

IN THE COURT OF THE SUB-JUDGE-I
Sub-Divisional Civil Court, Sonpur at Saran

**Miscellaneous Case No. 12 of 2015
(Arising out of Partition Suit No. 627 of 2011)**

Ram Babu Singh & Others ... Applicants

Versus

Naseem Khan & Others ... Opposite Parties

ORDER

Dated:-

The present miscellaneous case has been filed under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure for setting aside the ex-parte judgment and decree passed in Partition Suit No. 627 of 2011.

That the applicant is a resident of District Saran. One of the close friends and well-wishers of the applicant, namely Amarjeet, son of Late Kishori Singh, resident of village Kasmar Khana, P.S. Sonpur, District Saran, informed the applicant on 07.06.2015 that he had come to know from local sources that Opposite Party No. 1 had obtained an ex-parte decree against the applicant in Partition Suit No. 627 of 2011 in the court of the learned Sub-Judge-1 at Chapra and was proceeding for preparation of the final decree. Thereafter, the applicant came to Chapra on 10.06.2015 and through her advocate Sri Amarendra Bhushan Kumar Singh filed a petition for inspection of the records of Partition Suit No. 627 of 2011. The record was inspected on 19.06.2015, and it came to light that the Opposite Party No. 1 had obtained an ex-parte judgment and decree against the applicant by misleading the Ld. Court. Upon inspection of the records of Partition Suit No. 627 of 2011, it became clear that no summons had ever been duly served upon the applicant. Neither any registered summons was served nor was any publication made in the said suit. Consequently, the applicant had no knowledge whatsoever about the pendency of Partition Suit No. 627 of 2011. In fact, the Opposite Party No. 1, by suppressing the true facts and keeping the Hon'ble Court in darkness, managed to obtain an ex-parte decree against the applicant and deliberately prevented the applicant from appearing and contesting the suit.

Furthermore, the disputed land involved in Partition Suit No. 627 of 2011 was not purchased solely by the plaintiff. Rather, the same property had been purchased through the same document by applicant Ram Babu Singh, Tribhuvan Singh and Amarveer Singh, all of whom have equal share and interest in the said property. However, these persons were not made parties in the suit, and therefore the judgment and decree passed in the suit are not binding upon them as well. Due to the passing of the ex-parte judgment and decree against the applicant, the applicant has suffered serious mental and financial loss. Therefore, in the interest of justice, it is absolutely necessary that the ex-parte judgment dated 03.02.2014 and decree dated 27.02.2014 passed in Partition Suit No. 627 of 2011 be set aside, so that after the said judgment and decree are annulled, the applicant may appear in the original Partition Suit No. 627 of 2011 and place her rights, title, interest and claim over the disputed property before this Hon'ble Court.

Objection filed by O.P-4

That the Opposite Party No. 4, Khushboo Nisa, has appeared and filed her objection. That the present Miscellaneous Case has been filed by the applicant with the intention of setting aside the ex-parte judgment and decree passed in Partition Suit No. 627 of 2011. That when the Opposite Party No. 4 came to know about the said case, she made inquiries and upon such inquiry she came to learn that Opposite Party No. 1, Naseem Khan and others, had instituted Partition Suit No. 627 of 2011, but no summons or notice relating to the said suit was ever served upon Opposite Party No. 4. Rather, by misleading the Ld. Court and suppressing the true facts regarding service of summons, they managed to proceed with the suit ex-parte and obtained an ex-parte judgment and decree against the applicant as well as against Opposite Party No. 4 and her mother. That in the said suit, Mohamuda Khatoon, who has since died, had been made a party, and by suppressing proper service of summons the plaintiff obtained an ex-parte decree against the applicant, Opposite Party No. 4 and her mother. That the mother of the Opposite Party No. 4 had earlier purchased the disputed property through a registered sale deed executed in the name of Mohamuda Khatoon in favour of Ram Babu Singh and others on 26.11.2013, and since then they have been in actual possession and occupation of the said property, which continues even today. However, in Partition Suit No. 627 of 2011, by suppressing the true facts and without effecting proper service of summons upon the Opposite Party No. 4 and the applicant, the plaintiff managed to obtain an ex-parte decree against them. That if the Opposite Party No. 4 had received knowledge of the said suit before the passing of the ex-parte decree, she would certainly have appeared before the Court and filed her proper written statement and contested the case. That due to the ex-parte judgment and decree passed in Partition Suit No. 627 of 2011, the Opposite Party No. 4 has suffered serious mental and financial loss. Therefore, it is absolutely necessary in the interest of justice that the ex-parte judgment and decree passed in Partition Suit No. 627 of 2011 be set aside, so that the Opposite Party No. 4 may appear in the said partition suit and place the true and correct facts before this Hon'ble Court, so that no party concerned suffers any injustice. That whatever statements have been made by the applicant in the petition filed under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure are, to the best of the knowledge of this Opposite Party, true and correct.

