

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 49 of 2016**

Smt. Sano Devi, W/o Naresh Kumar Mathur, aged about 37 years, R/o Subhash Market, aged about 37 years, R/o Subhash Market, House No.274, 275, Sector 11, Zone No.2, Khursipar, Police Station-Khursipar, Bhilai, Civil and Revenue District-Durg (C.G.)

---- Applicant**Versus**

1. State of Chhattisgarh, through- Collector Bemetara, Civil and Revenue District- Bemetara (C.G.)
2. Rajeshwar Prasad, S/o Shobhartam Gupta, aged about 75 years, R/o Village Keshdabri, P.H.N. 2, R.N.M. & Tahsil – Berla, Police Station – Berla, Civil and Revenue District – Bemetara (C.G.)

Present R/o Azad Chowk, Kasaridih, Durg, Civil and Revenue District – Durg (C.G.) [*As mentioned in the application filed under Order 9 Rule 13 of Code of Civil Procedure*]

---- Respondents

For Applicant : Mr. V.A. Goverdhan, Advocate.

For Respondent No.1/State : Mr. Sameer Behar, Panel Lawyer.

For Respondent No.2 : Mr. A.C. Sahu, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****30/06/2016**

(1) The plaintiff filed suit for declaration of title and permanent injunction restraining the defendant No. 2, respondent No. 2 herein from interfering with the suit property.

(2) Defendant/respondent No. 2 was served by substituted service by publication in the daily newspaper “Amrit Sandesh” and ultimately *ex parte*

decree dated 11.11.2013 in favour of applicant/plaintiff and against the defendant/respondent No. 2.

(3) Defendant/respondent No. 2 filed an application under Order 9 Rule 13 of the Code of Civil Procedure for setting aside ex parte decree on 15.07.2014 stating *inter alia* that defendant/respondent No. 2 is old aged person, aged about 75 years and he was not duly served with the summons of the suit.

(4) The trial Court, after appreciating oral and documentary evidence available on record on the said application, by its impugned order set aside the ex parte order and restored the suit for its original number for hearing and disposal in accordance with law subject to payment of cost of Rs.200/-.

(5) Feeling aggrieved & dissatisfied with the impugned order, instant revision has been filed.

(6) Shri Vaibhav A. Goverdhan, learned counsel appearing for the applicant/plaintiff would vehemently submit that the trial Court is absolutely unjustified in setting aside the ex parte order without condoning the delay in filing the suit and, as such, there was no application for condonation of delay in filing the application under Order 9 Rule 13 of the CPC. He further submit that trial Court has passed the order impugned without its jurisdiction and, therefore, the impugned order deserves to be set aside.

(7) The trial Court has clearly recorded a finding that respondent No.2/defendant, who is aged person (75 years) was not duly served of the summons of suit, and finding sufficient cause for setting aside *ex parte* decree set aside the said decree subject to payment of cost of Rs.200/- to the other side.

(8) After hearing learned counsel appearing for the applicant and taking into consideration the averments made in the application and finding recorded by the trial Court in this behalf, I do not find any jurisdictional error in the impugned order warranting interference by this Court under its revisional jurisdiction.

(9) Accordingly, the civil revision fails and is hereby dismissed leaving the parties to bear their own cost. However, the trial Court is directed to expedite the trial.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

