

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.195 of 2019

1. Sunil Kumar Singh S/o Late Krishna Kumar Singh R/o Village- Telghi, P.s.- Kharik, District- Bhagalpur.
2. Lalan Kumar Singh S/o Late Krishna Kumar Singh R/o Village- Telghi, P.s.- Kharik, District- Bhagalpur
3. Nawin Singh S/o Late Kamdeo Singh R/o Village- Telghi, P.s.- Kharik, District- Bhagalpur
4. Shanti Devi W/o Late Arbinda Singh R/o Village- Telghi, P.s.- Kharik, District- Bhagalpur
5. Amit Kumar Singh S/o Late Arbinda Singh R/o Village- Telghi, P.s.- Kharik, District- Bhagalpur
6. Sumit Kumar Singh @ Sumit Kumar S/o Late Arbinda Singh R/o Village- Telghi, P.S.- Kharik, District- Bhagalpur.
7. Manju Devi, D/o Late Kamdeo Singh, Permanent R/o Village- Telghi, P.S.- Kharik, District- Bhagalpur.
8. Meena Devi, D/o Late Kamdeo Singh, Permanent R/o Village- Telghi, P.S.- Kharik, District- Bhagalpur.
9. Beena Devi, D/o Late Kamdeo Singh, Permanent R/o Village- Telghi, P.S.- Kharik, District- Bhagalpur.
10. Munni Devi, D/o Late Arbinda Singh, Permanent R/o Village- Telghi, P.S.- Kharik, District- Bhagalpur.
11. Sarita Sharma @ Babi Kumari, D/o Late Krishna Kumar Singh, Permanent R/o Village- Telghi, P.S.- Kharik, District- Bhagalpur.

... .. Petitioners

Versus

Jarmani Singh S/o Late Ram Raksha Singh, R/o Village- Telghi, P.S.- Kharik, District- Bhagalpur.

... .. Opposite Party

Appearance :

For the Petitioners : Mr. Vagisha Pragya Vacaknavi, Advocate
For the Opposite Party : Mr. Rajesh Kumar Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

13 22-02-2023 This Civil Revision application has been filed against

the order dated 12.07.2019 passed in Miscellaneous Appeal No.

14 of 2012 by learned Additional District Judge-II, Naugachia,

Bhagalpur whereby the order dated 22.05.2012, passed in



Miscellaneous Case No. 12 of 2009 has been reversed (set aside).

The petitioners are the heirs of original plaintiff of Title Suit No. 127 of 1985, filed against the State of Bihar and Ramakant Singh for declaration of title and confirmation of possession and also for correction of revisional survey entries, which were made in the name of the State of Bihar with Ramakant Singh as *awaidh dhakhalkar*.

After summons, the defendant No. 2 appeared and filed his written statement. Despite notice under Section 80 of the Code of Civil Procedure the State of Bihar (defendant No. 1) did not appear in this case.

On trial, the suit was decreed *ex-parte* on 26.04.1991 by the learned Sub-Judge, Naugachia, thereafter, opposite party No. 1, namely, Jarmani Singh, filed Miscellaneous Case No. 06 of 1991 in the Court of Sub-Judge, Naugachia with a prayer to set aside the *ex-parte* decree and also prayed to make him necessary party as intervenor-defendant in Title Suit No. 127 of 1985. After hearing, the learned Sub-Judge set aside the *ex-parte* order and judgment dated 26.04.1991, passed in Title Suit No. 127 of 1985. Against the said order dated 19.03.2004, an application was filed for review of order dated 19.03.2004,



passed in Misc. Case No. 06 of 1991 by the original plaintiff before the same Court, which was allowed and set aside the order dated 19.03.2004 passed in Miscellaneous Case No. 06 of 1991 on 26.07.2005 on the ground that petition under Order IX Rule 13 of Civil Procedure Code was not maintainable as he was not a party in Title Suit No. 127 of 1985 nor he was made intervenor-defendant in the suit.