Objection filed by Opposite Party No. 1, Naseem Khan, and Opposite Party No. 2 have appeared in the case and filed their objection stating that the petition filed by the applicant is not maintainable in the eye of law and is liable to be dismissed.

That the statements made by the applicant in the present petition are completely false and baseless. The applicant was never informed about the inspection of the records of Partition Suit No. 627 of 2011 through Amarjeet, son of Late Kishori Singh, nor was there any necessity for such inspection. Even if the applicant claims that inspection was carried out, the same would have been done only after the filing of the present petition and merely for the purpose of creating grounds for the present case. That the statements made by the applicant in the concerned paragraphs are incorrect. In Partition Suit No. 627 of 2011, summons were duly issued and served upon the applicant and the other defendants through the Court, and registered notices were also issued. Despite

having knowledge of the said suit, the applicant deliberately failed to appear before the Court.

That the statement of the applicant regarding the execution of a sale deed (bainama) in favour of certain persons through Mohamuda Khatoon is not the responsibility of these Opposite Parties. Even if Mohamuda Khatoon executed any sale deed in favour of any person, such transaction does not create any legal impediment to the rights of these Opposite Parties. That to the best knowledge of these Opposite Parties, Mohamuda Khatoon had no valid title over the disputed land so as to transfer the same to any person. Therefore, any alleged sale deed executed in respect of the disputed land does not confer any legal right or title upon the applicant or any other person. That the statements made by the applicant in paragraph 5 of the petition are absolutely incorrect. The judgment and decree passed in Partition Suit No. 627 of 2011 have not caused any loss or injury to the applicant. Even if any sale deed has been executed in favour of any person, such person can claim only the share of the executant, and the said deed does not confer any independent right over the disputed property. That therefore the applicant has not suffered any legal injury or loss due to the judgment and decree passed in the said partition suit. That the statements made by the applicant in the subsequent paragraphs of the petition are also incorrect and misleading. The judgment dated 03.02.2014 and the decree dated 27.02.2014 passed in Partition Suit No. 627 of 2011 are legal, valid and binding, and the same are not liable to be set aside. That the applicant has not produced any credible evidence in support of the alleged sale deed or any claim of title over the disputed property. The applicant has also failed to substantiate the alleged rights claimed through the said document. That the present petition has been filed only with the intention of harassing the Opposite Parties and creating unnecessary dispute, and therefore the same deserves to be dismissed with costs.

Oral witnesses adduced by applicant

Witness No. 2. Gopal Singh, in his examination-in-chief on oath, stated that about 8–10 years ago (approximately 33 years ago, as mentioned), Amarjeet Singh informed him in his presence that Naseem Khan and others had filed a partition suit against Ram Babu Singh and had obtained a decree and were proceeding to obtain the final decree. He further stated that he conveyed this information to Ram Babu Singh. He also stated that he is submitting his deposition on oath in this case file.

In cross-examination, he stated that the alleged house of Ram Babu Singh is situated at Dhoopar Tak, P.S. Phulwari, District Patna. He further stated that he is not a relative of Ram Babu Singh. He had gone to the house of Ram Babu Singh because his cousin sister was married in a house adjacent to Ram Babu Singh's residence.

He further stated that in the case filed by Naseem Khan, Ram Babu Singh was the only defendant. He does not know the case number of the suit filed by Naseem Khan nor the court in which it was pending. He stated that Amarjeet Singh had informed him that Naseem Khan had filed a case against Ram Babu Singh.

He further stated that Amarjeet Singh's house is situated next to Ram Babu Singh's house. According to him, Amarjeet Singh had informed him about the case over the phone and also told Ram Babu Singh over the phone that Naseem

Khan had filed a case against him. However, he does not remember the date on which Amarjeet Singh informed him about the said matter.

He further stated that he has no personal concern with the case filed by Naseem Khan. He also does not know against whom exactly Naseem Khan had filed the case. He finally stated that he did not personally convey anything to Ram Babu Singh regarding the case except what Amarjeet Singh had told him.

Witness No. 3, Kishori Singh, in his examination-in-chief on oath, supported the claim of the applicant.

In his cross-examination, he stated that he has knowledge about the miscellaneous case, but he does not know the number of the case.

