

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 122 of 2014**

1. Shyamta Bai W/o Kartik Ram Aged About 44 Years R/o Keshla, Tah. Pamgarh, Revenue and Civil District Janjgir-Champa C.G.
2. Shanti Bai W/o Dhananjai Verma Aged About 41 Years R/o Chhirra, Tah. Bilaigarh, Revenue and Civil District Raipur C.G., Now Baloda Bazar-Bhatapara C.G.

---- Appellants**Versus**

1. Panna Lal S/o Hansha Ram Kurmi Aged About 61 Years R/o village Kamta, Tah. Navagarh, Revenue and Civil District Distt. Janjgir-Champa C.G.
2. State Of Chhattisgarh Thru- Collector, Janjgir-Champa, Distt. Janjgir-Champa C.G.

---- Respondents

For Appellants	:	Shri P.K. Patel, Advocate
For Respondent No.2/ State	:	Smt. Shobha Kashyap, Dy. G.A.
For Respondent No.1	:	not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

29/11/2016

1. Learned counsel for the appellants informed the appellants have not complied with the order dated 29.9.2016 and 15.11.2016 for production of entire order sheets of the Court below to show as to whether after the order passed by the Lower Appellate Court any progress has been made in the Civil Suit or not. Learned counsel for the appellants submits that the matter may be heard and disposed of.

2. On due consideration, arguments heard on admission.
3. The appellants/plaintiffs had filed Civil Suit No.174A/2007 before Civil Judge, Class II, Pamgarh, District Janjgir Champa (CG) for declaration of title and partition. The trial Court vide judgment and decree dated 24.2.2010 allowed the suit and decreed as per para 13 of the judgment. Accordingly, the decree was drawn. Against the said judgment and decree, the defendant D1/appellant preferred Civil Appeal No. 2A/2014 before the Third Additional District Judge, Janjgir, District Janjgir Champa (CG). The Appellate Court vide judgment and decree dated 26.9.2014 held that as there was an error of law for not impleading the Lrs of Ganesh Ram and Duniya and not affording any opportunity for hearing hence, as no option left with the Appellate Court, the Appellate Court remanded the matter after setting aside the judgment and decree passed by the trial Court with a direction that Lrs of Ganesh Ram and Duniya be impleaded as party regarding land in question for 2.40 acres and after impleadment they be given an opportunity of hearing and thereafter the matter may be disposed of on its merits afresh.
4. The plaintiffs/appellants had preferred the instant Misc. Appeal against the order of remand under the provisions of Order 43 Rule 1 (u) or under Order 41 Rule 23 or Rule 23 A of the C.P.C.
5. From perusal of the impugned order, memo of appeal it appears that as the appellants have failed to demonstrate whether the dispute can be effectively and in totality disposed of even without impleading the

Lrs of Ganesh Ram and Duniya as they are necessary party.

6. On due consideration, as the appellants failed to demonstrate the case in their favour for admission, in the considered view of this Court, the Appellate Court had not committed any illegality or impropriety for remanding the matter in light of observation made in para 12 and the order in para 13 of the judgment.

7. Consequently, the instant Misc. Appeal is dismissed at the motion stage itself.

8. No order as to cost.

Sd/-

(Chandra Bhushan Bajpai)
Judge