

(1967) 04 PAT CK 0002

In the Patna High Court

Case No : A.F.O.O. No's. 249, 250 and 251 of 1964

Hiralal and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 26-04-1967

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9, 24

Citation : AIR 1968 Patna 439

Hon'ble Judges : B.N. Jha, J

Bench : Single Bench

Advocate : Silesh Chandra Misra, for the Appellant; B.D. Singh and Shambhu Saran for R.P. Katriar, for the Respondent

Final Decision : Allowed

Judgement

B.N. Jha, J.—These three miscellaneous appeals arise out of three miscellaneous cases filed by the appellants in the court below for the restoration of three land acquisition cases, which were dismissed for default on the 8th June, 1963.

2. There were three land acquisition cases, viz., Land Acquisition Case No. 162 of 1960, Land Acquisition Case No. 163 of 1960 and Land Acquisition Case No. 164 of 1960, pending before the court of the District Judge, Arrah. The cases were adjourned from time to time. December, 11, 1962, was the date fixed for the hearing of these cases, but on that date also the cases could not be taken up; and the cases were adjourned to the 21st January, 1963. In the meantime, on the 8th January, 1963, the learned District Judge transferred the cases to the court of the Subordinate Judge, Sasaram, for disposal. It appears from the order-sheet of the cases that notice of the transfer of these cases to Sasaram court was not, given to the lawyers of the applicants. It is the case of the appellants that on the 21st January, 1963, the date fixed in the cases they were informed by the Peshkar of the District Judge that the cases had been transferred to the court of the Subordinate Judge, Sasaram; and they also were told by him that the transferee-court would give notice of the date when the cases would be taken up

by that court. As they were under the impression that they would get intimation from the transferee-court regarding the date for hearing of these cases, they did not appear there; but no notice came to them from that court.

They were informed on the 6th July, 1963, that the cases were dismissed for default on the 8th June, 1963, by the Subordinate Judge, Sasaram. Hence, they filed applications for restoration of the aforesaid three land acquisition cases, being Miscellaneous Case No. 59 of 1963, arising out of Land Acquisition Case No. 162 of 1960, Miscellaneous Case No. 60 of 1963 arising out of Land Acquisition Case No. 163 of 1960 and Miscellaneous Case No. 61 of 1963, arising out of Land Acquisition Case No. 164 of 1960. The three miscellaneous cases were heard together and one judgment was passed by the court below. In this Court also the three appeals arising out of the three miscellaneous cases have been heard together and this judgment will govern them all.

3. The applicants examined themselves in the cases in support of the allegation made in their restoration applications. On a consideration of the evidence and the circumstances of the case, the learned Subordinate Judge refused to restore the cases to their original file by his order dated the 16th May, 1964. Hence these three appeals before this Court.

4. Mr. S.C. Misra, learned counsel for the appellants, has submitted before me that the view taken by the learned Subordinate Judge is erroneous both in law and on fact. He has referred to me the judgment of the learned Subordinate Judge in which he has relied on only one circumstance against the appellants that the three land acquisition cases had been made analogous with Land Acquisition Case No. 161 of 1960. The awardee in Land Acquisition Case No. 161 of 1960 had appeared in that case; and, as such, it was not possible for him to hold that the appellants had no knowledge regarding the transfer of the cases to Sasaram court, though he accepts that there was nothing on the record to show that the appellants came in touch with the awardee of Land Acquisition Case No. 161 of 1960. In my opinion, the learned Subordinate Judge is wrong in imputing knowledge of the transfer of the cases to the appellants on that account. In that view of the matter, the learned Subordinate Judge was wrong in coming to the conclusion that the action of the appellants in prosecution of their cases was not bona fide. The learned Subordinate Judge has himself held that there is nothing on the record to show that the appellant? came in touch with the awardee of Land Acquisition Case No. 161 of 1960.

It is only by conjecture that it can be said that the appellants had knowledge about the transfer of the cases to Sasaram Court. The judgment of the court must be based upon evidence on record and not on conjectures and surmises. In these circumstances, the learned Subordinate Judge is not right in holding that the appellants are guilty of negligence in prosecuting their cases in the court below. He did not accept that the appellants were prevented by sufficient reason from appearing in the cases on the date fixed for hearing. Learned counsel has submitted that if the appellants had, in fact knowledge about the transfer of the

cases, they certainly would have gone to Sasaram and attended the cases. As no notice of the transfer was given to the parties or their representatives, they believed in the statement of the peshkar that they would be informed about the cases by the transferee-court. This was a sufficient cause for their non-appearance in the cases. I find that there is great force in the contention raised by learned counsel for the appellants. I would hold in such circumstances that the appellants had no knowledge about the transfer of their cases from the court of the District Judge, Arrah. to the court of the Subordinate Judge. Sasaram.

5. Learned Counsel for the appellants has referred me to the Special Bench decision of this Court in *Ram Sukul Pathak v. Kesho Prasad Singh* AIR 1918 Pat 341, which has laid down the correct procedure which should be followed by the courts while transferring cases suo motu to some other courts. In that case, the appeal was pending before the District Judge. Arrah. Before the date fixed for the hearing of the appeal, the case had been transferred to the court of the Subordinate Judge. Arrah. Notice of the transfer was not given to the parties or their lawyers Though the appellant was present in court, he could not attend the court of the Subordinate Judge when the appeal was called out for hearing and consequently the appeal was dismissed for default The appellant filed a restoration application, which was received by the Subordinate Judge The contention raised by the appellant was that the District Judge while transferring the case to the Subordinate Judge, should have informed the parties or their lawyers that the case had been transferred. Hence, there was an appeal in the High Court. Sir Dawson-Mitter, C. J. who delivered the judgment of the Special Bench, observed as follows:

"It seems to me that it would be desirable in these cases where an order of transfer is made that notice should be given in every case to the parties or their representatives. I find a passage in the Judgment of Jwala Prasad, J., which deals with this point and with which I entirely agree. He says:

"In my mind such an important order as the transfer of a case from one court to another should invariably be communicated to the persons concerned and in token of such communication the signature of the parties or their pleaders should be obtained and when the signatures are not obtained the order-sheet should show that the information has been communicated"".

The case before me is on all fours with the case before the Special Bench. In the present case also neither the signatures were obtained nor did the order-sheet show that information was communicated to the parties or their pleaders about the transfer of the cases. I would also reiterate the principle laid down by the Special Bench that in all cases of transfer made by court suo motu it is always desirable that notice of the transfer must be given to the parties or their lawyers. In that view of the matter I hold that the parties had good excuse for not appearing before the transferee-court at Sasaram. This alone could be regarded as a sufficient cause within the meaning of Rule 9 of Order 9 of the Code of Civil Procedure. I am satisfied that the appellants had no knowledge about the

transfer of the cases from the court of the District Judge at Arrah to the court of the Subordinate Judge at Sasaram; otherwise they would have certainly attended the court on the date fixed in the cases. Mr. B.D. Singh appearing for the respondents, in view of the aforesaid decision in Ram Sukul's case. AIR 1918 Pat 341 has fairly conceded that notice of the transfer should have been given to the appellants. Therefore, I am satisfied that there was a sufficient cause for their non-appearance when the cases were called out for hearing in the Sasaram court on the 8th June, 1963.

6. In the result, the appeals succeed, the order of the court below rejecting the applications for restoration of the land acquisition cases is set aside and Land Acquisition Cases Nos. 162, 163 and 164 of 1960 are restored to their original files. In the circumstances of the case, there will be no order as to costs.