

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 27 of 2017**

Radhika Pandey D/o Saraju Pandey, R/o Village- Bhaisma, Post-Akaltari, Tahsil- Janjgir, District Janjgir-Champa, CG, Present Address- Eta Bhattha Mohalla Bilha, Tahsil Bilha, District Bilaspur, CG
(Defendant No.1)

---- Applicant**Versus**

1. Kedar Nath Dubey S/o Ramchand Dubey, Aged About 60 Years R/o Bilha, Tahsil Bilha, District Bilaspur, Chhattisgarh, The Teacher at Government Higher Secondary School Bilha Bilaspur, CG
2. The Tahsildar, Tahsil Office- Bilha, District Bilaspur, Chhattisgarh
3. The Station House Officer, Police Station Bilha District Bilaspur, CG
4. The Chief Municipal Palika Officer, Nagar Panchayat Bilha, Tahsil Bilha, District Bilaspur, Chhattisgarh
5. State Of Chhattisgarh, Through Its Collector Bilaspur, District Bilaspur, CG(Plaintiffs)

---- Respondents

For appellant	: Mr. Ravi Maheshwari, Adv.
For Respondents No. 2, 3 & 5	: Mr. Suryakant Mishra, PL on advance copy.
For other respondents	: Not noticed.

ORDER**3/3/2017**

1. Heard.
2. Mr. Surkant Mishra, PL appears on behalf of R- 2, 3 and 5 on advance copy.
3. After perusal of the entire material, the matter is heard finally at motion stage itself.
4. As per facts of the case, the appellant was defendant No. 1 before the trial Court in Civil Suit No. 1A/2011 filed by the respondent No. 1/plaintiff for alleged act of present appellant to register her name as wife of R-1 in the voter list and also to declare the mutation proceedings of the suit land illegal. The trial Court /Civil Judge Class I, Bilha Distt. Bilasur vide judgment dated 31-3-2016 held that the plaintiff failed to prove his case. Hence dismissed the suit. Against said dismissal, the

plaintiff/appellant preferred appeal before the 1st Additional Distt. Judge, Bilaspur as Civil Appeal No. 35A/2016. The appellate Court vide judgment and decree dated 19-1-2017 allowed the application filed on behalf of the appellant under Order 41 Rule 27 of the CPC for ID card, ration card, identification card, B-1, receipt of Nagar Panchayat and certified copy of the orders of revenue case and held that after affording opportunity to the parties to file documents and affording opportunity to adduce evidence, the matter be decided afresh by the trial Court. The appellate Court set aside the judgment and decree dated 31-3-2016 passed by the trial Court. Against the said judgment and decree passed by the appellate court, the present appellant/defendant No. 1 has preferred instant misc. appeal under Order 43 Rule 1 (u) of the CPC and prays that after long hearing in the matter i.e. more than 11 years, the court below decided the matter and though opportunity was available, R-1 had not adduced above documents. With this, order of remand of the matter by the appellate court is bad in law and requires interference. Hence the judgment and decree dated 19-1-2017 passed by the appellate court requires interference. Said judgment and decree may be set aside and the appellate court be directed to dispose of the matter on the basis of the material available.

5. Learned counsel for the appellant supports instant misc. appeal and submits that on the basis of the grounds taken, the judgment and decree passed by the appellate court may be set aside and this Court may pass the order which may be deemed fit and proper.
6. Perused the judgment and decree passed by the Courts below.
7. Vide para 9 of the judgment and decree passed by the trial Court, it appears that as no documentary evidence has been adduced by the plaintiff during trial, therefore, the plaintiff failed to prove issue No. 1 and 2 in his favour. During hearing before the appellate Court, the plaintiff/appellant filed an application under Order 41 Rule 2 of the CPC along with aforementioned documents and prayed that in the light of those documents the

matter requires reconsideration. The court below appreciated that the documents adduced along with said interim application are required to be considered and after due consideration and also after affording opportunity to both the parties to submit documents, adduce evidence, the matter be disposed of in the light of the documents and the evidence adduced in rebural afresh.

8. After perusal of the reasons shown in the judgment passed by the appellate court and also as the present appellant has full opportunity to file any document in rebuttal to adduce evidence in rebuttal for the above documents and to place material regarding admissibility of those documents as the dispute was not effectively and completely decided and further as opportunity given by the appellate court is not illegal or improper, in the considered opinion of this Court, the appellate court has not committed any illegality or impropriety in remanding the matter for hearing afresh.
9. On due consideration, instant MA being sans substance is dismissed at the motion stage itself.

Sd/-
(Chandra Bhushan Bajpai)
Judge