

Misc.(J) No. 29/2021

Meena Das Vs Md.Dulal Mir

01-10-2022

This is a Misc.(J) Case u/O-9 r. 13 of CPC and section 151 of CPC praying for setting aside the ex-parte Decree in T.S No. 12/2019 dated 23-10-2019. Id. counsel for the petitioners has submitted that summons in T.S No. 12/2019 was served only on petitioner No. 2 Sri Bhupen Das from which he came to know that petitioner No. 1 and 3 were also impleaded as parties in the suit. Then, the petitioner No. 2 met the O.P at Tezpur and O.P agreed to withdraw the suit and to accept the advance amount from the petitioners. Then, petitioner No. 2 put his signatures in 2 blank papers and in the Vakalatnama for preparation of withdrawal petition by his advocate. But later on, his counsel did not communicate with petitioner No.2. Apart from that the counsel of petitioner No.2 has also prayed for time to file Vakalatnama and W/S on behalf of petitioner No. 1 and 3, but not communicated to petitioner No.1 and 3, also regarding the pendency of the suit. As a result the suit proceeded ex-parte against the petitioner No. 1, 2 and 3 and decreed the suit ex-parte against them. The Id. counsel for the petitioner No. 2 obtained the copies of ex-parte judgment of T.S No. 12/2019 only on 16-11-2021 and the petitioner No. 2 personally saw the said copies of ex-parte judgment and decree only on 09-12-2021. Thereafter, the petitioners have filed the suit, praying for setting aside the ex-parte decree. It is submitted by the Id. counsel that the suit proceeded ex-parte only due to the guilt of the Id. counsel engaged by the petitioner No.2. The petitioners have no fault and due to their ignorance and misguidance by their Id. counsel they could not appear and contest the suit.

On the other hand, Id. counsel for the O.P has submitted that the petitioners have full knowledge about the pendency of the suit and at this

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stage they came here only to debar the O.P from enjoying the fruit of the execution. Already the sale deed was registered the O.P has paid the entire sale consideration amount of Rs. 10 Lakhs. Only the possession of the suit land is not delivered due to this Misc.(J) case filed by the petitioners. The petitioners have no valid ground for setting aside the ex-parte decree and they came only with the intention to delay the process of execution.

Perused the C/R of this Misc.(J) case and also C/R of the connected T.S No. 12/2019.

It appears that petitioner No. 1 and 3 has not filed any vakalatnama in T.S No. 12/2019. S.R of summons to petitioner No. 1 and 3/defendant No. 1 and 3 were not received. On the basis of postal receipts, summons were deemed as served. Considering the ground stated by the Id. counsel for the petitioners, it appears that there was some communication gap between the petitioner No. 2 and his Id. conducting counsel. From the record of T.S No. 12/2019 nothing appeared showing any notice sent by their Id. conducting counsel. As such, it appears that if the ex-parte judgment and decree dated 23-10-2019 passed in T.S No. 12/2019 is not set aside, it may result in denial of justice to the petitioners. Hence, the Misc.(J) case is allowed and ex-parte judgment and decree dated 23-10-2019 passed in T.S No. 12/2019 is hereby set aside.

However, after engaging counsel in the year 2019, the petitioner No. 2 has not enquired about his suit till 09-12-2021/16-11-2021. This also reveals reluctance on the part of the petitioner No. 2 and also petitioner No. 1 and 3 who are the mother and brother of petitioner No. 2. Being own mother and brother of Petitioner No. 2, petitioner No. 1 and 3 also must have knowledge about the suit. But none of them have enquired

about the status of the suit. Hence, a cost of Rs. 5,000/- is imposed of the petitioners to be paid to the O.P.

Judgment and decree dated 23-10-2019 passed in T.S No. 12/2019 is hereby set aside subject to payment of Rs. 5,000/- by the petitioners.

This Misc.(J) case is allowed and disposed of accordingly.