

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No. 525 of 2017

Rajesh S/o Rameshwar Singh, resident of village - Dalpat Vishunpur, P.O.
Dalpat Vishunpur, P.S. Dhaka, District - East Champaran

... .. Petitioner/s

Versus

1. Rameshwar Singh, S/o Late Daroga Singh, resident of village - Dalpat Vishunpur, P.O. Dalpat Vishunpur, P.S. Dhaka, District - East Champaran, At Present Mohalla - Sarvodaya Nagar, Near Chhota Bariyarpur, P.O. Matihari Court, P.S. Chhatauni, District - East Champaran
2. Chandrabhan Singh, S/o Late Daroga Singh,
3. Shambhu Singh, S/o Late Daroga Singh, Both resident of village - Dalpat Vishunpur, P.O. Dalpat Vishunpur, P.O. Dhaka, District - East Champaran
4. Bachchi Devi, D/o Late Daroga Singh, W/o Chateshwar Singh, resident of village - Fulwar, P.O. Fulwar, P.S. Lakhaura, District - East Champaran
5. Rumai Devi, D/o Late Daroga Singh, W/o Anandi Singh, resident of village - Padumker, P.O. Padunker, P.S. Patahi, District - East Champaran
6. Reeta Devi, D/o Late Daroga Singh, W/o Rajeshwaar Singh, resident of village - Ratansaar, P.O. Munfarawa, P.S. Patahi, District - East Champaran

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Dubey, Advocate

For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

2 03-07-2023 Heard learned counsel for the petitioner.

2. This Civil Miscellaneous application has been filed under Article 227 of the Constitution of India against the order dated 20.09.2016 passed by the learned Sub-Judge, East



Champaran, Motihari in Probate Case No. 20 of 2011 / 03 of 2015 by which he has allowed the petition dated 29.03.2016 filed on behalf of respondent No. 3 to recall the *ex parte* hearing order and to accept his written statement.

3. The brief facts appeared from the application are that petitioner has filed Probate Case No. 20 of 2011 for grant of probate in his favour on the basis of a will dated 26.07.2006 executed by Daroga Singh who died on 13.08.2006. On service of notice, respondent No. 1 appeared on 14.06.2012. After paper publication, the service of notice on respondent Nos. 2 and 3 had been accepted as valid but they remain absent and on 17.04.2014 respondent No. 2 appeared but not filed written statement despite given several dates and the Court debarred him from filing written statement. After framing of issues two plaintiff witnesses have been examined and cross-examined by defendant No. 1. Respondent No. 3 filed his written statement on 16.03.2016 and on 29.03.2016 also filed petition with prayer to recall the *ex parte* order dated 11.03.2016. The same was objected by the petitioner on the ground that the said petition was filed belatedly. The learned Court below allowed the said petition dated 29.03.2016.

4. Learned counsel for the petitioner submits that



mere perusal of order-sheet of the trial Court in the suit, it appears that the defendants were debarred from filing written statement vide order dated 02.03.2015 but in the impugned order the said date is stated as 16.02.2016 which has been recalled by allowing the application of respondent No. 3 and respondent No. 3 / opposite party No. 3 was allowed to contest the suit.

5. Learned counsel for the petitioner further submits that the petitioner has opposed the said application by stating that defendant No. 3 had appeared in the suit on 04.05.2015 but he has not filed the written statement within time accordingly he has been debarred from filing written statement but the same was not taken into consideration. He also submits that respondent No. 3 has filed the said application in a causal manner which is neither supported with an affidavit nor signed by the party and there is no explanation for delay in filing the written statement after appearance. The trial Court failed to appreciate that due to delay on part of defendant No. 3 the suit has been delayed unnecessarily.

6. Having heard learned counsel for the petitioner and on perusal of the impugned order, it appears that the learned Court below allowed the application of respondent No. 3 for



recalling the *ex parte* proceeding and prayed to accept the written statement filed on behalf of respondent No. 3. The Court has allowed the same application with a cost of Rs. 1000/- by the said impugned order dated 20.09.2016. It also appears from paragraph 5 of the rejoinder on behalf of petitioner / plaintiff to the application dated 29.03.2016 of respondent No. 3 that *ex parte* order was passed by the trial Court on 16.02.2016. The impugned order has been passed by the learned Court below on hearing both the parties and considering the facts and circumstances of the case.

7. After going through the impugned order passed by the learned trial Court as well as considering the materials available on record and after hearing the petitioner, this Court does not find any jurisdictional error or infirmity in the impugned order passed by the trial Court to interfere in supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

8. This Civil Miscellaneous application is, accordingly, dismissed.

9. Learned Court below is directed to expedite the disposal of the said Probate Case No. 20 of 2011.

10. Both the parties are directed to cooperate the trial



Court for expeditious disposal of the said Miscellaneous application.

(Sunil Dutta Mishra, J)

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