

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.30 of 2023

Abid Ansari @ Abid Hussain Son of Late Abdul Samad Resident of Village-
Chanpur- Mubarakpur, P.O.- Chanpur, P.S.- Siswan, District- Siwan, Pincode-
841203.

... .. Petitioner/s

Versus

1. Alauddin Ansari Son of Late Najmullah Ansari Resident of Village-
Chanpur- Mubarakpur, P.O.- Chanpur, P.S.- Siswan, District- Siwan,
Pincode- 841203.
2. Rustam Ansari, Son of Late Najmullah Ansari Resident of Village- Chanpur-
Mubarakpur, P.O.- Chanpur, P.S.- Siswan, District- Siwan, Pincode- 841203.
3. Rehna Khatoon, Daughter of Late Naj Mullah Ansari Resident of Village-
Chanpur- Mubarakpur, P.O.- Chanpur, P.S.- Siswan, District- Siwan,
Pincode- 841203.
4. Meena Khatoon, Daughter of Late Naj Mullah Ansari Resident of Village-
Chanpur- Mubarakpur, P.O.- Chanpur, P.S.- Siswan, District- Siwan,
Pincode- 841203.
5. Sabid Ansari @ Sabid Hussain, Son of Late Abdul Samad Ansari Resident of
Village- Chanpur- Mubarakpur, P.O.- Chanpur, P.S.- Siswan, District- Siwan,
Pincode- 841203.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ramesh Kumar Choudhary, Advocate
For the Respondent/s : Mr. Sanjay Kumar Tiwari, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

8 14-11-2024 Heard learned counsel for the petitioner as well as
learned counsel for the respondent nos 1 and 2.

2. The petitioner is aggrieved by the order dated
13.09.2022 passed by learned Sub Judge-VII, Siwan in Title
Partition Suit No. 781 of 2021 whereby and whereunder the



petition dated 09.06.2022 filed by the defendant/petitioner for recalling the order dated 19.05.2022 has been rejected.

3. Learned counsel for the petitioner submits that the petitioner is the defendant no.1 before the learned trial court and the suit has been filed by respondent nos. 1 to 4 for partition of the suit property. Though it has come on record that notices were issued and served upon the defendant/petitioner, no such notice has been served. One of the defendants, namely, Anwar Ansari died in the year 2012 itself, that is much prior to the institution of the present suit still he has been made party. Similarly, defendant no.2, namely, Sabid Ansari has been living in Ghaziabad (U.P) for quite long time. The defendant/petitioner did not get any knowledge about the institution of the title suit which was fixed for *ex parte* hearing vide impugned order dated 13.09.2022 which was passed on application dated 09.06.2022 filed for recalling the *ex parte* proceeding against the defendant/petitioner. Learned counsel further submits that no summons were served upon the defendants and the same was not received by the defendants and *tamila* was also not signed by the defendants. Thus, the learned counsel submits that it is a partition suit, the defendants should be given opportunity to contest the same and place their side of case.



4. Learned counsel appearing on behalf of respondent nos. 1 and 2 vehemently contends that there is no infirmity in the impugned order. The impugned order mentions that the defendants received their summons and despite receiving their summons, they did not appear. Thereafter, summons through registered post as well as substituted service through paper publication was resorted to and thereafter, vide order dated 19.05.2022, the defendants were proceeded *ex parte*. Hence, there is no merit in the contention of the learned counsel for the petitioner that the defendant was not having any knowledge about the proceeding taking place before the learned trial court.

5. Having regard to the facts and circumstances and submissions made on behalf of the parties, I am not inclined to enter into the merits of the rival contention of the parties. The suit before the learned trial court is the suit for partition and the petitioner being the co-sharer needs to be heard. Further, the petitioner claims that he has not received the summons and not put his signature on the *tamila*. Be that as it may, the impugned order dated 13.09.2022 passed by the learned Sub Judge-VII, Siwan in Title Partition Suit No. 781 of 2021 is set aside subject to payment of cost of Rs. 5,000/- to be paid to the plaintiffs on the first date of hearing before the learned trial court after



receipt/production of a copy of this order.

6. Accordingly, the instant petition stands allowed.

(Arun Kumar Jha, J)

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