

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.2383 of 2007

1. RENU SINHA D/O Singheshwar Prasad @ Chamo Prasad R/O Village- Rajowna, P.S. and P.O.- Lakhisarai, District- Lakhisarai, Presently R/O Mohalla- Alkapuri, P.O.- Anisabad, P.S.- Gardanibagh, District- Patna
2. Rita Sinha D/O Singheshwar Prasad @ Chamo Prasad R/O Village- Rajowna, P.S. and P.O.- Lakhisarai, District- Lakhisarai, Presently R/O Mohalla- Alkapuri, P.O.- Anisabad, P.S.- Gardanibagh, District- Patna
3. Madhu Sinha D/O Singheshwar Prasad @ Chamo Prasad R/O Village- Rajowna, P.S. and P.O.- Lakhisarai, District- Lakhisarai, Presently R/O Mohalla- Alkapuri, P.O.- Anisabad, P.S.- Gardanibagh, District- Patna
4. Seema Sinha D/O Singheshwar Prasad @ Chamo Prasad R/O Village- Rajowna, P.S. and P.O.- Lakhisarai, District- Lakhisarai, Presently R/O Mohalla- Alkapuri, P.O.- Anisabad, P.S.- Gardanibagh, District- Patna
5. Nutan Sinha D/O Singheshwar Prasad @ Chamo Prasad R/O Village- Rajowna, P.S. and P.O.- Lakhisarai, District- Lakhisarai, Presently R/O Mohalla- Alkapuri, P.O.- Anisabad, P.S.- Gardanibagh, District- Patna
6. Rajani Sinha D/O Singheshwar Prasad @ Chamo Prasad R/O Village- Rajowna, P.S. and P.O.- Lakhisarai, District- Lakhisarai, Presently R/O Mohalla- Alkapuri, P.O.- Anisabad, P.S.- Gardanibagh, District- Patna
7. Mithilesh Kr. Sinha S/O Singheshwar Prasad @ Chamo Prasad R/O Village- Rajowna, P.S. and P.O.- Lakhisarai, District- Lakhisarai, Presently R/O Mohalla- Alkapuri, P.O.- Anisabad, P.S.- Gardanibagh, District- Patna
8. Rajeshwar Kr. S/O Singheshwar Prasad @ Chamo Prasad R/O Village- Rajowna, P.S. and P.O.- Lakhisarai, District- Lakhisarai, Presently R/O Mohalla- Alkapuri, P.O.- Anisabad, P.S.- Gardanibagh, District- Patna
9. Rakesh Kr. Sinha S/O Singheshwar Prasad @ Chamo Prasad R/O Village- Rajowna, P.S. and P.O.- Lakhisarai, District- Lakhisarai, Presently R/O Mohalla- Alkapuri, P.O.- Anisabad, P.S.- Gardanibagh, District- Patna
10. Anu Sinha D/O Singheshwar Prasad @ Chamo Prasad R/O Village- Rajowna, P.S. and P.O.- Lakhisarai, District- Lakhisarai, Presently R/O Mohalla- Alkapuri, P.O.- Anisabad, P.S.- Gardanibagh, District- Patna
11. Pramila Devi R/O Village- Rajowna, P.S. and P.O.- Lakhisarai, District- Lakhisarai, Presently R/O Mohalla- Alkapuri, P.O.- Anisabad, P.S.- Gardanibagh, District- Patna

... .. Petitioner/s

Versus

1. BAJRANGI RAM @ BAJO RAM and ORS S/O Late Sakal Ram R/O Village- Chouki, P.S.- Lakhisarai, P.O.- Balgudar Lakhisarai, District- Lakhisarai
2. Jasoda Ram @ Raso Ram S/O Late Sakal Ram R/O Village- Chowki, P.S.- Lakhisarai, P.O.- Balgudar, Distt.- Lakhisarai
3. Rajo Ram @ Rajendra Ram S/O Late Sakal Ram R/O Village- Chouki, P.S.- Lakhisarai, P.O.- Balgudar Lakhisarai, District- Lakhisarai



4. Shiv Kumar Ram S/O Late Sakal Ram R/O Village- Chouki, P.S.- Lakhisarai, P.O.- Balgudar Lakhisarai, District- Lakhisarai
5. Chchotu Ram S/O Late Sakal Ram R/O Village- Chouki, P.S.- Lakhisarai, P.O.- Balgudar Lakhisarai, District- Lakhisarai
6. Hira Ram S/O Late Sakal Ram R/O Village- Chouki, P.S.- Lakhisarai, P.O.- Balgudar Lakhisarai, District- Lakhisarai

... .. Opposite parties

Appearance :

For the Petitioner/s	:	Mr. Rudal Prasad Mr. Neeraj Nandan Mr. Mukesh Kumar Mr. Binay Kumar Pandey
For the opposite parties		None

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV JUDGMENT

Date : 31-01-2024

I have already heard the learned counsel for the petitioners. None appeared on behalf of the opposite parties.

