IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. No. 238 of 2025

Mahadev Oraon, aged about 65 years, son of Late Sadho Oraon, resident of Village Gari Gaon, Pahan Toli, P.O. Hotwar, P.S. Sadar, District Ranchi, Jharkhand .... Petitioner

Versus

1. Bimal Beck, son of Late Vijay Beck
2. Binod Beck @ Binod, son of Late Vijay Beck
3. Mamata Beck, wife of Late Igonis Beck
4. Alfons Beck, son of Late Karlus Beck
5. Robert Beck, son of Late Karlus Beck
6. Ranjeet Beck, son of Late Karlus Beck

All are resident of Village Gari Gaon, Pahan Toli, P.O. and P.S. Sadar, District Ranchi, Jharkhand .... Opposite Parties

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner : Mr. Sandeep Verma, Advocate
For the Opp. Parties : Mr. Pawan Kumar Pathak, Advocate
Mr. Rishabh Raj, Advocate

06/04.11.2026 This petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 29.11.2024 passed in Miscellaneous Case No.27 of 2022 arising out of Original (Title) Suit No.564 of 2016, whereby application filed by the opposite parties/defendants under Order IX Rule 10 of the CPC has been allowed by the learned court and Original (Title) Suit No.564 of 2016 was restored to its original file to decide afresh providing opportunity to both the sides.

2. Mr. Sandeep Verma, learned counsel appearing for the petitioner submits that petitioner/plaintiff filed Title Suit No.564 of 2016 before Sub-Judge-V for declaration of right, title and interest over the land bearing Khata No.133, Plot No.1708, measuring an area of 90 decimals situated at Mouza-Gari, P.S.-Sadar, District-Ranchi which have been decreed in favour of his father Sadho Oraon in the year 1956 in Title Suit No.24/1956 vide decree dated 16.03.1956 over the Plot No.1708 of Khata No.133 of Village-Gari. He also submits that petitioner/plaintiff was also in possession over the land since 1940. He further submits that subsequently the defendants started to raise false claim over the land for which proceeding under Section 144 of the Cr.P.C. was initiated. The

defendants tried to forcefully encroach the land for which legal notice dated 04.02.2015 was served to the opposite parties/defendants on 10.02.2015. Finding no other ways, the petitioner instituted Title Suit No.564 of 2016 on 16.09.2016 praying therein for declaration of right, title and interest of the plaintiff for the suit property and cost of the suit and other such reliefs for which the plaintiff be entitled. He next submits that the title suit was admitted and thereafter, notice was issued to the opposite parties/defendants. He further submits that the opposite parties/defendants refused to accept the notice, hence the notice was affixed on the wall of defendants. He next submits that in spite of knowledge of the opposite parties/defendants did not appear and the case was fixed for ex-parte against defendants by the order dated 03.08.2018 and 11.09.2019 and finally the suit was decided by the judgment dated 07.12.2021. He submits that thereafter, appeal was preferred before the learned Judicial Commissioner, Ranchi vide Title Appeal No.14 of 2022 on 07.07.2022 by the opposite parties/defendants which was dismissed as withdrawn on the ground of pecuniary jurisdiction to file appeal before appropriate court by way of order dated 11.07.2022. He submits however, opposite parties/defendants did not file the appeal and preferred petition under Order IX Rule 13 of the CPC on 02.08.2022 for recall of the ex-parte order without explaining sufficient cause for the delay. He next submits that learned Sub-judge-II, Ranchi erroneously recalled the ex-parte order dated 07.12.2021. He next submits that it is well settled that if it was in the knowledge of the opposite parties/defendants for pendency of the suit and intentionally not appeared, then it cannot be recalled. To buttress this argument, he relied the case of ***Sunil Poddar & Others Vs. Union Bank of India*** reported in **(2008) 2 SCC 326** as well as the case of ***Mahabir Singh Vs. Subhash & Others*** reported in **(2008) 2 SCC 358**. Relying on above two judgments, he submits that in view of the observation and the finding of Hon'ble Supreme Court in these two cases, the case of the petitioner is fully covered and as such the impugned order may kindly be set aside.

