

Saim Ansari Vs. Jainul Ansari

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Court : Patna

Decided On : Jun-29-2005

Judge : S.N. Hussain, J.

Appeal No. : Civil Revision No. 643 of 2005

Appellant : Saim Ansari

Respondent : Jainul Ansari

Advocate for Def. : Nirmal Kumar Sinha No. 9 and Rakesh Ambastha, Advs. for O.P. Nos. 1 to 4

Advocate for Pet/Ap. : Shankar Kumar, Adv.

Prior history : S.N. Hussain, J. 1. Heard learned counsel for the parties. 2. The petitioner is defendant No. 1 in title Suit No. 162/2002, which was filed by the opposite party 1st set for declaration of title and confirmation of possession and for other ancillary reliefs. 3. The petitioner is aggrieved by order dated 21-2-2005 passed in the aforesaid suit, by which the learned Munsif Sadar, Sitamarhi rejected his petition dated 4-2-2005 for accepting the written statement filed by him on that very date. 4

Judgement :

S.N. Hussain, J.

1. Heard learned counsel for the parties.

2. The petitioner is defendant No. 1 in title Suit No. 162/2002, which was filed by the opposite party 1st set for declaration of title and confirmation of possession and for other ancillary reliefs.

3. The petitioner is aggrieved by order dated 21-2-2005 passed in the aforesaid suit, by which the learned Munsif Sadar, Sitamarhi rejected his petition dated 4-2-2005 for accepting the written statement filed by him on that very date.

4. The suit was filed in the year 2002 and when the defendants did not appear even after regular process, substituted service was ordered and publication was made in the Gazette. It transpires that even thereafter the defendants did not appear, the suit was fixed for ex parte hearing by order dated 4-8-2003. It was much thereafter that defendant No. 1 appeared in the suit on 10.6.2004 and filed a petition for recall of the aforesaid order dated 4.8.2003. The said petition was allowed by the learned Court below vide order dated 20.9.2004 and the earlier order dated 4.8.2003 was recalled subject to payment of cost of Rs. 300/-. The said cost was not paid and after several months defendant No. 1 filed his written statement on 4.2.2005 alongwith a petition for accepting the written statement. This petition has been rejected by the learned Court below vide the impugned order.

5. From the facts and circumstances of the case, it is quite apparent that the trial Court itself had recalled its earlier order dated 4.8.'2003 after realising that defendant No. 1 could not appear in the suit for genuine reasons as he had claimed that notices were not served upon the defendants and since he is an illiterate person, he was not aware of the Gazette publication. Learned counsel for the petitioner has submitted that he was ill since 30.8.2004 till January 2005, due to which he could not contact his lawyer and had no information about the order of the trial Court dated 20.9.2004 and when even after recovery from the ailment he came to Court and learnt about the said order, he immediately filed a written statement alongwith a petition for accepting the written statement. I am satisfied that the reasons assigned by the defendant-petitioner in support of the prayer for extending the time was good and valid and the written statement has already been

filed.

6. This view finds support from the decision of the Hon'ble Apex Court in the case of Kailash v. Nanhku and Ors. reported in : AIR 2005 SC2441 and a decision of this Court in the case of Smt. Sunita Devi and Ors. v. Abdhesh Kumar Sinha @ Kamleshwari Pd. Sinha and Ors. reported in 2005(2) PLJR 482. Hence, I direct that written statement shall now be taken on record but it would be subject to payment of cost of Rs. 4,000/- (rupees four thousand) by the petitioner-defendant to opposite parties No. 1 to 4 through their counsel Sri Nirmal Kumar Sinha No. 3, within a period of six weeks from today. In addition to that the defendant-petitioner is directed to pay the cost of Rs. 300/- to the plaintiffs as directed by the learned Court below on 20.9.2004 within four weeks from today.

7. Accordingly, this civil revision is allowed, the impugned order is set aside and the learned Court below is directed to proceed with the suit without giving any further adjournment to the defendant-petitioner as it is informed that already several witnesses of the plaintiffs have deposed.

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