2. This civil revision has been preferred by the petitioners against the order dated 29.09.2007 passed by Additional District Judge, F.T.C.-V, Munger in Civil Review Misc. No. 01 of 2005, preferred for review of the judgment dated 29.07.2004, passed by 1st Additional District Judge, Munger in Misc. Appeal No. 11 of 2001, affirming the order dated 26.03.2001, passed by Sub Judge-1, Lakhisarai in Misc. Case No. 04 of 1996, by which the learned Sub-Judge-I, Lakhisarai, dismissed the application under Order IX Rule 13 of the Civil Procedure Code (hereinafter to be referred to as ‘the Code’).



3. Late Sakal Ram, the male lineal ascendant/ predecessor-in-interest of the opposite parties, instituted Title Suit No. 126 of 1988 in the court of Sub Judge-I, Munger for declaration and confirmation of his title over the disputed land on the ground that he inherited that land from his father, who was a recorded *raiyat* in survey *khatiyar*. The defendant Late Singheshwar Prasad @ Chamo Prasad, the predecessor-in-interest of the petitioners, was the defendant. The suit was decreed on 28.03.1992. The petitioner filed an application under Order IX Rule 13 of the code to set aside that *ex parte* decree, which was registered as Misc. Case No. 04 of 1996. That miscellaneous case was dismissed by the Sub-Judge-I, Lakhisarai, vide order dated 26.03.2001. The petitioner preferred Misc. Appeal No. 11 of 2001 against the order dated 26.03.2001 and that miscellaneous appeal was also dismissed by the 1st Additional District Judge Munger, vide order dated 29.07.2004. Being aggrieved by the concurrent orders of the learned courts below, the petitioner preferred Civil Revision No. 1444 of 2004 before this Court, but after some arguments, that civil revision application was withdrawn vide order dated 29.03.2005. After withdrawal of that revision application, the petitioner preferred Civil Review No. 01 of 2005 in the Court of



District Judge, Munger against the order dated 29.07.2004 passed in Misc. Appeal No. 11 of 2001. The review petition was dismissed by the ADJ, F.T.C.-V, Munger, vide his order dated 29.09.2007. Being aggrieved by the order of the learned ADJ, F.T.C.-V, Munger, the petitioner preferred the present revision application, which was initially dismissed. The petitioners herein filed Civil Review No. 129 of 2013 against the order of dismissal of the present revision and by a very detailed and exhaustive order, the present revision was restored, vide judgment dated 24.02.2016.

4. As such, at present, the order dated 26.03.2001 passed in Misc. Case No. 04 of 1996 by Sub Judge-I, Lakhisarai, dismissing the application under Order IX Rule 13 of the Code which which was affirmed by learned 1st Additional District Judge Munger in Misc. Appeal No. 11 of 2001 vide order dated 28.03.1992 as well as the order passed in Civil Review No. 01 of 2005 dated 29.09.2007 by ADJ, F.T.C. V, Munger are before this Court for legal scrutiny.

5. As discussed above, the predecessor-in-interest of the petitioner/defendant filed an application under Order IX Rule 13 of the Code before the Sub Judge-I Lakhisarai to set aside the ex parte order passed in Title Suit No. 126 of 1988 on



the ground that he was not aware of the proceeding of Title Suit No. 126 of 1988 and without service of summons, the opposite party obtained the ex parte decree stealthily and fraudulently. The service report on the process was obtained after taking the postal peon and the peon of the court in collusion. It has been pleaded that the service report of the process server on the back of the summons shows that instead of summons to the defendant's home village *Rajouna*, the summons was sent to the plaintiff's village *Chouki* which was returned with the endorsement that the defendant was not residing in village *Chouki*. The plaintiff sent two registered envelope through the court, the first was sent to village *Rajouna* which was returned by the postal peon with a report that the addressee resides outside. The second registered envelope was sent to the defendant at his present address in Alkapuri, Anisabad, Patna, but in the address of envelope, it was wrongly written the designation of the original petitioner as officer posted in Kara Vibhag, Gardanibagh. As a matter of fact, on the relevant date, he was not residing in Mohalla Gardanibagh. It has further been pleaded that the postal peon falsely endorsed that the defendant refused to receive the envelope. As a matter of fact, the defendant retired from the government service from the Jail



