
(2004) 02 AHC CK 0167

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15271 of 1984

Badhu and Ors.

APPELLANT

Vs

Civil Judge, Azamgarh & Ors.

RESPONDENT

Date of Decision : 23-02-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13

Citation : (2004) 02 AHC CK 0167

Hon'ble Judges : Rakesh Tiwari, J

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Counsel for the parties and perused the record.

This writ petition has been filed praying, inter alia, quashing of the judgment and order dated 681984 (Annexure 3 to the writ petition) passed by respondent No. 1.

2. The case of the petitioners, in brief, is that respondents 3 to 6 Shami Umar and others filed Suit No. 167 of 1976 against them for permanent injunction restraining them from interfering with their possession of the land in suit situate in Village Haribanshpur, Pargana Nizamabad, Tehsil Sadar, District Azamgarh. The plaintiffrespondents claimed the land in suit to be Kabristan. The suit was filed under Order I, Rule 8 C.P.C. The trial Court ordered for service of summons on the petitioners by an advertisement in a newspaper and decreed the suit exparte against the petitioners on 741979. An application was made on behalf of the petitioners under Order IX Rule 13 C.P.C. for setting aside the decree passed exparte against them. The trial Court rejected the application by its order dated 3071982 on the basis that a perusal of the record of the case showed that the service of summons on the petitioners was sufficient. Misc. Appeal No. 188 of 1982 was filed on behalf of the petitioners against the aforesaid order dated 3071982. The appellate Court dismissed the appeal by its order dated 681984. The trial Court rejected the petitioners' application under Order IX Rule 13 C.P.C. Summons were served upon the petitioners by publication in a newspaper

"Rashtradoot". Two of the defendants belonging to the same village appeared in the original case. The Courts below disbelieved the version of the petitioners that they had no knowledge of the case. The service of summons on the petitioners was sufficient. There is no illegality or infirmity in the impugned order, Service by publication is in accordance with the procedure prescribed under the Code of Civil Procedure, as it is substituted service.

3. For these reasons this writ petition is dismissed. Interim order, if any, is vacated. No order as to costs.