Learned counsel for the petitioner submits that opposite party No.1 preferred Miscellaneous Appeal No. 31 of 2005 against the order dated 26.07.2005 before the District Judge, Bhagalpur, which was finally heard by learned 3rd Additional District Judge Naugachia, who allowed the said Miscellaneous Appeal in favour of Opposite party No.1 by order dated 18.11.2006. It is also submitted that against the said order the plaintiff moved before this Hon'ble Court *vide* Civil Revision No. 377 of 2007, which was disposed of on 05.08.2009 with a liberty to file an application for review of order dated 19.03.2004, passed in Miscellaneous Case No. 06 of 1991 along with an application for condoning the delay.

Accordingly, a review application was filed by the original plaintiff bearing Miscellaneous Case No. 12 of 2009 and the said review application was allowed on 22.05.2012.



Against the aforesaid order dated 22.05.2012 passed in Miscellaneous Case No. 12 of 2009 by the learned Sub-Judge, Naugachia, Bhagalpur, opposite party No.1 preferred Miscellaneous Appeal bearing Miscellaneous Appeal No. 14 of 2012 before the District Judge, Bhagalpur. The said Miscellaneous Appeal was allowed on 12.07.2019 in favour of opposite party. Thereafter, this Civil Revision has been filed by the plaintiffs-petitioners.

It is submitted that opposite party 1 was not a party to the suit and he has no *locus standi* to file application under Order IX Rule 13 of the Code of Civil Procedure. As such, his application was not maintainable. It is also submitted that the learned Appellate Court failed to consider the provision of ***Order IX Rule 13 of Code of Civil Procedure***, which reads as follows:-

“Setting aside decree ex parte against defendant.—

In any case in which a decree is passed ex parte against a defendant, he may apply to the Court by which the decree was passed for an order to set it aside; and if he satisfies the Court that the summons was not duly served, or that he was prevented by any sufficient cause from appearing when the suit was called on for hearing,



the Court shall make an order setting aside the decree as against him upon such terms as to costs, payment into Court or otherwise as it thinks fit, and shall appoint a day for proceeding with the suit:

Provided that where the decree is of such a nature that it cannot be set aside as against such defendant only it may be set aside as against all or any of the other defendants also:

¹[Provided further than no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.]

²[Explanation.—Where there has been an appeal against a decree passed ex parte under this rule, and the appeal has been disposed of on any ground other than the ground that the appellant has withdrawn the appeal, no application shall lie under this rule for setting aside that ex parte decree.]”

It is further submitted that the application of opposite party No.1, filed under Order IX Rule 13 of Code of Civil Procedure was not maintainable in absence of defendant of Title



Suit No. 127 of 1985.

On the other hand opposite party No.1 has filed counter affidavit, stating therein that in Title Suit No. 127 of 1985, the opposite party No.1, filed his application as intervenor, which remained pending at the time of *ex-parte* decree and hence, he is aggrieved party.

It is well settled law that a party to the suit can challenge the *ex-parte* decree under Order IX Rule 13 of the Code of Civil Procedure, in the cases of ***Ram Prakash Agarwal and another Vs. Gopi Krishan (Dead Through LRS.) and others*** reported in ***(2013) 11 Supreme Court Cases 296*** and ***Ramji Gupta and another Vs. Gopi Krishan Agarwal (Dead) and Others*** reported in ***AIR 2013 Supreme Court 3099*** the Hon'ble Supreme Court has held that:-

“An application under Order IX Rule 13 of the Civil Procedure Code can only be filed by a person, who was a party to the proceedings in which such an order was passed and that such an application was not maintainable at the behest of a stranger.”

In view of the aforesaid judgments of the Hon'ble Supreme Court, the impugned order dated 12.07.2019 passed in Miscellaneous Appeal No. 14 of 2012 by the lower Appellate Court cannot be sustained in the eye of the law and hereby set



aside.

Accordingly, this Civil Revision application is
allowed.

(Khatim Reza, J)

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