Department in the year 1984 and the government quarters was vacated by him in the year 1986. The petitioner has also mentioned that the newspaper namely '*Aatmakatha*' in which the notice was published, was neither in circulation in Patna nor in the locality of village *Rajouna*. As such, the entire process was behind the back of the petitioner. The source of knowledge of *ex parte* decree was disclosed in his petition that his nephew Dr. Bishun Narayan Sinha had gone in Ashok Dham Temple to offer worship on 14.03.1996. The second son of the plaintiff was selling flowers outside the temple. He informed Dr. Bishun Narayan Sinha about that *ex parte* decree. Thereafter, the appellant inspected the records and filed an application under order IX Rule 13 of the Code. The learned courts below were of the opinion that the petitioner/defendant was aware of the proceeding of Title Suit No. 126 of 1988 and he knowingly and deliberately, with an intention to delay the proceeding of the suit, did not appear in that title suit.

6. The learned counsel for the petitioner(s) submitted that the plaintiff obtained the *ex parte* decree stealthily and fraudulently behind the back of the petitioner. As soon as he came to know about the existence of the *ex parte* decree, he filed restoration petition but the courts below



mechanically and without application of mind rejected his restoration application. He has also submitted that the learned courts below committed error in recording their orders by mentioning that the petitioner refused to receive the notice. He drew my attention towards the judgment of this Court dated 24.02.2016 passed in Civil Review No. 129 of 2013, which shows that the learned Single Judge of this Court called for the original record of Title Suit No. 126 of 1988 and he jotted down the proceedings mentioned in the order-sheet of the Title Suit No. 126 of 1988 in chronological order which are extracted hereunder:-

“(i) 13.07.1988: The suit was filed.

(ii) 24.1.1989: The trial court while exempting the plaintiff from payment of court fee admitted the suit and directed the plaintiff to furnish summon for notice.

(iii) 18.2.1989: Since summon was filed without talbana fee hence order was passed to deposit the same.

(iv) 9.3.1989: Talbana fee deposited, order for issuance of notice passed.

(v) 6.1.1990: Despite order dated 9.3.1989,



summons were not yet issued to the defendants.

(vi) 1.2.1990: Directions issued to ensure issuance of summons.

(vii) 1.3.1990: Service report on summons not received while the registered summons returned with a report that the addressee had gone out.

(viii) 11.04.1990: Service report on summons received with report that no one by the name resides in the village.

(ix) 5.7.1990: Plaintiff deposits fresh requisite for registered notice. Direction issued for its issuance, the registered notice could not be issued in absence of subsequent directions.

(x) 11.1.1991: Registered notice not yet issued.

(xi) 21.2.1991: While the order records that the service of registered notice not received, the remark in the column records a service.

(xii) 25.3.1991: Awaiting service report.



(xiii) 4.5.1991: Deemed service of registered summons recorded by passage of one month time. Prayer for substituted service also accepted.

(xiv) 21.9.1991: Notice published in newspaper Hindi daily Atmakatha

(xv) 16.11.1991: Ex parte hearing fixed.

(xvi) 28.3.1992: Suit decreed ex parte.”

7. The learned courts below have mentioned in their orders that the petitioner refused the registered summons but from perusal of the order sheet of Title suit No. 126 of 1988, it appears that there was no service report in respect of the summons sent to the defendant through registered post. In the order dated 04.05.1991, it has been specifically mentioned that a petition was filed on behalf of the plaintiff to publish a gazette/notice in daily newspaper as the service of registered summons was not received till that date. On 21.09.1991, the notice was published in the newspaper Hindi daily ‘*Atmakatha*’. That newspaper was not in circulation either in Patna or in *Rajouna*, the permanent village of the defendant/petitioner and perusal of the materials on the record shows that the order dated 28.03.1992 passed in Title Suit No. 126 of 1988 was behind the



back of the original petitioner. If the present petitioners are not being provided an opportunity of being heard, they would be deprived of their valuable right of natural justice.

8. Considering the above-mentioned facts and circumstances of the case, the order dated 29.09.2007 passed by Additional District Judge, F.T.C.-V, Munger in Civil Review Misc. No. 01 of 2005, preferred for review of the judgment dated 29.07.2004, is set aside. Consequently, the judgment passed by 1st Additional District Judge, Munger in Misc. Appeal No. 11 of 2001 dated 29.07.2004 and the order dated 26.03.2001 passed by Sub Judge-1, Lakhisarai in Misc. Case No. 04 of 1996, are also set aside.

9. On the basis of abovenoted observations, this civil revision application is allowed, and Title Suit No.126 of 1988 is restored to its original number and position.

(Nawneet Kumar Pandey, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	23.01.2024
Uploading Date	31.01.2024
Transmission Date	

