

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Second Appeal No. 152 OF 2009**

Jaishri Sahu aged about 34 years wife of Shri P.R. Sahu resident of Geetanjali House
Nehru Nagar Bilaspur Tahsil and District Bilaspur Chhattisgarh

---- Appellant**Versus**

1. Chandrashekhar Tiwari son of Shri M.L. Tiwari Resident of Shivghat Sarkanda
Bilaspur, Tahsil and District Bilaspur Chhattisgarh
2. State of Chhattisgarh through the Collector Bilaspur Chhattisgarh

---- Respondents

For Appellant : Mr. Malay Shrivastava, Advocate

Hon'ble Shri Justice Sanjay Agrawal**Judgment On Board****03/04/2017**

Heard on admission.

1. This is plaintiff's second appeal against the judgment dated 15/11/2007 passed by the 6th Additional District Judge, Bilaspur (C.G.) in Civil Appeal No. 12-A/2006, whereby the order passed by the trial Court dated 12/01/2006 has been affirmed.

2. Undisputed facts of the case, are that, the plaintiff has instituted a suit for declaration of title and permanent injunction. The suit was registered as Civil Suit No. 189-A/2005. In the said suit, the defendant was treated *ex parte* and therefore, the case was listed time to time for plaintiff's evidence. On 12/01/2006, when the case was fixed for evidence, an application was made by plaintiff's counsel under Order 17 Rule 1 of the CPC for adjournment of the hearing. The

trial Court after rejecting the said application has dismissed the plaintiff's suit vide order dated 12/01/2006.

3. Being aggrieved with the aforesaid order of dismissal, the plaintiff has preferred an appeal under Section 96 of the CPC.

4. The appellate Court in its tern has observed that while passing the order as such, the trial Court neither considered any of the evidence nor any formal explanation was made and came to the conclusion that the order passed by the trial Court on 12/01/2006 cannot be held to be a decree and therefore, the appeal, as preferred was not maintainable. Consequently, the First Appellate Court has rejected the appeal.

5. Being aggrieved with the aforesaid order, instant second appeal has been preferred by the plaintiff.

6. Mr. Malay Shrivastava, learned counsel for the appellant submits that the order as passed by the trial Court was a decree because after rejecting the application under order 17 Rule 1 of the CPC, the trial Court has dismissed the suit after closing his evidence, and therefore, the Appellate Court erred in holding that the appeal filed under Section 96 of the CPC is not maintainable.

7. I have heard learned counsel for the appellant and perused the record carefully.

8. From bare perusal of the order dated 12/01/2006 passed by the trial Court, it is evident that the trial Court has dismissed the suit on the said date after rejecting an application for adjournment. The said order further shows that it was not decided on merits or any adjudication was made by the trial Court. Under such circumstances, it cannot be held that any adjudication, much less that formal expression of adjudication, was made by the trial Court while

dismissing the plaintiff's suit. Therefore, such an order cannot be held to be a decree and therefore, neither any appeal under Section 96 of the CPC was maintainable nor further appeal was also required to be made.

9. In view of the foregoing discussions, no question of law much less the substantial question of law arises for determination in this second appeal. The second appeal being devoid of merits, is hereby dismissed at admission stage itself.

There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge