

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.297 of 2021

Prem Narayan Yadav, S/o - Late Lakshmi Gope @ Lakshmi Narayan yadav,
Resident of Gosai Tola, Shree Ram Janki Kunj Apartment, P.O. - Patliputra,
P.S. - Patliputra, District- Patna, Pin Code - 800013.

... .. Petitioner/s

Versus

1. Ashok Kumar, S/o - Late lakshmi Gope alias lakshmi Narayan Yadav
Resident of - Bhawar Pokhar, Back side Pakka Kuan, P.O. - Bankipur, P.S. -
Pirbahore, District- Patna, Pin Code - 800004
2. Estate of Late Munder Kuer, Husband of Sri lakshmi Gope alias lakshmi
Narayan Yadav Resident of Bhawar Pokhar, Back side Pakka Kuan, P.O. -
Bankipur, P.S. - Pirbahore, Distt- Patna, Pin Code- 800004.
3. Manoj Kumar, Son of Late Lal Babu @ Rup Narayan Gope, Resident of
Bhawar Pokhar, Back side of Pakka Kuan, P.O. - Bankipur, P.S. - Pirbahore,
Dist. - Patna, Pin Code - 800004
4. Rajesh Kumar, Son of Late lal Babu @ Rup Narayan Gope Resident of
Bhawar Pokhar, Back side of Pakka Kuan, P.O. - Bankipur, P.S. - Pirbahore,
Dist. - Patna, Pin Code - 800004
5. Rakesh Kumar, Son of Late Lal Babu @ Rup Narayan Gope, Resident of
Bhawar Pokhar, Back side of Pakka Kuan, P.O. - Bankipur, P.S. - Pirbahore,
Dist. - Patna, Pin Code - 800004
6. Mukesh Kumar, Son of Late lal Babu @ Rup Narayan Gope Resident of
Bhawar Pokhar, Back side of Pakka Kuan, P.O. - Bankipur, P.S. - Pirbahore,
Dist. - Patna, Pin Code - 800004
7. Shila Devi, Daughter of Late Lal Babu alias Rup Narayan Gope, wife of Not
known, Resident of Mohalla - Shivpuri, Tikiya Toli, P.S. - Sultanganj, P.S. -
Mahendru, Pin Code- 800006, Dist. - Patna.
8. Rekha Kumari, Daughter of Late Lal Babu alias Rup Narayan Gope, Wife of
Prem Kumar Yadav, Resident of Mohalla - Munna Chak, Kankarbagh,
Patna, P.S. - Kankarbagh, P.O. - Lohiya Nagar, Pin Code - 800020, Dist. -
Patna.
9. Pinki Kumari, Daughter of Late Lal Babu alias Rup Narayan Gope, Wife of
Arun Kumar Yadav, Resident of Mohalla - Munna Chak, Kankarbagh, Patna,
P.S. - Kankarbagh, P.S. - Lohiya Nagar, Pin Code - 800020, Dist.- Patna.
10. Kanchan Kumari, Daughter of Late lal Babu alias Rup Narayan Gope, Wife
of Ranjan Kumar Yadav, Resident of Mohalla - Lalji Tola, Near CDA
Building, Patna, P.S. - Kadamkuan, Post Office- CDA, Post Office, Pin
code- 800001.
11. Arjun Prasad, Son of Late Umesh Chandra Yadav, Resident of Bhawar
Pokhar, Back side of Pakka Kuan, P.O. - Bankipur, Police Station-
Pirbahore, District- Patna, Pin Code - 800004.
12. Punam Kumari, Daughter of Late Umesh Chandra Yadav, Wife of Indrajeet
Kumar, Resident of Village and Post - Sikandarpur, Police Station-
Sikandarpur, Post Office - Bihata, Pin Code - 801108, Dist. - Patna.
13. Baby Kumari, Daughter of late Umesh Chandra Yadav, Wife of Ranjeet
Kumar, Resident of Village and Post - Sikandarpur, Police Station-



Sikandarpur, Post Office - Bihta, Pin Code - 801108, Dist.- Patna.

14. Shanti Devi, Daughter of Late Laxmi Narayan Gope, Wife of Manindra Nath Ram, Resident of Gate No. 67 Kurji, Patna, Post Office - Sadakat Ashram, Police Station- Digha, Pin Code - 800010, Dist. - Patna.
... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Pramod Kumar Yadav, Advocate
For the Respondent/s : Mr. Amrendra Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

10 17-02-2023 Heard learned counsel for the parties.

2. This application has been filed against the order dated 08.01.2021 passed in Letter of Administration Case No. 21 of 2018 by the learned Additional Sessions Judge-XVII, Patna whereby and whereunder a petition dated 13.08.2019 filed for setting aside/recall of order dated 30.07.2019 by which petitioner was proceeded ex-parte has been dismissed.

