

Krishna Kumar Singh Vs. Smt. Vidya Devi ors.

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Court : Patna

Decided On : Feb-25-2002

Judge : Radha Mohan Prasad, J.

Appeal No. : Misc. Appeal No. 43 of 2000

Appellant : Krishna Kumar Singh

Respondent : Smt. Vidya Devi ors.

Disposition : Appeal Dismissed

Judgement :

Radha Mohan Prasad, J.

1. This appeal is directed against the order dated 25-11-1999 passed by Subordinate Judge XI, Patna in Misc. Case No. 3/98 arising out of Title Partition Suit No. 431 of 1995 which the petition under Order IX, Rule 13 C.P.C. has been rejected.

2. The Title Partition Suit No. 431 of 1995 was filed by Respondent No. 1, namely, Smt. Vidya Devi for declaration of exclusive title and possession over the property mentioned in Schedule III of the plaint by virtue of oral partition and further for passing of preliminary decree of partition of half share in respect of the property mentioned in Schedule I of the plaint and also for partition of half share of the

property mentioned in Schedule II of the plaint. The abovementioned suit was decreed ex parte against defendant Nos. 1 to 5, 9 & 10. Defendant Nos. 6, 7, 8, 11 & 12, though appeared but, did not file any written statement, despite service of notice on all. However, according to the defendant appellant he had no knowledge of the suit and the plaintiff got the ex parte decree by suppressing service of summons upon main defendants and when it came to his knowledge he filled Misc. Case No. 3 of 1998 under Order IX, Rule 13 for setting aside the judgments and decree which has been dismissed by the impugned order. By the impugned order, learned Subordinate Judges XI after taking into consideration the service of summons through various modes including by publication in the newspaper Hindi daily 'Hindustan' and that the defendant-appellant did not get himself examined and also an consideration of the evidence of applicant-witnesses, found it difficult to hold that there was no valid service of summons on the appellant. According to the learned Subordinate Judge the defendant-appellant was very much aware of the partition suit and, accordingly has rejected the application for setting aside the ex parte decree.

3. Learned Counsel for the appellant submitted that the learned Subordinate Judge has erred in law in rejecting the prayer of the appellant for setting aside the ex parte decree. According to him, there has been complete non-compliance of the requirements for substituted service under Order v. Rule 20, Cr. P.C., and thus, the court-below should not have relied upon the publication of notice in Hindi 'Hindustan' for coming to the conclusion that there was valid service of summons. Moreover, publication in the newspaper was on 7-1 -1997 to appear on 10-1-1997, which was not sufficient as per the law settled. According to him in the case of Bhagwan Singh and Ors. v. Ram Balak Singh and Anr. 1987 B.B.C.J. 238 (para 21) 12 days notice has been held to be not sufficient. It has also been submitted by the learned Counsel for the appellant that it was incumbent upon the plaintiff-respondents to bring evidence to show that there was service of notice and the Court should not have simply relied upon the report of the process server incorporated in the order sheet. This also, according to him, is good ground for setting aside the ex parte decree. He referred to the decision of the Apex Court in the case of Satyanarain Bajoria and Anr. v. Ramnarain Tibrewal

and Anr. 1994(1) PLJR 3 (SC).

4. I am unable to accept the said submission of the learned Counsel for the appellant. The decision of the Apex Court in the case of Satyanarain Bajoria v. Ramnarain Tibrewal, was relating not setting aside of the sale on the ground of fraud judgment-debtor suffering substantial loss and injury due to decree-holder obtaining ex parte order of sale of property of judgment debtor and himself purchasing the same for a petty sum. The Apex Court considering the apparent substantial injustice to judgment-debtor set aside the sale. The said decision is hardly of any help to the appellant in fact, in the present case, this Court finds that after exhausting all modes, notice was published in the newspaper and despite it the appellant did not choose to even appear. In fact, the learned Subordinate Judge has also taken notice of the fact that some of the defendants, who were purchaser from the appellant after receipt of summons had appeared, but later after pairvi. Under such circumstances, the learned Subordinate Judge has rightly found it difficult to accept that the appellant had no notice about the suit and that there was no valid service of summons on him. Under Order V. Rule 20 dealing with the requirement of substituted service, Clause 1(A) was fully attracted under which on failure in the effort to serve notice in the ordinary way, the Court has been vested with the power to order service by advertisement in the daily newspaper circulated in the locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain. It was not the case of the respondent that the newspaper was not circulated in the area where the appellant resides. In fact, no evidence was also led on his behalf with respect to the above. Under such circumstances, the Court was left with no option but to proceed ex parte. This Court also finds substance in the submission of the learned Counsel for the respondents that there is no explanation as to how he got knowledge from Nagendra Prasad as claimed by him. Accordingly, this Court finds that the learned Subordinate Judge/has fully considered all aspects and has rightly come to the conclusion that there was valid service of summons on the appellant and that he was very much aware of the partition suit.

5. In the result, this Court does not find any merit in the appeal and the same is dismissed in limine.

