

Mst. Bhabia Devi

Vs

Permanand Pd. Yadav

SLP (C) No. 3559 of 1997

(K. Ramaswamy, G. T. Nanavati JJ)

24.02.1997

ORDER

1. This special leave petition arises from the order of the High Court of Patna, made in appeal from the Original Order No. 406 of 1986 on 24-7-1996.

2. The respondent had filed a suit for specific performance on the foot of an agreement alleged to have been executed by the petitioner. The petitioner was served notice but since she did not contest the suit, ex parte decree was granted. Subsequently, the petitioner filed an application under Order 9, Rule 13 CPC seeking setting aside of the ex parte decree. Therein, her specific case was that she was not residing at Garhia Village and, therefore, the notice could not be deemed to have been served on her. The endorsement is not correct. The question was gone into by the courts below after recording the evidence of one Laxuman Yadav, Mahendra Yadav and process-server. It is their case that on 15-1-1985 when the summons were handed over to Mst. Bhabia Devi and when she was acquainted with the facts, she refused to sign or put her thumb impression on the notice. When the process-server had gone to serve it on her personally on 2-4-1984 to the village and also on 9-4-1984 when the registered card acknowledgement was sent, she refused to acknowledge it. Under those circumstances, the courts below have concluded and the High Court has recorded as under :

"Apart from the aforementioned two modes for service of notice, as I have already noticed, there was yet another mode by way Gazette publication. An attempt has been made on behalf of the appellant to say that she being an illiterate lady could not learn about the Gazette publication."

3. This is a finding of fact on appreciation of the evidence. Thereby, it is clear that the petitioner had refused to accept the notice. Consequently, she was rightly set ex parte. The learned counsel for the petitioner seeks to contest the case on merits. We cannot go into the merits since the appeal was not the subject-matter in any of the appeals filed either under Section 96 or Section 100 CPC.

4. The special leave petitioner is dismissed.