

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 6 of 2017

1. Smt. Tarawati Barik W/o late Ravi Barik, aged about 45 years, R/o Shri Krishna Kumar Pandey, Medical College Colony, Quarter No.1/172, Post and Police Station Gadha, District Jabalpur (M.P.)(Applicant)

---- Appellant

Versus

1. Vanita Barik W/o late Ravi Barik, aged about 30 years, R/o 4th Battalion, C.A.F. Mana Camp, Mana Ravi Barik's Quarter, Mana, Tahsil and District Raipur, Chhattisgarh
2. Aishwarya Barik D/o (wrongly written as W/o) late Ravi Barik, aged about 9 years, Minor Through Natural Guardian Mother Vanita Barik, R/o 4th Battalion, C.A.F. Mana Camp, Mana Ravi Barik's Quarter, Mana, Tahsil and District Raipur, Chhattisgarh
3. Dewashish Barik S/o (wrongly written as W/o) late Ravi Barik, aged about 5 years, Minor Through Natural Guardian Mother Vanita Barik, R/o 4th Battalion, C.A.F. Mana Camp, Mana Ravi Barik's Quarter, Mana, Tahsil and District Raipur, Chhattisgarh(Non-applicants)

---- Respondents

For Appellant – Ms. Itu Rani Mukharjee, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

13-01-2017

1. The instant MA has been preferred within its limitation.
2. Heard the matter on motion.
3. Learned counsel for the appellant would submit that the appellant and late Ravi Barik were the husband and wife. Her husband Ravi Barik had filed a petition for divorce. The appellant was living separately at her parental house. Her husband gave wrong address in the petition for divorce and she was not informed for said divorce petition. She was not aware for the publication of notice in daily newspaper and thereafter her husband obtained the ex-parte decree on 24-07-1998 illegally. Thereafter, on 01-03-2012 when she was noticed by the department regarding arrears of late Ravi Barik she came to know that said Ravi Barik has died on 10-10-2011 and thereafter she applied for certified copy which was received on 02-04-2012. Thereafter, the appellant

filed MJC No.40/2016 against the non-applicants to set aside the ex-parte decree passed on divorce along with Section 5 of the Limitation Act as she was not aware for the judgment and decree of divorce dated 24-07-1998. The Court below vide order dated 24-11-2016 passed in MJC No.40/2016 dismissed the application under Order 9 Rule 13 of the CPC and held that the fact that she did not know for ex-parte judgment and decree of divorce for about 13 years goes to show that she forgot that Ravi Barik is her husband and she never tried to get information regarding death of said Ravi Barik. The Court below further held that it appears that the applicant merely for the purposes to get pension and gratuity had filed the application to set aside the ex-parte judgment and decree of the divorce and as the non-applicant No.1 is the wife and non-applicant Nos. 2 and 3 are born out of the wedlock of Ravi Barik and non-applicant No.1, the application is barred by time, hence dismissed the application to set aside the ex-parte judgment and decree passed in Civil Suit No.435A/96 dated 24-07-1998.

4. Perused the award dated 24-11-2016. The applicant/appellant had filed the said MJC to set aside the judgment and decree passed by the Court below regarding decree of divorce after about more than 6 months of the death of her husband. Since the present respondents are not necessary party for the purposes of hearing of the matter pertaining with the divorce, even otherwise, as the appellant was not aware for more than 13 years regarding the ex-parte judgment and decree passed against her and also the applicant/appellant not disclosed this fact that on which date, month and year she was forcibly ousted by her husband, the entire facts surfaced goes to show that the appellant only to get the pension and gratuity filed the MJC to set aside the ex-parte judgment and decree of divorce after more than 13 years. On entire consideration, this Court is in agreement with the appreciation of the Court below and with this the instant MA is having no substance, hence the same is hereby dismissed at the

motion stage itself.

5. MA dismissed.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE

Aadil