

**Hardeo Singh Vs. Ramavati Devi**

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**SooperKanoon Citation :** [sooperkanoon.com/140706](http://sooperkanoon.com/140706)

**Court :** Patna

**Decided On :** Jun-29-2005

**Judge :** S. Nayer Hussain, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Order 8, Rule 10 - Order 9, Rule 13

**Appeal No. :** Civil Revision No. 911 of 2000

**Appellant :** Hardeo Singh

**Respondent :** Ramavati Devi

**Advocate for Def. :** R.K. Srivastava, Adv.

**Advocate for Pet/Ap. :** Raghav Prasad and Maheshwar Prasad, Adv.

**Judgement :**

**S.N. Hussain, J.**

1. Heard learned counsel for the parties.
2. The petitioner is defendant-applicant-appellant of Title Suit No. 34 of 1986 which was filed by the sole opposite party for declaration that the deed of gift executed by the plaintiff in favour of the defendant (petitioner) was forged, void and fraudulent.

3. It transpires that the defendant-petitioner appeared in the suit on 17.11.1990, but thereafter left pairvi of the case and by order dated 14.7.1992 the suit was fixed for ex-parte hearing and the same was decreed ex-parte on 19.8.1992. Thereafter also much time lapsed and the defendant-petitioner filed Misc. Case No. 1 of 1994 under Order IX Rule 13 of the Code of Civil Procedure (hereinafter referred as the 'Code') for the sake of brevity) for setting aside the ex-parte decree against the defendant. The said Misc. Case was dismissed on 17.9.1998 by the learned trial Court on the grounds that the case was hit by the law of limitation and that the ex-parte order passed under Order VIII Rule 10 of the Code was an appealable order, so the Misc. case was not maintainable.

4. Against the said order dated 17.9.1998 passed in Misc. Case No. 1 of 1994 the defendant-petitioner filed Misc. Appeal No. 27 of 1998 (4 of 1999) which was dismissed by the Learned 4th Additional District Judge, Gopalganj, by the impugned order dated 1.4.2000 on the ground of limitation as well as on the ground that the defendant had full knowledge of the proceeding of the suit and the suit was decreed ex-parte due to his own laches.

5. It is well settled principle of law that an ex-parte decree passed against a defendant can be set aside by the Court under the provision of Order IX Rule 13 of the Code when the Court is satisfied that either the summons were not duly served upon the defendant or he was prevented by any sufficient cause from appearing at the time of hearing of the suit. Here, in the instant case there is no dispute that the summons were duly served upon the defendant who had already appeared in the suit and hence the only question which arises in this case is that whether the defendant had been able to show sufficient cause for his non-appearance at the time of hearing of the suit. In the instant case it is the specific case of the defendant that he is a poor man and had gone to Gujrat in the year 1990 for earning his livelihood leaving the case in the hands of his Pairvokar who did not take proper care of the case and did not inform the petitioner about its development and when the petitioner returned he learnt that the said Pairvokar took no interest as a result of which the suit was decreed ex-parte whereafter he immediately filed the Misc. Case. This plea of the petitioner not only shows sufficient cause for non-appearance of the defendant at the time of hearing of the

suit but also explains the delay in filing of the Misc. Case. But these aspects of the matter have been completely ignored by the learned Courts below, as both of them adopted a very narrow and technical approach in dealing with the matter pertaining to the genuineness of a registered deed already executed by the plaintiff despite the fact that the defendant had put a reasonable defence and had approached the Court for setting aside the ex-parte decree, although, the Misc. Appeal was admittedly filed within the statutory period.

6. The Hon'ble Apex Court in its decision in the case of G.P. Srivastava v. R.K. Raizda and Ors. , reported in : [2000]2SCR97 , has specifically held that even where defendant is found to be negligent, the other side may be compensated by costs and the decree set aside on such terms and conditions as were deemed proper by the Courts below. Due to these technical approaches adopted by the learned Courts below the litigation between the parties continued for about nineteen years. Hence, it is necessary in the ends of justice that the defendant-petitioner is allowed one opportunity to prove his case within a reasonable time.

7. In the aforesaid facts and circumstances, this Civil Revision is allowed by setting aside the impugned orders of the learned Courts below as well as the ex-parte decree of the learned trial Court on payment of Rs. 4,000/- (Four thousand) by the defendant-petitioner to the plaintiff-opposite party within one month from today through his lawyer in the trial Court. The trial Court is also directed to give one opportunity to the defendant to prove his claim and expedite the disposal of the Title Suit within a period of ten months from the date of receipt/production of a copy of this order.

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