He further stated that Gopal Singh and Ram Babu Singh are not related to each other, but he has knowledge that they had some conversation between them. His house is situated at a short distance from theirs. He also stated that the maternal home of the applicant is situated in the same village. He further stated that the original suit was filed by the Muslim party against Ram Babu Singh. He also stated that he overheard Amarjeet Singh and Gopal Singh talking about the ex-parte decree. At that time, besides them there were several other persons present, but he is unable to state their names. He further stated that he cannot say whether there was any discussion between them regarding the details of the original suit, and beyond that he has no further knowledge about the matter.

Witness No. – Bittu Kumar Srivastava, in his affidavit evidence, stated that in his presence Ram Babu Singh on 10.06.2015 executed a Vakalatnama in favour of his advocate, Sri Amarendra Bhushan Kumar Singh, in the Civil Court at Chapra and filed a petition for inspection of the records of Partition Suit No. 627 of 2011. He further stated that the Vakalatnama was signed by Advocate Sri Amarendra Bhushan Kumar Singh in his presence, and he identifies the said signature. He further stated that he knows Advocate Amarendra Bhushan Kumar Singh very well. The signature of Advocate Amarendra Bhushan Kumar Singh on the Vakalatnama dated 10.06.2015 has been marked as Exhibit-1.

In cross-examination, he stated that he met Ram Babu Singh for the first time in the Civil Court on 10.06.2015, and prior to that he had never met him earlier. He further stated that he works as a clerk (Munshi) for Advocate Amarendra Bhushan Kumar Singh in Partition Suit No. 627 of 2011. The Munshi register is with him but he has not brought it to the Court today. He also stated that there are other advocates such as Vidyasagar Pandey, Ram Nayak Singh and others, with whom he works as a clerk. He further stated that he does not remember the number of cases in which he has assisted Advocate Amarendra Bhushan Kumar Singh. He further stated that he did not personally go to inspect the court records along with the advocate.

Witness No.- 6. Phulena Sah, in his examination-in-chief, stated that in his presence Ram Babu Singh went to Chapra on 10.06.2015 and executed a Vakalatnama in favour of his advocate and filed a petition seeking inspection of the records of Partition Suit No. 627 of 2011. He further stated that on 19.06.2015 the records were inspected in his presence. He also stated that the Vakalatnama bears the signatures of Advocate Amarendra Bhushan Kumar Singh, which he identifies.

In cross-examination, he stated that he has studied only up to Class IV and does not know how to read English. He further stated that when the Vakalatnama was signed by Advocate Amarendra Bhushan Kumar Singh, no one else was present there except Ram Babu Singh and the said advocate. He further stated

that he did not accompany the advocate when he went to file the Vakalatnama or the petition for inspection. He also stated that he does not remember the case number written in the petition for inspection, nor does he remember in which court the said case (Partition Suit No. 627 of 2011) was pending. He further stated that he does not remember how many advocates had signed the Vakalatnama, nor did he pay attention to the contents written in the Vakalatnama. He further stated that in one of his own cases he had appeared in the year 1989, in which his advocate was Satish Babu, and the said case was finally disposed of in the year 2006.

Witness No.1. Sachchidanand Singh, in his examination-in-chief, supported the entire contents of the application.

However, in cross-examination, he stated that he is engaged in agriculture and has three brothers. His two brothers drive auto-rickshaws, and his father deals in the purchase and sale of land. Their agricultural and household affairs are carried on near Patna. He further stated that the original suit was related to the Civil Court at Chapra, but his father had not informed him anything about the said case. He also stated that he does not know who Mohammada was in the said case. He stated that Amarjeet Singh was a friend of his father and used to live at Koleja Ghat. Amarjeet Singh is also a relative of his family, therefore he knows and recognizes him well. He further stated that his father had engaged Advocate Sri Amarendra Bhushan Kumar Singh for inspection of the original records of the case. He came to know about the inspection of the records from his father. However, after the inspection of the original records, his father did not tell him what information was obtained from those records. He further stated that many of the statements written in the affidavit were written on his instructions and to his knowledge. He further stated that he has not read the judgment of the case. He only came to know that due to the ex-parte decree, the plaintiff might have obtained even the share of land belonging to him. He further stated that in the original suit (Partition Suit No. 627 of 2011), Mohammada had appeared and filed her written statement, and the said statement forms part of the record. He further stated that he had purchased the disputed land even before the filing of Partition Suit No. 627 of 2011, though he does not remember the exact date of purchase. He further stated that his father had purchased about eleven bighas of land in that area. He also stated that his relatives reside at Koleja Ghat, and Mohammada's house is also situated there. After the purchase of the land, his father had discussions with Mohammada regarding the said property.

