

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL MISCELLANEOUS JURISDICTION No.1331 of 2016**

Suryadeo Ojha, Son of Late Ram Bharosha Ojha, Resident of Village - Kurari, P.S. Durgawati, District - Kaimur (Bhabhua) at present residing at House No. B/1, 148/6K Mohalla Assi, Bhelupur, District - Varanasi (U.P.)

... .. Petitioner/s

Versus

1. Shyam Sundar Singh Yadav
2. Ram Lal Singh Yadav
3. Babulal Yadav

All sons of Late Baijnath Singh Yadav, Resident of Village - Manpur, P.O. Kurari, P.S. Durgawati, District - Kaimur.

4. Manoj Kumar Choubey, Son of Kapildeo Choubey, Resident of Village - Pareva, P.S. Saiyadraja, P.O. Naubatpur, District - Chandauli, Uttar Pradesh.

... .. Respondent/s

**Appearance :**

|                      |   |                                |
|----------------------|---|--------------------------------|
| For the Petitioner/s | : | Mr.Sanjay Kumar Ojha, Advocate |
| For the Respondent/s | : | Mr.Ashok Kumar Garg, Advocate  |

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA**  
**ORAL JUDGMENT**

**Date : 07-08-2025**

Heard learned counsel for the parties.

2. The petitioner is aggrieved by the order dated 24.06.2016 passed by learned Sub Judge-I, Kaimur (Bhabhua) in Misc. Case No. 24 of 2006, arising out of Title Suit No. 94 of 2003, whereby and whereunder the petition filed by defendant no.4/respondent no. 4 under Order 9 Rule 13 of the Code of Civil Procedure (hereinafter 'the Code') has been allowed while setting aside the judgment and decree dated 22.11.2005 and 30.11.2005, respectively passed in Title Suit No. 94 of 2003.

3. The opposition of the learned counsel for the



petitioner to the order dated 24.06.2016 is mainly on the ground that no petition under Order 9 Rule 13 of the Code was maintainable against the ex-parte judgment and decree passed in Title Suit No. 94 of 2003 for the reason that only after filing the written statement, defendant no. 4/respondent no. 4, discontinued his appearance in the learned trial court. It was not an ex-parte judgment and decree for application under Order 9 Rule 13 of the Code. Thereafter, the reason for non-appearance on 22.11.2005 is not believable as no application was filed earlier and the defendant no.4/respondent no. 4 was not ill as claimed by him.

4. The contention of learned counsel for the petitioner is vehemently opposed by learned counsel appearing on behalf of the respondents. Learned counsel for the respondents submits that there is no illegality in the impugned order and the learned trial court has rightly passed the order on petition filed under Order 9 Rule 13 of the Code in Misc. Case No. 24 of 2006. Learned counsel further submits that the proper medical documents have been produced before the learned trial court showing that the defendant no.4/respondent no. 4 was under treatment for T.B. since 30.04.2005 till 20.03.2006. Learned counsel further submits that the learned trial court has



also taken note of this fact that it was necessary for the ends of justice that the matter is disposed of in presence of both the parties on its merit.

5. Perused the record.

6. The submission of learned counsel for the petitioner is that the petition under Order 9 Rule 13 of the Code is not maintainable when defendant no. 4/respondent no. 4 discontinued his appearance after filing of the written statement, is not sustainable having regard to provisions of Order 17 Rule 2 of the Code, which reads as under:-

***"2. Procedure if parties fail to appear on day fixed.—Where, on any day to which the hearing of the suit is adjourned, the parties or any of them fail to appear, the Court may proceed to dispose of the suit in one of the modes directed in that behalf by Order IX or make such other order as it thinks fit."***

If any party, after making appearance is absent, the court can proceed in the matter as provided under Order 9 of the Code and therefore, if defendant no. 4 was absent, the learned trial court proceeded ex-parte against him. Therefore, such ex-parte judgment and decree can be set aside in terms of Order 9 Rule 13 of the Code.

7. So far as the objection to the impugned order is



concerned, the learned trial court has arrived at a finding by recording evidence of the parties holding that the defendant no.4/respondent no. 4 has given sufficient reason for his non-appearance and also considered the fact that the matter should be disposed of on merit in presence of both the parties, I am not inclined to interfere with such order.

8. In the light of aforesaid facts and circumstances and discussion made hereinbefore, finding no infirmity in the impugned order, the same is affirmed. Accordingly, the present petition stands dismissed.

9. Learned trial court is directed to take up the matter in all earnest and try to dispose it of within a year from the date of receipt/production of a copy of this order since it is a suit of the year 2003.

**(Arun Kumar Jha, J)**

DKS/-

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