

HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 143 of 2013

- Narbada Aghariya S/o Jiwanlal Aghariya, Aged About 59 Years, R/o Village/P.O. Jawalpur, P.S. and Tah. Janjgir, Distt. Janjgir-Champa (C.G.)

---- Applicant

Versus

1. State of Chhattisgarh Thru- The District Collector, Collectorate, Janjgir, P.O./P.S. and Tah. Janjgir, Distt. Janjgir-Champa (C.G.)
2. The Sub Divisional Officer (Revenue), P.O./P.S./Tah. Janjgir, Distt. Janjgir-Champa (C.G.)
3. Ramawtar S/o Manmohan Aghariya, Aged About 64 Years, R/o Village/P.O. Jawalpur, P.S. and Tah. Janjgir, Distt. Janjgir-Champa (C.G.)

----Non-applicants

For Applicant : Shri Somnath Verma, Advocate
For Non-applicants/State : Shri Samir Behar, P.L.
For Non-applicant No.3. : Smt. Anju Ahuja, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

15/07/2016

1. Plaintiff's suit for declaration of title was dismissed by the trial Court for want of prosecution on 16-10-1999 against which he filed an application for restoration on 19-11-1999. The Trial Court rejected the application for restoration vide order dated 12-06-2006. Against which Misc. Appeal No. 04/2007 was filed before the first appellate Court which was allowed and that Court remanded the matter back to the Trial Court to record evidence of the parties and to decide the same afresh. The Trial Court vide its order dated 13-05-2010, again rejected the application filed under Order 9 Rule 9 of the Code of Civil Procedure (for short the 'CPC') against which Misc. Civil Appeal No.06/2010 was filed before the District Judge, Janjgir-Champa and by

the impugned order, the said appeal has been rejected. Feeling aggrieved by that order, the present revision has been filed.

2. Learned counsel for the applicant would submit that application for restoration was filed within time assigning sufficient cause that the applicant/plaintiff is aged about 59 years and is suffering from paralysis and therefore, he could not appear on 16-10-1999 and his son wrongly noted the date of hearing. Therefore, the order of dismissal be set aside as both the Courts are committed legal error in rejecting the application.

3. On the other hand, learned counsel for respondents would support the impugned order.

4. I have heard learned counsel for the parties and perused the order impugned.

5. It is not disputed that the application for restoration was filed within limitation and the plaintiff was also examined but both the Courts below have rejected the application holding that the plaintiff has not been examined his son who attended hearing before the Trial Court on 05.10.1999. The enquiry held by the trial Court would reveal that the plaintiff has categorically stated that his son noted the wrong date of hearing and therefore, suit came to be dismissed in default on 16.10.1999.

6. Taking into consideration the facts and circumstances of the case, the evidence available on record and the reasons assigned by the plaintiff, I am of the considered opinion that he has succeeded in showing sufficient cause for not appearing before the trial Court on 16.10.1999 when the suit was called for hearing and both the courts below have committed legal error in not holding so, the impugned order of the trial Court is set aside. The plaintiff's suit is restored to its original number for hearing and disposal in accordance with law. The trial Court is directed to expeditiously try the suit as it was filed in the year 1999 and conclude within a period of six months from the date of receipt of certified copy of this order subject to payment of Rs.3,000/- to the counsel for respondent- 3.

7. Consequently, the revision petition deserves to be and is allowed. No cost(s).

Sd/-
(**Sanjay K. Agrawal**)
JUDGE