

Sunaina Devi Vs. Raj Narayan Singh

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Court : Patna

Decided On : Aug-30-2013

Appellant : Sunaina Devi

Respondent : Raj Narayan Singh

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Miscellaneous Appeal
No.212 of 2011

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Sunaina Devi, D/o Ram Swaroop Singh & wife of Raj Narayan Singh, at present at village-Kadilpur, P.O.- Mahua, P.S.-Mahua, District- Vaishali Applicant-Appellant Versus 1. Raj Narayan Singh, S/o Late Anandi Singh, resident of village-Paharpur Toi, P.S.- Desari, District- Vaishali 2. Arjun Singh, S/o Ram Sagar Singh, resident of village- Kadilpur, P.S.+P.O.-Mahua, District- Vaishali 3. Shankar Sah, S/o Sri Sant Lal Sah, resident of village- Sherpur, P.O.+P.S.-Mahua, District- Vaishali Respondents

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Appearance : For the Appellant : Mr. Uday singh & Mr. Manindra Kishore Singh
For the Respondent No.1 : Mr. Anirudh Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE NAVIN SINHA and HONOURABLE MR. JUSTICE VIKASH JAIN ORAL

JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVIN SINHA) Date:

30. 08-2013 Navin Sinha & We have heard counsel for the Appellant and the Vikash Jain, J.J.

Respondent no.1. The present Appeal arises from judgment and order dated 5.1.2011 passed by the Principal Judge, Family Court, Vaishali at Hajipur in Miscellaneous case no. 1 of 2000. The impugned order, rejects the application dated 18. 7.2000 of the Appellant filed under Order 9 Rule 13 of the Code of Civil Procedure for recalling the ex-parte decree of divorce dated 18.8.1999 granted to Respondent no.1 The parties were married approximately in the year 1983. The Appellant is alleged to have been driven out of the Matrimonial home in Patna High Court MA No.212 of 2011 dt.30-08-2013 2 April 2000. Four children are stated to have been born from the wedlock. Respondent no.1 filed O.S.no. 11 of 1998 before the Principal Judge for divorce under Section 13 of the Hindu Marriage Act. The Appellant is alleged not to have entered appearance despite knowledge of the institution and pendency of the Suit and also service of notice upon her inter alia through paper publication. The Principal Judge held that there was a presumption for delivery of a registered notice and also that summons had been served as reported by the process server. Service by publication in the Hindi daily Aaj was also done. The application under Order 9 Rule 13 was filed belatedly. On her own admission the Appellant was aware of the institution and pendency of the suit but did not enter appearance for no justifiable reason to protect her own interest. Learned counsel for the Appellant submitted that she is an illiterate lady. It was the primary obligation of the Court to ensure valid service of notice upon her to the satisfaction of the Court. This was mandatory as attempted reconciliation was a statutory compulsion before divorce could be granted under the Hindu Marriage Act. The lack of proper service of notice violates this statutory requirement and the consequential right of the Appellant to the same. Once the Court, on materials to its satisfaction, had recorded for a valid service of notice and the Appellant did not appear thereafter, issues would have been materially different. There has been no delay in filing of the application under Order 9 Rule 13 within 11 months. It is not only the ex-parte decree with which he is aggrieved, it also sullies her reputation and image as a woman alleging

unchastity as a married woman and wife of Respondent no.1. Patna High Court MA No.212 of 2011 dt.30-08-2013 3 Learned counsel for Respondent no.1 submitted that there is a presumption with regard to service of a registered notice. The process server had submitted a report that the Appellant was not at home and the notice had been pasted on the door. Once the Appellant admits in her evidence knowledge of the institution and pendency of the divorce suit, she had more than adequate time till its disposal on 18.

8. 1999 to enter appearance. If she was negligent for protection of her own interest, despite availability of sufficient time, the Court may not interfere with the impugned order as no sufficient cause can be stated to have been demonstrated. It was lastly submitted that an application filed by the appellant under section 125 Cr.P C on 10.5.2002 had been dismissed on 14.

2. 2011 relying on the ex- parte decree coupled with the deposition of the elder daughter of the Appellant alleging unchastity against her. We are informed by the counsel for the Appellant that the order is under challenge in a pending revision application before this court. The passing of an ex-parte decree against a person is a serious matter, more so in a divorce case because of the consequences. The absence of any satisfaction recorded by the Court with regard to valid service of notice upon the Appellant defeats the statutory requirement for attempted conciliation before a decree of divorce is granted. If there has been no valid service of notice, obviously the conciliation cannot be attempted as the party is not present. If after valid service of notice recorded to the satisfaction of the Court leading to full knowledge of the contesting party, appearance is avoided for ulterior motives or to take advantage of it at a subsequent date matters would be entirely different. In a legal proceeding, knowledge cannot be a substitute for valid service of notice. A valid service of notice to a contesting party is an integral facet of the principle of natural Justice. It is not compensated by alleging that the party upon whom notice was required to be issued was in any event aware of the pendency of the matter. If that argument is to be accepted, it would lead to preposterous results where a party may allege that since the opponent has knowledge of the pendency of the case filed by it, there is no need to issue notice separately. This would wreak havoc in the entire

legal system with an unscrupulous litigant obtaining orders against the party without the latter even having knowledge of the proceedings. Though there is a presumption for service of a registered notice, it is not absolute. The presumption is rebuttable. The registered acknowledgment card had not been received back in Court. Once the appellant alleged that she had never received the registered notice, the onus shifted to respondent no.1 for demonstrating a valid service. The postal peon who allegedly delivered the registered letter has not been examined as a witness on behalf of the Respondent.no.1. No explanation has been furnished for his non examination. The report of the process server was of no consequence in absence of his examination as a witness and also that there was no independent witness in support of the report that it was hung on the door of the Appellant who according to the report itself was not available at home. Again no explanation has been furnished by respondent no.1 for non- examination of the process server. Both the service reports were therefore invalid. Opposite parties no. 2 and 3 have filed an affidavit in support of the Appellant that the daily news paper Aaj did not have circulation in the village where the Appellant resided. There is no denial of it by the Patna High Court MA No.212 of 2011 dt.30-08-2013 5 Respondent no.1 and neither has the Court considered the issue. The fact that the Appellant was illiterate is also an additional consideration. We are therefore satisfied that there was never any valid service of notice upon the Appellant and there was no material for the Principal Judge to hold in favour of the respondent no.1 in this regard to sustain an order for ex-parte hearing. The judgment and order dated 5.1.2011 is therefore not sustainable having been passed without due opportunity of defence preceded by a valid service of notice. It has rightly been urged that the consequences for the Appellant are serious as it affects her reputation alleging unchastity as a married woman. The order dated 5.1.2011 is set aside. The matter is remanded to the Principal Judge, Family Court, Vaishali at Hajipur for fresh disposal in accordance with law after hearing the parties. The application is allowed. (Navin Sinha, J) Patna High Court, Patna (Vikash Jain, J) Dated 30th August, 2013, NAFR/P.K./-

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