

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.65 of 2019

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1. Urmila Devi W/o Late Laxman Mahto Resident of Mohalla Hiranand Sah Ki Ghat, P.S. Chowk, P.O. Patna City, District-Patna.
 2. Naresh Mahto Son of Late Laxman Mahto Resident of Mohalla Hiranand Sah Ki Ghat, P.S. Chowk, P.O. Patna City, District-Patna.
 3. Dinesh Mahto Son of Late Laxman Mahto Resident of Mohalla Hiranand Sah Ki Ghat, P.S. Chowk, P.O. Patna City, District-Patna.
 4. Pravesh Mahto @ Ram Pravesh @ Ram Pravesh Mahto Son of Late Laxman Mahto Resident of Mohalla Hiranand Sah Ki Ghat, P.S. Chowk, P.O. Patna City, District-Patna.
 5. Jhunia Mahto Son of Late Laxman Mahto Resident of Mohalla Hiranand Sah Ki Ghat, P.S. Chowk, P.O. Patna City, District-Patna.
 6. Shitla Kumari D/o Late Laxman Mahto Resident of Mohalla Hiranand Sah Ki Ghat, P.S. Chowk, P.O. Patna City, District-Patna.
 7. Sudamia Devi D/o Late Laxman Mahto Resident of Mohalla Hiranand Sah Ki Ghat, P.S. Chowk, P.O. Patna City, District-Patna.

... .. Petitioner/s

Versus

1. Raghunandan Mahto Son of Late Budh Lal Mahto Resident of Mohalla Hiranand Sah Ki Ghat, P.S. Chowk, P.O. Patna City, District-Patna. At present resident of Mohalla-Musallahpur, P.S. Kadam Kuan, District-Patna.
2. Deo Nandan Mahto Son of Late Budh Lal Mahto Resident of Mohalla Hiranand Sah Ki Ghat, P.S. Chowk, P.O. Patna City, District-Patna. At present resident of Mohalla-Musallahpur, P.S. Kadam Kuan, District-Patna.
3. Baijnath Mahto Son of Late Budh Lal Mahto Resident of Mohalla Hiranand Sah Ki Ghat, P.S. Chowk, P.O. Patna City, District-Patna. At present resident of Mohalla-Musallahpur, P.S. Kadam Kuan, District-Patna.
5. Triloki Mahto Son of Late Lochan Mahto Resident of Mohalla Hiranand Sah Ki Ghat, P.S. Chowk, P.O. Patna City, District-Patna. At present resident of Mohalla-Musallahpur, P.S. Kadam Kuan, District-Patna.
6. Rajendra Mahto Son of Late Lochan Mahto Resident of Mohalla Hiranand Sah Ki Ghat, P.S. Chowk, P.O. Patna City, District-Patna. At present resident of Mohalla-Musallahpur, P.S. Kadam Kuan, District-Patna.
7. Yogendra Mahto Son of Late Lochan Mahto Resident of Mohalla Hiranand Sah Ki Ghat, P.S. Chowk, P.O. Patna City, District-Patna. At present resident of Mohalla-Musallahpur, P.S. Kadam Kuan, District-Patna.
8. Pyare Mahto Son of Late Bachan Mahto Resident of Mohalla Hiranand Sah Ki Ghat, P.S. Chowk, P.O. Patna City, District-Patna. At present resident of Mohalla-Musallahpur, P.S. Kadam Kuan, District-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Santosh Kumar Singh
For the Respondent/s	:	Mr.Arjun Kumar



**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

CAV ORDER

17 08-12-2023 Heard the parties.

2. This Civil Revision has been preferred by the petitioners being aggrieved by the order dated 23-03-2019 passed by the Additional District Judge-IV, Patna City in Miscellaneous Appeal No. 46 of 2017 whereunder and whereby the learned Additional District Judge-IV, Patna City dismissed the appeal affirming the order dated 29-07-2017 passed by the learned Munsif in Miscellaneous Case No. 17 of 2010 by which, the learned Munsif rejected the application filed by the petitioners under Order 9 Rule 13 C.P.C. for setting aside the ex-parte order dated 31-05-2010 and decree dated 09-06-2010 passed in T.S. No. 65 of 1996.

3. The opposite parties filed T.S. No. 65 of 1996 for declaration of their title and interest over the suit property on the ground that the defendants were tress-passers.

4. The learned counsel for the petitioners submitted that both the courts below committed illegality in rejecting the restoration petition filed by the petitioners under Order 9 Rule 13 of the C.P.C. holding that the service of summons on the petitioners was valid. As a matter of fact, the petitioners were not aware with T.S. No. 65 of 1996. The summons were not



served upon them and the learned courts below committed illegality whereby the petitioners have been deprived from their valuable rights. Learned counsel has also submitted that the order dated 22-09-1998 in T.S. No. 65 of 1996 shows that the process server was directed to file his affidavit in support of his service report but there is no affidavit at all on his behalf and, ignoring this fact, the learned court below committed illegality in rejecting the petition filed by the petitioners under Order 9 Rule 13 of the C.P.C.

5. Learned counsel for the opposite parties has submitted that the submission of the learned counsel for the petitioners is totally false. As a matter of fact, the petitioners were aware of the title suit and they had refused to take summons, which is evident from service report dated 18-09-1998 (Ext. A). Further the notices were also sent to the petitioners through registered post which is evident from postal receipts (Exts. B to B/7) which were never returned unserved. He has also submitted that despite the knowledge of existence of the Title Suit, the respondents/opposite parties willfully and deliberately avoided their appearance in the court below and having no option, the ex-parte decree was passed by the court below. He also submitted that the order sheets of the learned



court below shows that the process server had furnished his affidavit in respect of service of summons but that affidavit is misplaced at the instance of the petitioners themselves, as they would be benefited due to misplace of that affidavit.

6. It appears from the order sheets dated 18-11-1998 and 02-12-1998 of T.S. No. 65 of 1996 that the process server has filed affidavit in support of his service report. The copy of the petition filed by the petitioners under order IX Rule XIII before the court of Munsif (Misc. Case No. 17 of 2010) is available with the record. In that petition, the petitioners did not mention that the affidavit filed by the process server was not on the record. It appears that this plea has been taken at the revisional stage for the first time. From perusal of the orders of the learned Munsif as well as the order of the first appellate court, it appears that the petitioners had full knowledge about the existence of T.S. No. 65 of 1996 and they willfully and deliberately avoided to appear before the trial court.

7. I do not see any illegality, irregularity or impropriety in the impugned order. The order under revision needs no interference.

8. Accordingly, this Civil Revision petition is dismissed.



9. The learned court below is directed to conduct an enquiry for misplace of the above-noted affidavit and thereafter take appropriate action against the erring persons as per the provisions of law.

10. From perusal of the record, it appears that Execution Case No. 05 of 2010 is pending for a period of 13 years. Learned Executing Court is directed to expedite the proceeding of Execution Case No. 05 of 2010 and dispose it of within a period of three months. The learned Executing Court shall not fix the date for more than a week in Execution Case No. 05 of 2010.

(Nawneet Kumar Pandey, J)

A.K.V.//-

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