Village- Ghaghdi, Post office- Sirsi, P.S.- Bahktiyarpur, District- Patna..
 19. Rina Kumari Daughter of Ramishwar Prasad Resident of Village- Mahanandpur, Post office- Deepnagar, P.S.- Deepnagar, District- Nalanda.
 20. Sanju Kumari Daughter of Mahabir Prasad @ Arvind Prasad, W/o Awadhesh Prasad Resident of Village- Mahanandpur, Post office- Deepnagar, P.S.- Deepnagar, District- Nalanda.
 21. Najju Kumari Daughter of Mahabir Prasad @ Arvind Prasad, Wife of Vivek Kumar Resident of Village- Mutadhi, P.O. and P.S. - Harnaut, District- Nalanda.
 22. Manju Kumari Daughter of Muneshwar Prasad, W/o Manoj Kumar Resident of Village- Budhanpur, Post office- Mobarakpur, P.S.- Barh, District- Patna.
 23. Kusum Kumari Daughter of Muneshwar Prasad, W/o Ghanshyam Kumar Resident of Village- Katauna, P.O. and P.S.- Khushrupur, District- Patna.
 24. Sushma Kumari Daughter of Muneshwar Prasad Resident of Village- Katauna, P.O. and P.S.- Khushrupur, District- Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Indu Bhushan
For the Respondent/s :

=====

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 18-07-2022 The petitioner is aggrieved by the impugned order dated 07/11/2019 by which the learned trial court has recalled the ex-parte order dated 09 / 11 / 2016 passed in Title Suit No. 59 of 2016.

The petitioner is a plaintiff in Title Suit No. 59 of 2016 filed for partition of land described in Schedule II and III of the plaint. The suit was admitted and notice was issued to the defendants-respondents for their appearance and the case was fixed for appearance of the defendants-respondents on



22/07/2016.

Learned counsel for the petitioner submits that postal receipt for service of notice was filed and thereafter an application was filed for publication of notice in newspaper which was allowed by the trial court and notice for appearance of the defendants-respondents was published in the “Dainik Jagran” newspaper on 01-09-2016. After publication of the notice in newspaper and due to non-appearance of the some defendants on 09/11/2016 the suit was fixed for ex-parte hearing and the next date was fixed for 30-11-2016. A petition was filed by the defendants 2 to 4 and 7 to 8 - respondents for recall of the order dated 09/11/2016 inter alia on the grounds that notice was not served upon them and they came to know about the suit after filing information slip before the court below.

Learned counsel further submits that the court below has committed error of law by recalling the order dated 09-11-2016 at the advance stage of the suit inasmuch as the plaintiff's witness has already been examined and one of the defendants has also been examined in the suit. He further submits that the learned court below has recalled the order in violation of the provision contained in Order VIII Rule 1 of the C.P.C. He further submits that rejoinder filed by the petitioner to



the petition of recall has not been considered by the trial court while passing the impugned order.

I have heard learned counsel for the petitioner and have perused the material on record and the impugned order. It appears that the suit is for partition and the defendants are the co-sharers. The learned trial court has recalled the order on the ground that in absence of the co-sharers the suit which has been filed for partition of the property described in Schedule II and III of the plaint cannot be properly decided and for just and effectual decision of the suit presence of the defendants is necessary and accordingly recalled its order dated 09-11-2016.

In my opinion the court below in order to prevent miscarriage of justice and to arrive at just decision in the suit has recalled the order of ex-parte hearing of the suit. I do not find any illegality in the impugned order.

Accordingly, this civil miscellaneous application is rejected.

(Anil Kumar Sinha, J)

praful/-

U		T	
---	--	---	--

