

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 401 of 2015

Smt. Manjulata Rathore W/o Shri Ramkrishna Rathore Aged About 44 Years R/o Badaipara, Post, P.S. & Tehsil Raipur, Revenue & Civil District- Raipur, Chhattisgarh

---- Appellant

Versus

1. State Of Chhattisgarh Through : Collector, Raipur, Revenue & Civil District- Raipur, Chhattisgarh
2. Public At Large

---- Respondents

Shri Rishi Sahu, counsel for the appellant/s.
Shri Neeraj Sharma, Dy.G.A. for the State.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

12/01/2016

Heard on admission.

This appeal is directed against impugned judgment and decree dated 22/04/2015 passed by the learned lower Appellate Court by which judgment decree passed by the learned Trial Court has been affirmed and appeal dismissed.

2. Learned counsel for the appellant submits that the Court below committed gross illegality and perversity in dismissing the suit for declaration of civil death of appellant's husband, even though there exists on record, uncontroverted evidence of whereabouts of appellant's husband, namely Ramkrishna Rathore are not known for the last more than seven years. Report of missing person was lodged in the police station. Since then, enquiries are being held, but the husband of the appellant is not known to anyone and no one has seen him alive for more than seven years prior to the date of filing of the suit. It is also submitted that bar under Section 34 of the Specific Relief Act would not come in the way in granting relief for mere declaration. It is further argued that in the circumstances of the case, there

was no need for the plaintiff to seek any other consequential relief except the relief of declaration of civil death of her husband – Ramkrishna Rathore.

3. As is evident from para 14 and 15 of the judgment of learned lower Appellate Court, a suit for declaration under Section 34 of the Specific Relief Act could be filed only in the circumstance as stated therein. It is not a case where the property or any legal status to which the plaintiff is legally entitled to, has been disputed or openly denied by anyone or interference in enjoyment of any legal status or property of the plaintiff giving rise to a cause of action for filing of suit.

Mere declaration, without fulfilling such requirement as has been stated in para 15 of the impugned judgment clearly spelt out in Section 34 of the Specific Relief Act, suit of the plaintiff has been rightly held to be not maintainable. Therefore, no substantial question of law arises for consideration in this appeal. The appeal is accordingly dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge