
(2011) 11 AHC CK 0144
In the Allahabad High Court
Case No : Misc. Single No. 2440 of 1991

Smt. Haliman And Others

APPELLANT

Vs

Iind. A.D.J.Unnao And Others

RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 151

Citation : (2011) 11 AHC CK 0144

Hon'ble Judges : Anil Kumar, J

Bench : Single Bench

Judgement

Hon"ble Anil Kumar, J.—Heard Sri P.V. Chaudhary, learned counsel for petitioner and perused the record.

2. Facts in brief of the present case are that, initially petitioners/plaintiffs filed a suit for declaration registered as Regular Suit No. 62/79 Sagir Ahmad Vs. Smt. Smt.Haliman and others, decreed ex-parte by judgment and decree dated 29.11.1980.

3. Aggrieved by the said fact, the defendants/respondents filed an application under Order 9 Rule 13 read with Section 151 CPC, the trial court after considering the reasons given by the defendants/respondents for non-appearance in the matter in question allowed the same by order dated 20.04.1985 and recalled of the exparte judgment and decree dated 29.11.1980 and restored the suit to its original number.

4. Thereafter, the petitioners/plaintiffs initially find an appeal, later on converted into revision (Revision No. 30/1985, Smt. Haliman and others Vs. Sagir Ahmad and others), dismissed by order dated 20.10.1991 passed by opposite party No. 1 hence the present writ petition has been filed by the petitioners/plaintiffs challenging the order dated 20.10.1991 (Annexure No. 1) passed by O.P. No. 1 and order dated 24.04.1985 passed by O.P. No. 2 (Annexure No. 5).

5. After hearing learned counsel for parties and going through the record, it

transpires that after taking into consideration the facts and circumstances of the case good and sufficient reasons, the trial court/O.P.No. 2 recalled as there were the ex-parte judgment and decree passed in Regular Suit No. 62 of 1979. Thereafter the order dated 20.10.1991 (Annexure No. 1) has also been passed against the petitioner affirming the order dated 20.04.1985 passed by O.P. No. 4.

6. Accordingly, I do not find any illegality or infirmity in the impugned orders which are under challenge in the present case. Further, it is well settled proposition of law that nobody should be unheard if any order has been passed ex-parte behind the back of the petitioner, the same will be in violation of the principles of natural justice, thus the present writ petition filed by the petitioner is lacks merit and is dismissed.

7. However, keeping in view the facts and circumstances that the suit in question from which the controversy arisen in the matter in question has been filed in the year 1979, the O.P. No. 2 is directed to decide the same in accordance with law expeditiously preferably within a period of one year from the date of receiving a certified copy of this order.