

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.565 of 2017

1. Chhotu Paswan @ Shailendra Paswan son of Mahendra Paswan.
2. Smt. Renu Devi, Wife of Chhotu Paswan @ Shailendra Paswan, Both resident of Village- Usari Karki P.S. Ariyari, District- Sheikhpura.

... .. Petitioner/s

Versus

1. Chandrika Paswan
2. Karu Paswan, Both son of late Gajadhar Paswan.
3. Chandmuni Devi, Wife of Karu Paswan, All resident of Village- Usari Karki, P.S. Ariyari, District- Sheikhpura.
4. Mahendra Paswan, Son of Late Gajadhar Paswan, resident of Village- Usari Karki, P.S. Ariyari, District- Sheikhpura.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh No. 1, Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

4 07-04-2023 Heard learned counsel for the petitioners.

This Civil Miscellaneous Application has been filed under Article 227 of the Constitution of India for quashing of the order dated 31.01.2017 passed in Title Suit No. 67 of 2013 by the learned Sub Judge Ist, Sheikhpura.

It appears from the petition and material on record that petitioners are defendant No. 1 and 2 in the Title Suit bearing T.S. No. 67 of 2013 filed by the plaintiff for declaration that registered sale deed dated 03.05.2013 executed by defendant No. 1 in favour of defendant No. 2 is forged, fabricated and executed for non-consideration of money and the



same is not binding on the plaintiff alongwith allied relief. Petitioner No. 1 Chotu Paswan is grandson of plaintiff Most. Ram Pyari Devi. The summons were issued on defendants/petitioners and lastly the petitioners were served through paper publication, but they failed to appear in the trial Court. The order for ex-parte hearing of the suit was passed vide order dated 02.11.2013. The witnesses were examined on behalf of plaintiff and after conclusion of argument the date 02.12.2013 was fixed for order/judgment.

The petitioners / defendants appeared on 02.12.2013 and filed a petition under Order 9 Rule 7 read with Section 151 of the Code of Civil Procedure for recalling the order dated 02.11.2013 passed for ex-parte hearing in the suit on the ground that summon has not been properly served to them. The learned trial Court after hearing both the parties rejected the petition dated 02.12.2013 filed by the defendants / petitioners under Order 9 Rule 7 read with Section 151 CPC on merit vide order dated 15.02.2014. The defendants / petitioners again filed petition dated 06.03.2014 under Order 9 Rule 7 read with Section 151 CPC for recalling the said order dated 02.11.2013 on the same grounds and after hearing the parties the trial Court again rejected the same vide order dated 27.03.2014. The



defendants/petitioners again vide petition dated 30.04.2014 filed written statement alongwith petition to recall the previous orders dated 15.02.2014 and 27.03.2014 which has been rejected by the impugned order dated 31.01.2017.

Learned counsel for the petitioners submits that although the petition under Order 9 Rule 7 read with Section 151 of CPC had been rejected twice by the learned trial Court but it is in the interest of justice that the petitioners / defendants may be permitted to contest the suit. He has conceded that petitioners have not filed any petition before the Higher Court for quashing the earlier orders dated 15.02.2014 and 27.03.2014.

Having heard learned counsel for the petitioners and on perusal of the record, it appears that the petition under Order 9 Rule 7 read with Section 151 CPC has been rejected by the learned trial Court on merit two times earlier and the learned trial Court given the valid reasons for rejection of the petition filed by the petitioners. It is also observed by the trial Court that due diligence for contesting the suit has not been shown by the petitioners. The petitioners admittedly had also not preferred any appropriate application in the higher Court for setting aside the earlier orders passed by the trial Court.



The impugned order is a reasoned order, there is no jurisdictional illegality or error for interference by this Court in its supervisory jurisdiction under Article 227 of the Constitution of India. This Civil Miscellaneous is devoid of merit.

This Civil Miscellaneous application is, accordingly, dismissed.

(Sunil Dutta Mishra, J)

shweta/-

U			
---	--	--	--