3. Learned counsel appearing for the opposite party nos.1 to 6

opposes the prayer and submits that only one defendant was served however others have not been served and straight way, prayer for substituted service of notice by way of paper publication has been allowed. He next submits that even they have got no knowledge about the paper publication and in this background, they have been compelled to file the appeal, however, later on, it was withdrawn with liberty to move before the pecuniary court jurisdiction and thereafter, petition under Order IX Rule 13 of the CPC was filed before the learned court which has been allowed. He submits that the defendants were having both the remedies, and it was decided that by way of filing appeal, unnecessary before the High Court, the matter will be prolonged and as such the defendants chosen to file petition under Order IX Rule 13 of the CPC. He submits that in this background, the learned court has rightly allowed the said petition. He also submits that the decree was obtained after suppressing certain facts. He next submits that in petition, the memo of appeal preferred earlier which was withdrawn later on, is also annexed.

4. In view of above the submission of the learned counsel for the parties and after going through the record, it transpires from the summons annexed in the petition that one summon was served upon Banty Beck, however, he has refused to take the same and thereafter that has been hanged on the house. So far Pornesh Beck is concerned, he was not found in the house and another one Binod Beck refused to accept the notice. One Ramjeet Beck also refused to accept the notice, however, the notice upon Kurnelius Beck has not been served and thereafter, paper publication has been made on 18.05.2018 and the case was fixed ex-parte against defendants by the order dated 03.8.2018 and 11.09.2019 and finally the ex-parte decree has been passed on 07.12.2021. The opposite parties/defendants filed the appeal which has been withdrawn with liberty to file the same before the pecuniary court, however, they have not preferred the appeal and chosen to file petition under Order IX Rule 13 of the CPC. Both the remedies were there upon the opposite parties/defendants. The appeal was not decided on merit. The learned

court has been pleased to allow the petition under Order IX Rule 13 of the CPC.

5. On perusal of the judgment dated 07.12.2021 passed in Original (Title) Suit No.564 of 2016, the court finds that there is no whisper regarding the satisfaction of the learned trial court about non-service of notice upon the defendants to the effect that they were avoiding service of notice despite repeated efforts by the court. Before dealing of application under Order V Rule 20 of the CPC, it was the duty of the learned trial court to record it satisfaction that the defendants were avoiding the service of notice. The trial court did not bother to record the statement of process server, who had taken summons for service on the defendants at their address shown in the plaint. The Hon'ble Supreme Court in the case of ***Smt. Yallawwa V. Smt. Shantavva***, reported in **AIR 1997 SC 35** held that the trial court could not have almost automatically granted the application for substituted service without taking steps for serving the respondent by ordinary procedure as laid down by Order V Rules 12, 15 and 17 of the C.P.C. It must be kept in view that substituted service has to be restored as the last resort when the defendant cannot be served in the ordinary way and the court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way. Evidence has also not been led on the issue of service of notice. The learned court appreciating the fact and has come to the conclusion that both the sides are required to be heard as judgment and decree was ex-parte and in view of that has passed the order. There is no doubt that the principles laid down by the Hon'ble Supreme Court in the case of ***Sunil Poddar & Others Vs. Union Bank of India*** and ***Mahabir Singh Vs. Subhash & Others*** (supra) relied by the learned counsel appearing for the petitioner are applicable in the facts and circumstance of each case. In the case of ***Sunil Poddar & Others*** (supra), it transpires in the civil court while written statement for all those were filed, however, suppressed by them while filing the application before the DRT for setting aside the ex-parte

order. In that background, the Hon'ble Supreme Court decided the said case. In the case of ***Mahabir Singh*** (supra) the aggrieved party was knowing about the judgment and decree and in that background, the said petition was decided. It has been pointed out that in the evidence of Binod Beck he has stated he has got the ex-parte judgment and came to know in the month of June, 2022. The appeal was filed on 07.07.2022 which was withdrawn on 11.07.2022 and thereafter, petition under Order IX Rule 13 of the CPC was filed before the court. In the light of Article 123 of the Limitation Act, the time from which the period begins to run is the date of decree where the summons or notice was not duly served when the applicant has knowledge about the decree. Knowledge in this case has been pointed out in the light of the evidence of Binod Beck in June, 2022.

6. In view of above facts, reasons and analysis, this court finds that the learned court has rightly passed the order. Accordingly, this civil miscellaneous petition is dismissed. The matter is old one and in view of that the petitioner and the defendants shall remain present before the court so that further delay may not be occurred in deciding the said title suit. Learned counsel appearing for the opposite parties/defendants submits that the defendants will not take any unnecessary adjournment before the learned trial court.

(Sanjay Kumar Dwivedi, J.)

Dated 04.11.2026
Anit
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A.F.R.

Uploaded
06.11.2026