

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No. 536 of 2015**

1. Dau Ram Sahu S/o Late Adhin Sahu, (Died) Through Legal Heirs
 1. (A) Tula Ram S/o Dau Ram Sahu Aged about 65 Years
 1. (B) Tulas Ram S/o Dau Ram Sahu Aged about 58 Years
 1. (C) Nohar S/o Dau Ram Sahu Aged about 43 Years,
 1. (D) Tuka Ram S/o Dau Ram Sahu, (Died) Through Legal Heir Son
 1. D (i) Mukesh Kumar S/o Tuka Ram Aged about 32 Years

2. Manglu Sahu S/o Late Adhin Sahu, Aged About 78 Years

3. Anup Sahu S/o Late Adhin Sahu, Aged About 68 Years

Appellant No. 1 to 3 are resident of village Silhati, P ost Silhati Tehsil Bodla (Now Sahaspur Lohara) Civil and Revenue District Kabirdham, District Kabirdham, Chhattisgarh.

4. Fekan Bai W/o Mani Ram Sahu, Aged About 75 Years R/o Village Senhabhatha, Police Station - Kunda, Tahsil - Pandariya, Civil & Revenue District Kabirdham (Chhattisgarh).
5. Jugari Bai W/o Ramchand Sahu, (Died) Through Legal Heirs Husband And Sons
 - 5 . (A) Ramchand Sahu S/o Jugnu Ram Sahu Aged about 85 Years
 - 5 . (B) Manohar Ram S/o Ramchand Sahu Aged about 65 Years,
 - 5 . (C) Rohan S/o Ramchand Aged about 57 Years

No. 5(A) to 5(C) are R/o Village Kapa, Police Station And Tahsil Pandariya, Civil And Revenue District Kabirdham (Chhattisgarh)

6. Jhadiyarin W/o Sitaram Sahu, Aged About 70 Years R/o Village Dashrangpur, Police Station And Tahsil Bodla, Civil And Revenue District Kabirdham (Chhattisgarh)
7. Banvasiya Bai Wd/o Banshi Sahu, Aged About 82 Years R/o Village Khadoda, Police Station Kawardha, Civil And Revenue Districst Kabirdham (Chhattisgarh) Wrongly Mentioned The Address Of The Appellant No. 4 To 8 In The Impugned Order

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1. Suresh Kumar S/o Jagdish Kurmi, Aged About 47 Years
2. Sushil Kumar S/o Jagdish Kurmi, Aged About 40 Years

Both Resident of Village Mohagaon, Sonpur, Tehsil And Police Station

Pandariya, Civil And Revenue District Kabirdham (Chhattisgarh)

3. Melan Bai W/o Janak Ram Sahu, Aged About 63 Years R/o Gadahabhatha, Police Station Pipariya, Civil And Revenue District Kabirdham (Chhattisgarh)
4. State Of Chhattisgarh Through The Collector Kawardha, District Kabirdham (Chhattisgarh)

-----Respondents

For Appellants	: Shri Dharmesh Shrivastava, Advocate.
For Respondent/State	: Shri B. Gopa Kumar, Deputy Advocate General.

Hon'ble Shri Navin Sinha, Chief Justice
Hon'ble Shri P. Sam Koshy, J.

Judgment on Board

Per Navin Sinha, Chief Justice

30/11/2015

1. I.A. No. 1 of 2015 has been filed to condone delay of 238 days in filing the appeal.
2. The appeal arises from order dated 14.1.2015 dismissing Writ Petition (227) No. 812 of 2013 holding that the Board of Revenue committed an error in relying upon the ex-parte decree passed by the Civil Judge, Class II, Kawardha declaring that Respondents No. 1 to 3 were not paid full consideration and therefore there was no transfer of title by order dated 17.5.2012 without noticing that pursuant to an application under Order IX Rule 13 CPC, the ex-parte decree dated 17.7.2002 had been set aside and the suit restored. Subsequently, the plaint of the suit was returned for presentation after proper valuation and payment of adequate Court fee, the appeal filed against which was also dismissed to conclude that the order of the Board of Revenue relying upon the ex-parte decree which factually did not exist, was erroneous.

3. In a family dispute with regard to properties, the land in question were sold by Appellants No. 4 to 8 to Respondents No. 1 and 2 conditionally. The latter filed application for mutation. Appellants No. 4 to 8 raised an objection that the condition precedent by payment of full consideration has not been made. The Appellants No. 4 to 8 then filed Civil Suit for declaration of title and that the sale deed dated 1.6.1998 was null and void. The ex-parte decree dated 17.7.2002 followed and ultimately the suit itself dismissed as discussed hereinabove.

4. In the nature of the property dispute, third party rights being involved pursuant to the sale deed, nullification of which was sought a delay of 238 days in filing this appeal cannot be considered as insignificant. The application for condonation of delay states that the order of the Learned Single Judge was passed in absence of the Appellants and that they had no knowledge of the impugned order. It is not the case of the Appellants that notice had not been issued to them or served as party Respondents in the writ petition. In fact, there is no such pleading in the memo of appeal. If despite service of notice, the Appellants did not appear knowingly, they cannot turn it to their advantage seeking to prolong litigation on that ground. If that was not enough, no date has been mentioned when they became aware of the order of the Learned Single Judge before their contention that delay was not deliberate or intentional, could be considered. In absence of any sufficient cause to explain the long and inordinate delay of 238 days, the Court is not persuaded to condone the delay.

5. I.A No. 1 of 2015 is therefore dismissed. Consequently, the appeal itself fails.

Sd/-
(Navin Sinha)
CHIEF JUSTICE

Sd/-
(P. Sam Koshy)
JUDGE