Witness No.4. Rakesh Sharma, in his examination-in-chief, stated that he knows and identifies both the applicant and the opposite parties. He further stated that a Partition Suit No. 627 of 2011 was pending between them in the Court of the learned Sub-Judge at Chapra. He stated that the applicant Ram Babu Singh resides near his house. He further deposed that the Opposite Parties, by practicing fraud, deceit and misrepresentation, obtained an ex-parte decree without giving any notice or information to the applicant. He further stated that in order to set aside the said ex-parte decree and to restore Partition Suit No. 627 of 2011 for proper adjudication, the applicant Ram Babu Singh has filed the present petition, which according to him is true and correct.

In cross examination stated that he has no knowledge about PS 627/2011. He did not know when the original suit was filed and when service of summons was issued in that suit. Whether any publication in that suit take place or not, he has no knowledge. That the present Miscellaneous case is filed by Late

Rambabu Singh. Why the suit was filed he has no knowledge. He has no knowledge about the service and service report in that suit.

Opposite Party Witness No. 1 – Naseem Khan, in his examination-in-chief on oath, stated that he is Opposite Party No. 1 in the present case. He further stated that Partition Suit No. 627 of 2011 had been filed by him, and in that suit summons were issued by the Court against all the defendants through ordinary process as well as by registered notice. He further stated that publication in the newspaper was also made, but despite that the defendants in Partition Suit No. 627 of 2011 deliberately did not appear before the Court. He further stated that the present applicant has filed this case on the basis of false statements, and that all the statements made by the applicant in this case are false and misleading. He also stated that the claim made by the applicant regarding inspection of the records is false. According to him, after the judgment in Partition Suit No. 627 of 2011, the applicant filed the present petition in order to obstruct the preparation of the final decree. He further stated that if the judgment passed in Partition Suit No. 627 of 2011 is set aside, he will suffer heavy loss, and therefore the claim of the applicant is incorrect.

In cross-examination, he stated that he does not remember the exact date on which the ex-parte order was passed in the original suit. He further stated that in the original suit he himself was the plaintiff. The original suit was filed by him (Mohammad Naseem Khan) and his sister Firoza Khatoon against Ram Babu Singh and Mohammada Khatoon, though he does not remember the names of the other parties. He further stated that in the original suit summons were issued through registered notice and publication in newspapers. He stated that the notice was published in newspapers such as Navbharat Times and Hindustan, though he does not remember the exact date of publication. He further stated that the defendants in the original suit did not appear before the Court. He further stated that he has no objection if the case is decided after hearing both parties. He also stated that in the original suit notice had been issued and served upon the defendants. According to him, the defendants reside in Patna and therefore the service of notice was effected at Patna and publication was also made in newspapers. He denied the suggestion that the notices were secretly issued without proper service.

Documents Exhibited on behalf of Applicant

Exhibit-1 – Vakalatnama executed in favour of Advocate Amarendra Bhushan Kumar Singh dated 28.02.2020.

Exhibit-2 – Certified copy of judgement of P.S 627/2011 passed by Ld Sub Judge-1 Chapra.


On perusal of the record it transpires that both parties have adduced oral and documentary evidence in support of their respective cases. The applicants examined witnesses and also produced documents such as Vakalatnama of Ld Advocate who filed a petition for inspection of record and relevant judgement and decree of the Court. From the evidence on record, it appears that the applicants came to know about the ex-parte decree only subsequently, and thereafter they promptly took steps to inspect the records and filed the present Miscellaneous Case. There is no service of summons on the record which indicates that proper service of summons was served to the defendant of the PS 647/2012 also no acknowledgement of registered service of summons on the record nor any evidence of publication produced on the record. The applicants have been able to show sufficient cause for their non-appearance in the original suit. The

evidence adduced by the applicants indicates that they had no effective knowledge about the pendency of the suit, and therefore they could not appear before the Court when the case was taken up. The Court is also of the view that in a partition suit involving valuable property rights, the matter should be decided on merits after giving full opportunity to all the parties.

Therefore, in the interest of justice and to afford the applicants an opportunity to contest the suit, the ex-parte judgment and decree deserve to be set aside.


Order

Accordingly, the present Miscellaneous Case No. 12 of 2015 is hereby allowed with cost of Rs. 3500/ (Three Thousand Five Hundred only). The ex-parte judgment dated 03.02.2014 and decree dated 27.02.2014 passed in Partition Suit No. 627 of 2011 are hereby set aside. The original Partition Suit No. 627 of 2011 is restored. The defendants shall be given opportunity to file their written statement and contest the suit on merits in accordance with law.


Sub-Judge-1 09/03/26

Sub-Divisional Civil Court
Sonpur at Saran.

Dated:09/03/2026


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