

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1896 of 2018

Yogendra Thakur @ Jogindar Thakur Son of late Ram Ashray Thakur@ late RamAchar Thakur Resident of Village- Chhajwa Balia, Police Station- Andar, District- Siwan, at Present Village- Earabari Apub (Part), P.S. Biswanath Chanali, District- Sonitpur(Assam).

... .. Petitioner/s

Versus

1. Most. Lakha Kuwar Wife of late Dina Nath Thakur Resident of Chhajwa Balia,P.O. Andar P.S. Andar, District- Siwan.
2. Laxman Thakur Son of late Dina Nath Thakur Resident of Chhajwa Balia,P.O. Andar P.S. Andar, District- Siwan.
3. Prabhawati Devi Daughter of late Dina Nath Thakur Resident of Chhajwa Balia,P.O. Andar P.S. Andar, District- Siwan.
4. Munna Thakur Son of late Tribhuj Nath Thakur Resident of Chhajwa,P.O. and P.S. Andar District- Siwan.
5. Shantosh Thakur Son of late Tribhuj Nath Thakur Resident of Chhajwa, P.O. and P.S. Andar, District- Siwan.
6. Daroga Thakur Son of late Tribhuj Nath Thakur Resident of Chhajwa, P.O. and P.S. Andar, District- Siwan.
7. Basanti Devi Daughter of late Tribhuj Nath Thakur Resident of Chhajwa, P.O. and P.S. Andar, District- Siwan.
8. Suganti Devi Daughter of late Tribhuj Nath Thakur Resident of Chhajwa, P.O. and P.S. Andar, District- Siwan.
9. Gyanti Devi Daughter of late Tribhuj Nath Thakur Resident of Chhajwa, P.O. and P.S. Andar, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Raghav Prasad, Advocate
For the Respondent/s	:	Mr. Chandra Kant, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 10-12-2024

Heard learned counsel for the petitioner as well as learned counsel for the respondents on the point of admission and I intend to dispose of the present petition at the stage of admission itself.



2. The petitioner is aggrieved by the order dated 11.06.2018 passed by the learned Additional District Judge-Vth, Siwan in Misc. Appeal No. 11 of 2014 whereby and whereunder the appeal was allowed and order dated 01.05.2014 passed by learned Munsif-I, Siwan in Misc. Case No. 83 of 2011 has been set aside.

3. Learned counsel for the petitioner submits that the plaintiffs/respondents filed Title Suit No. 184 of 2003 for partition of 1/3 share in the suit properties but they furnished wrong addresses of defendant nos. 1 and 8. The defendant nos. 1 and 8 have been residing in Assam for quite long time but all the notices were sent on their village addresses and the notices were never served upon them. Learned counsel further submits that despite knowing the fact that defendant nos. 1 and 8 have been residing at Assam, even the substituted service of notice through paper publication was done in local newspaper in Dainik Hindustan. Although notices were never served, decree was passed *ex parte* on 29.09.2007 against defendant nos. 1 and 8. Learned counsel further submits that when the petitioner came to his village on 15.11.2011, then for the first time he came to know about the disposal of the Title Suit No. 184 of 2003 and passing of the *ex parte* decree dated 29.09.2007. Thereafter,



defendant nos. 1 and 8 filed Misc. Case No. 83 of 2011 on 20.11.2011 under Order IX Rule 13 of the Code of Civil Procedure for setting aside *ex parte* decree dated 29.09.2007. The plaintiffs/respondents appeared and filed their reply on 23.01.2013. Both sides adduced their evidences in support of their cases. The petitioner filed several documents in support of his contention like Voter I.D. Card, license of shop and electricity bill in support of his claim of residence and business in Assam. Learned counsel further submits that from these documents, it is very much clear that the petitioner has been residing with his family at Assam for quite long period. Even the license for the shop shows shop has been running in Assam since 07.08.1986, i.e., much before the institution of the present suit. The learned Munsif-Ist, Siwan in Misc. Appeal No. 83 of 2011, considered these documents and set aside the *ex parte* judgment and decree dated 29.09.2007 passed in Title Suit No. 184 of 2003. However, the learned first appellate court, vide impugned judgment dated 11.06.2018, allowed the appeal and set aside the order of learned Munsif.

4. Learned counsel further submits that the learned first appellate court did not even consider the fact that defendant no.1 Tribhuj Nath Thakur @ Tribhuwan Nath Thakur died on



27.03.2017 during pendency of the miscellaneous appeal and the order impugned has been passed against a dead person. Learned counsel reiterates that defendant nos.1 and 8 have been residing in Assam since 1986 with their family and summons were sent to their village addresses in district of Siwan and paper publication of summons was only within the jurisdiction of State of Bihar. Therefore, notice was never served and *ex parte* decree was passed illegally.

5. Learned counsel appearing on behalf of the respondents vehemently contents that there is no illegality in the impugned order. Learned counsel submits that the learned appellate court considered all the facts and circumstances and disbelieved the case of the petitioner. Summons were sent through ordinary process as well as registered post and the registered post did not return. There is presumption of service in these circumstances. Thereafter, substituted service through paper publication has been taken up for all the defendants. One of the witnesses on behalf of the defendants has also stated that the petitioner and other defendants have been permanently residing at the address of Ballia. Learned counsel further points out that nowhere in the petition of miscellaneous case, the petitioner has mentioned about the person from whom he



received the information about passing of *ex parte* decree. No such person was named and no such person was examined. The claim in this regard is quite baseless. Learned counsel further submits that all these facts have been considered by the learned appellate court and it disbelieved the case of the petitioner completely. Hence, there is no infirmity in the impugned order and the same does not require any interference by this Court.

6. I have given my thoughtful consideration to the rival submissions of the parties and perused the record. Perusal of impugned order shows the learned appellate court discussed each and every contention of the petitioner and recorded its reasons for overturning the orders of the learned Munsif whereby and whereunder the *ex parte* proceeding was set aside in Title Suit No. 184 of 2003. The learned appellate court has also taken note of the presumption under Section 114 of the Evidence Act which provides that where any judicial act is done in a manner substantially regular, a presumption in law arises that all formalities for its validity were complied with.

7. In the light of the fact that it is a reasoned order and there appears no ground to take any other view, the impugned order dated 11.06.2018 passed by learned Additional District Judge-Vth, Siwan in Misc. Appeal No. 11 of 2014 is affirmed.



8. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.12.2024
Transmission Date	NA

