

(2022) 07 PAT CK 0003

Patna High Court

Case No: Civil Miscellaneous Jurisdiction No. 845 Of 2019

Munni Devi

APPELLANT

Vs

Laxman Sah

RESPONDENT

Date of Decision: July 5, 2022

Acts Referred:

- Code Of Civil Procedure, 1908 - Order 9 Rule 13

Hon'ble Judges: Anil Kumar Sinha, J

Bench: Single Bench

Advocate: Chandra Kant

Final Decision: Dismissed

Judgement

1. Heard learned Counsel for the petitioners.
2. The petitioners are aggrieved by the order, dated 28.03.2019, passed, by Munsif-I, Siwan, in Misc. Case No. 159 of 2018, whereby the learned Court below has dismissed the application filed by the petitioners, under Order IX Rule 13 of the C.P.C., for setting aside the ex-parte decree.
3. The petitioners claim themselves to be the descendants of their ancestors, who were defendants in Title Suit No. 102 of 1973, in which the decree was passed on 20.04.1990 and thereafter after preparation of the final decree, Execution Case No., 13 of 1993 has been filed.
4. From the impugned order, it appears that the petitioners filed the objection in the Execution Case No. 13 of 1993 on 05.02.2014 and after a lapse of four years from the date of filing of the objection, the present misc. case has been filed for setting aside the ex-parte decree on the ground that

summonses were not served upon the ancestors/defendants of the petitioners and paper publication was also not done and the decree was passed in their absence.

5. Learned Counsel for the petitioners submits that the learned Court below has committed error of law in holding that in support of the petition regarding condonation of delay, no material has been brought on record by the petitioners and, accordingly, dismissed the misc. application, as not maintainable.

6. Having heard learned Counsel for the petitioners and after going through the impugned order, it appears that the learned Court below has categorically come to the conclusion that the date of knowledge regarding the ex-parte decree has not been disclosed in the misc. case filed by the petitioners and no sufficient cause has been shown by them for condonation of delay of about 28 years 05 months and 06 days in filing the misc. case.

The learned Court below has also come to the finding that the petitioners were having knowledge about the decree and had earlier, on 05.02.2014, had filed objection in the execution case. As such, the learned Court below refused to condone the delay of about 28 years.

7. Accordingly, I come to the conclusion that the learned Court below has not committed material irregularity and/or jurisdiction error while passing the impugned order.

8. This application is, accordingly, dismissed.

9. There shall be no order as to costs.