3. The brief fact of this case is that the respondent no.1/ plaintiff filed the letter of Administration Case No. 21 of 2018 before the learned District Judge, Patna for grant of Letter of Administration of the Will dated 28.04.1986 executed by late Munder Kuer in favour of plaintiff in which summons, notices by way of citation sent or published by both modes through Nazarat as well as registered cover with acknowledgment and those notices were served upon defendants but they failed to appear in the case then the Court below passed an ex-parte order vide order dated 30.07.2019. When the petitioner came to know he appeared and



filed a petition to recall the order dated 30.07.2019 which was rejected by the impugned order.

4. Learned counsel for the petitioner/defendant no.10 submits that petitioner and some other defendants were living in different places in connection with their livelihood and as such no summons or notices were served or tendered to the petitioner due to which he could not appear in the case and contest the same. He further submits that plaintiff/respondent no.1 managed to get collusive service report of summon and file a petition under Section 151 C.P.C. and requested to pass ex-parte order against the petitioner and others and without issuance of a fresh notice to the petitioner and others, the Court below passed the ex-parte order against the petitioner and others vide order dated 30.07.2019 which is illegal and against the Natural Justice. He has pointed out that in the service report son of plaintiff is witness which itself creates doubt with respect to proper service of summon on the petitioner.

5. Learned counsel for the petitioner further submits that the aforesaid L.A. Case has been filed on the basis of forged will dated 28.04.1986 for the purpose to deprive the effect of final decree dated 26.06.2019 passed in the Title Partition Suit No. 148/1998 by the learned Sub-Judge- IV, Patna by which suit property which is also the subject matter of the said “will” has been



partitioned 3/5th share to his all brothers and the plaintiff / respondent no.1 has accepted the share of his all brothers in the property. Further, it is submitted that petitioner and plaintiffs are brothers and the petitioner has very good case on merit and prayed to grant opportunity to the petitioner to contest the said L.A. Case.

6. On the other hand, learned counsel for the respondents submits that despite valid service of notice the petitioner failed to appear, then the Court below rightly passed the ex-parte order and also rejected the recall petition. He further submits that there is no sufficient cause for the petitioner for not appearing when the case was called on. Further there is presumption of service of notice by registered post and the order of the learned Court below requires no interference. He has submitted that appropriate cost may be imposed on the petitioner.

7. It appears that the learned Court below vide order dated 30.07.2019 on satisfaction that the petitioner and some other defendants have refused to accept the notice, ordered for fixing ex-parte proceeding and on the next date i.e. 13.08.2019 the petitioner appeared and filed to recall the order dated 30.07.2019.

8. The law is well settled that procedure is handmaid of the law and it is made for achieving the last result of the justice between the parties and also is a part of principle of natural justice.



While deciding whether there is sufficient cause or not for non appearance, the Court must bear in mind the object of doing substantial justice to all the parties and that the technicalities of law should not prevent the court from doing substantial justice.

9. The 'sufficient cause' should be given liberal construction so as to advance substantial justice and to apply the law in a meaningful manner which serves the ends of justice.

10. The Hon'ble Supreme Court in **Robin Thapa Vs Rohit Dora** reported in **(2019) 7 Supreme Court Cases 359** in Paragraph 7 observed:

"7 Ordinarily, a litigation is based on adjudication on merits of the contentions of the parties. Litigation should not be terminated by default, either of the plaintiff or the defendant. The cause of justice does require that as far as possible, adjudication be done on merits"

11. The Division Bench of this Court in **Saket Kumar Vs Nitu Kumari 2017 (3) PLJR 384** observed in Paragraph 14 that:-

"14. We are of the view that as provided in Rule 6 of Order IX, the suit may proceed ex-parte against the defendant, only when it is proved by the plaintiff to the satisfaction of the Court that the defendant did not appear even though the summon was duly served. A party should not be deprived of hearing unless there has been something equivalent to misconduct or gross-negligence on his part. After all, judgments rendered by the Court after offering opportunities to all the parties and in satisfaction of principle of natural justice is more valuable than judgments in absence of either parties when there is sufficient cause shown for such absence".

12. Considering the aforesaid facts and circumstances and



in the interest of justice, an opportunity should be given to the petitioner to contest the case and the case must be directed to be disposed of expeditiously.

13. Accordingly, this Civil Miscellaneous Application is allowed and set aside the impugned orders dated 08.01.2021 and 30.07.2019 with respect to petitioner passed in Letter of Administration Case No. 21 of 2018 subject to cost of Rs. 5,000/- to be paid by the petitioner to the plaintiff in the Court below.

14. The parties are directed to cooperate in the disposal of the said Letter of Administration case and the Court below shall take steps for disposal of the case as expeditiously as possible.

(Sunil Dutta Mishra, J)

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