

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.196 of 2018

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Chandra Bhushan Singh S/o- Raghuvir Mahto, Resident of Village- Katauli,
P.S.- Hulasganj, Distt.- Jehanabad.

... .. Petitioner/s

Versus

1. Ashok Pandey and Ors S/o- Late Mohan Pandey, R/o- Vill- Katauli P.S.-
Hualasganj, Distt.- Jehanabad.
2. Suresh Pandey
3. Sita Ram Pandey Both Son of Late Bhubneshwar Pandey, R/o- Vill- Telhara,
P.S.- Telhara, Distt- Nalanda.
4. Sunil Pandey, S/o- Late Mohan Pandey, R/O- Vill- Katauli P.S.- Hulasganj,
Distt.- Jehanabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Brij Bihari Tiwary
For the Respondent/s : Mr.Kalpana

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

CAV ORDER

10 13-12-2023 The present civil revision has been preferred by the

petitioner Chandra Bhushan Singh against the judgment dated

09.10.2018 passed by Presiding Officer, Fast Track Court II,

Jehanabad, Bihar in Miscellaneous Appeal (Civil) No.

3/2017/4/2018 whereby the learned court below set aside the

order dated 28.02.2017 passed by Sub-Judge- 1, Jehanabad in

Miscellaneous Case No. 7/2012 whereby the learned Sub-Judge-

1st, Jehanabad rejected the petition filed by the

defendants/respondents, Sunil Pandey and Ashok Pandey, under

Order IX Rule 13 of the CPC for setting aside the *ex parte*

decree dated 19.01.2012 in Title Suit No. 137 of 2010.



2. Brief facts of the case are that the petitioner who was plaintiff in Title Suit No. 137/2010 instituted that title suit on the basis of a sale deed executed by respondent nos. 2 and 3 in his favour to declare his title over the suit land and also to restrain the defendants from interfering his possession. O.P. Nos. 2 and 3 namely, Suresh Pandey and Sitaram Pandey, appeared in that suit and contested. O.P. No. 4, Sunil Pandey who is full brother of O.P. No. 1 Ashok Pandey also appeared in that suit, but did not file his written statement nor he contested that suit. The summons were also sent to O.P. No. 1, but he did not appear. As such, the suit was *ex parte* against O.P. No. 1, Ashok Pandey.

3. O.P. No. 4, Sunil Pandey and O.P. No. 1, Ashok Pandey filed a joint petition under Order IX Rule 13 to set aside the impugned judgment and decree passed in Title Suit No. 137 of 2010 claiming it to be *ex parte* against them. They also filed a petition to stay the proceedings of Execution Case No. 5/2012 which was rejected on same day, i.e, 28.02.2017 by the executing Court. O.P. No. 4, Sunil Pandey took plea that O.P. Nos. 2 and 3 assured him to contest the suit on his behalf and he rest assured that his care was taken well by the O.P. Nos. 2 and 3, but he came to know that the plaintiff in collusion with O.P.



Nos. 2 and 3 got a decree against O.P. No. 4 as well as O.P. No.

1. This order of the learned Sub-Judge-I was set aside by the impugned order by the learned Presiding Judge, Fast Track Court.

4. Learned counsel for the petitioner has submitted that O.P. Nos. 1 and 4 are full brothers. They were aware of existence of Title Suit No. 137 of 2010. O.P. No. 4 appeared in that suit but did not file his written statement. O.P. No. 1 knowingly and deliberately did not appear to contest the suit. Both the brothers, though one of them was appearing in that suit, had jointly filed Miscellaneous Case No. 7 of 2012 claiming the decree to be *ex parte* against them.

5. On the other hand, the learned counsel for the opposite parties submitted that the decree was *ex parte* against Ashok Pandey, O.P. No. 1. He was not aware with the existence of Title Suit No. 137 of 2010, as such, the learned ADJ, Fast Track-II, Jehanabad rightly set-aside the order of the Munsif, refusing restoration petition of the opposite parties.

6. From perusal of records, it appears that O.P. No. 4 had appeared in Title Suit No. 137 of 2010 but he did not contest that suit, even did not file his written statement. O.P. No. 1 is his full brother and both of them have jointly filed the restoration petition which makes it clear that they are at good



terms. It cannot be inferred that the existence of the Title Suit No. 137 of 2010 was not within the knowledge of O.P. No. 1, and O.P. No. 4 did not communicate it to O.P. No. 1. The learned Munsif rightly rejected the petition filed by O.P. Nos. 4 and 1 under Order IX Rule 13 of the CPC. The learned Additional District Judge, Fast Track Court II, Jehanabad committed gross illegality in setting aside the order of the learned Munsif dated 28.02.2017 vide his order dated 09.10.2018 in Miscellaneous Appeal No. 3/2017/4/2018.

7. On the basis of above-noted discussions, the order dated 09.10.2018, passed in Miscellaneous Appeal No. 3/2017/4/2018, by the learned ADJ, Fast Track Court-II, Jehanabad is set aside. The order of the learned Sub-Judge-1, Jehanabad dated 28.01.2017 is upheld and accordingly, this civil revision petition is allowed.

8. The learned Executive Court is directed to expedite the matter.

(Nawneet Kumar Pandey, J)

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