

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.615 of 2016

1. Ashok Yadav
2. Satya Narain Yadav Both are sons of Late Tanik Lal Yadav Resident of Mohalla - Topkhana Bazar, P.S. - Kotwali, District – Munger.

... .. Petitioner/s

Versus

Sushila Devi widow of Late Rameshwar Sah Resident of Mohalla - Topkhana Bazar, P.S. - Kotwali, District – Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dhirendra Nath Jha, Advocate

For the Respondent/s : Mr.Harshwardhan Sahay, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 11-12-2023

Heard learned counsel for the petitioners as well as learned counsel for the respondent.

2. With the consent of the parties, the matter is taken up for disposal at the stage of admission itself.

3. The petitioners have filed the instant Civil Misc. petition for quashing the order dated 15.06.2016 passed by learned Munsif 2nd, Munger in Title Suit No. 06 of 2016 by which the petitioners' petition dated 15.06.2016 for recalling the order 31.05.2016 has been rejected.



4. Learned counsel for the petitioners submits that the petitioners, who are defendants before the learned court below, have no knowledge about the proceeding taking place in Title Suit No. 06 of 2016 and for this reason they could not appear before it. When they came to know about the proceeding before the learned court below, they moved a petition on 15.06.2016 for recalling the order dated 31.05.2016 passed by learned trial court ordering to take steps for ex-parte proceeding. Learned counsel further submits that the petitioners were proceeded against ex-parte but actually proceeding took place behind the back of the petitioners and the petitioners got no knowledge about service of summons in which they are stated to have refused to receive the notices is not correct and it was collusive between the plaintiff/respondent and the process server/postal peon. Learned counsel further submits that the learned trial court did not consider this fact and rejected the petition for recalling the ex-parte order.

5. Learned counsel for the respondent vehemently opposes the submission made on behalf of the petitioners. Learned counsel for the respondent submits that the petitioners refused to accept their notices through ordinary process as well as under registered cover. Thereafter, the substituted service



through publication was resorted to and even then the petitioners chose not to appear before the learned trial court and it was a deliberate act on the part of the petitioners. Thus, learned counsel submits that there is no merit in the instant petition and it may be dismissed.

6. From perusal of the record it is amply clear that there appears to be some deliberate inaction on the part of the petitioners since all the processes had been taken but they did not appear before the learned trial court. It has come on record that the petitioners refused to accept the summons and thereafter, the matter proceeded ex-parte.

However, in the interest of justice, the instant Civil Misc. petition is allowed and the order dated 15.06.2016 passed by learned Munsif 2nd, Munger in Title Suit No. 06 of 2016 is set aside subject to payment of cost of Rs.10,000/- to the respondent/plaintiff before the learned court below. The payment will be made on the 1st date before the learned Munsif 2nd, Munger or the court concerned to the respondent/plaintiff and thereafter, the petitioners/defendants will file their written statement within 15 days. Since it is a case of the year 2016, the learned trial court is directed to expedite the trial and take steps for early conclusion of the same



preferably within six months from the date of receipt/production
of a copy of this order.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.12.2023
Transmission Date	N/A

