

(1940) 09 PAT CK 0009
In the Patna High Court

Divi Bhuneswari Kuer and Another

APPELLANT

Vs

Mt. Sama Kuer and Others

RESPONDENT

Date of Decision : 06-09-1940

Acts Referred:

Citation : AIR 1941 Patna 402

Hon'ble Judges : Agarwala, J

Bench : Division Bench

Judgement

Agarwala, J.—This application arises in the following circumstances.

2. The plaintiff instituted a suit for rent for the years 1348 to 1346 Fasli and was directed to file process fees amounting to Rs. 3-6-0 by 7th October 1939. There were five defendants in the suit of whom one was a minor. On 7th October the plaintiff filed only Rs. 3. The Court pointed out that annas six was still due and fixed 16th November for the disposal of the suit. On that date the plaintiff applied for the appointment of a guardian ad litem for the minor defendant and filed a fee of Rs. 2 for that purpose. The defendants were not present. The balance of six annas due from the plaintiff was not paid and the suit was dismissed for default. An application for restoration of the suit was filed. The plaintiff now comes in revision and contends, in the first place, that the Court had no jurisdiction to dismiss the suit on 16th November as no date had been fixed for appearance of the defendants.

3. Reliance was placed on the decision in Sripati Saran Prasad Singh and Others Vs. Indarjit Mahton and Others, . It was there held that where the Court calls upon the plaintiff to file process fees and copies of the plaint by a certain date but on that date nothing is done, the Court has no jurisdiction to dismiss the suit. The reason given was that the Court acted illegally in calling upon the plaintiff to file process fees before fixing the date for the appearance of the defendant. That case is distinguishable from the present. 16th November was fixed for the disposal of the suit, that is to say, it was the date which the Court fixed for hearing the parties. The reason why the defendants were not present

was that the process fees had not been paid.

4. It is next contended that out of the three rupees which the plaintiff deposited there was sufficient at least to pay the process fees for service on the adult defendants and that the suit should therefore not have been dismissed as against them.

5. Reference was made to Ramanand Singh v. Chadrama Singh AIR 1921 Pat. 422. The facts of that case, however, are clearly distinguishable. The adult defendants had entered appearance but suit was dismissed because there was no appearance on behalf of the minor defendants owing to the process fees and the costs of the guardian ad litem not having been deposited. In these circumstances it was held that the Court acted illegally in dismissing the suit as against the adult defendants. It is contended that in the present case the Court should have, out of the process fees already filed, served notice on the adult members. But it is not for the Court to decide which of the defendants are to be served. If the plaintiff does not deposit sufficient fees for service on all the defendants and wishes the Court to issue notice to some of them he must specify which of them he desires to serve, otherwise it would be open to him to complain afterwards that the persons whom the Court had served were not substantial defendants while the substantial defendants had not been served and that the Court had exercised an unwise discretion in serving notice on the unsubstantial defendants and omitting to serve notice on substantial defendants. The plaintiff cannot be allowed to put the Court in such a position.

6. The last point raised is that as the Court has inherent powers to restore a suit and as the result of this dismissal will be that a part of the claim of the plaintiff will be barred by limitation the Court should have exercised its inherent power to restore the suit.

7. Reference was made to Ram Narain and Others Vs. Ramdhan Singh and Others, , where it was held that when a suit has been dismissed in the absence of both parties there is no prejudice to the defendants if it is restored and the Court ought to exercise its inherent powers in such a case especially if the claim is a substantial one and would become barred by time if the suit is not restored. The amount of the claim in this case is about Rs. 18 per annum. It could hardly be considered that this was a substantial claim as to require the Court to exercise its inherent powers. In the result the application fails and the rule is discharged. As there is no appearance on behalf of the major defendants and the costs of the guardian ad litem having been already deposited there will be no order for costs.