
(1923) 03 PAT CK 0008
In the Patna High Court

Chotu Mian and Others

APPELLANT

Vs

Pallo Gope and Others

RESPONDENT

Date of Decision : 21-03-1923

Acts Referred:

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

Citation : AIR 1924 Patna 529

Hon'ble Judges : Macpherson, J;Das, J

Bench : Full Bench

Judgement

Das, J.—This application is directed against the order of the learned Subordinate Judge of Monghyr refining an application under Order 9 Rule 13 of the CPC to set aside a decree. The suit was on a mortgage and was instituted on the 9th March 1920. The Order sheet shows that the defendants continually asked for time and that the Court granted the defendants many adjournments. On the 17th February 1921, the Court adjourned the suit to the 16th March 1921, on the defendant's application for time. On the 16th March 1921, both parties applied for time and the Court adjourned the hearing of the suit to the 18th April 1921, and intimated to the parties that it would proceed with the hearing of the suit on the 18th April 1921. On the 18th April 1941 the defendants were not present in Court. The plaintiff was ready and was willing to proceed with the hearing of the suit. The learned Subordinate Judge however without any application on the part of the defendants, adjourned the hearing of the suit to the 28th April 1921. On the 28th April 1921, the defendants were again absent. The plaintiff however, applied for time and the learned Subordinate Judge adjourned the hearing of the suit to the 30th May 1921, the plaintiff was ready and the defendants again applied for time. The learned Subordinate Judge adjourned the hearing of the suit to the 28th June 1921, and directed that the parties must be ready to produce evidence on the elate fixed. On the 28th June 1921, the plaintiff was again ready and the defendants again applied for time. The learned Subordinate Judge declined to allow time and intimated to the parties that ho would proceed with the hearing of the suit the next day. On the 29th June 1921, the defendant

made another application for time. The learned Subordinate Judge thereupon, passed the following order. "Defendant again applies for time. His application may be allowed if he pays Rs. 10 costs to the plaintiffs immediately. The case will be taken up to-day if costs be not paid". The costs were not paid and the learned Subordinate Judge thereupon proceeded with the hearing of the suit and passed an ex parte decree in favour of the plaintiff.

2. It is contended on behalf of the petitioners by Mr. Manohar Lal that it was quite impossible for the defendants to comply with the order of the learned Subordinate Judge passed on the 29th June 1921 since the defendants were not present in Court and were not aware of the direction which the Court made upon them to pay Rs. 10 as cost to the plaintiff. The question is not whether the defendants could or could not comply with the order but whether the learned Subordinate Judge had jurisdiction to pass the order which he did in fact pass. In my opinion his jurisdiction to pass the order which he did pass on the 29th June was complete. The order was a conditional order, and the condition not having been satisfied the learned Subordinate Judge was right in proceeding with the hearing of the suit. The cost which he allowed to the opposite party was Rs. 10 and the pleader who appeared for the petitioners might easily have paid that amount to the opposite party if he wanted to save the suit. But we are in this case not concerned with the question whether it was possible for the defendants to pay the adjournment costs on the 29th June 1921 to the opposite party. The learned Subordinate Judge acted with jurisdiction and it is impossible for us, especially having regard to the history of the suit, to interfere with his order.

3. I would accordingly reject this application with costs. Hearing fee one gold Mohur.

Macpherson, J.

4. I agree.