

HIGH COURT OF CHHATTISGARH, BILASPUR

MA No. 8 of 2008

State Of Chhattisgarh Through The Collector, Ambikapur, District -
Surguja C.G.

---- Appellant

Versus

1. Legal Heirs of Surendra Nath,

(a) Vinod Kumar Gupta, S/o Surendra Nath Gupta.

(b) Laxmi Devi, Widow of Surendra Nath Gupta.

(c) Chandraprabha, D/o Surendra Nath Gupta.

(d) Shashi, D/o Surendera Nath Gupta.

(e) Sama, D/o Surendra Nath Gupta.

All are residents of Surajpur, District Surguja (C.G.)

2. Legal Heirs of Satish Chandra Gupta,

2(a)(i) Smt. Shanti Gupta, aged about 55 years, Wd/o Late Shri
Harish Chandra Gupta,

2(a)(ii) Suman Gupta, aged about 30 years, D/o Late Shri Harish
Chandra Gupta,

2(a)(iii) Seema Gupta, aged about 29 years, D/o Late Shri Harish
Chandra Gupta,

2(a)(iv) Vaibhav Gupta, aged about 28 years, S/o Late Shri Harish
Chandra Gupta,

All are resident of Tiwari Chal, Jarhabhata, Bilaspur, District
Bilaspur, Chhattisgarh

(b) Ravindra Chandra Gupta, S/o Satish Gupta

(c) Pradeep Gupta S/o Satish Gupta

(d) Prem Kumari, Widow of Satish Gupta,

All are residents of Surajpur, District Surguja (C.G.)

3. Legal Heirs of Sushil Gupta,

(a) Munni Devi, widow of Sushil Kumar Gupta,

(b) Pramod Kumar Gupta S/o Sushil Kumar Gupta,

(c) Smt. Indu Gupta D/o Sushil Kumar Gupta.

(d) Smt. Madhu Gupta, D/o Sushil Kumar Gupta

(e) Smt. Manju Gupta D/o Sushil Kumar Gupta,

All R/o Deviganj Road, Ambikapur, District Surguja (C.G.)

4. Legal Heirs of Naresh Gupta,

(a) Bhairu Prasad Gupta, S/o Naresh Gupta

(b) Chandrashekhar, S/o Naresh Gupta

(c) Kusum, D/o Naresh Gupta.

(d) Sharda, D/o Naresh Gupta.

(e) Uma Devi, Widow of Naresh Gupta.

All are R/o Deviganj Road ,Ambikapur, Distt - Surguja (C.G.)

---- Respondents

For State/appellant-Shri Dilman Rati Minj, Dy.G.A.
For respondents-Shri Pramod Verma, Sr. Advocate with Shri Virendra Verma,
Advocates.

Hon'ble Shri Justice Goutam Bhaduri

Order

6/09/2018

Heard.

1. Present appeal is against the order dated 23/06/2007 whereby an application filed under Order 22 Rule 9 (2) of CPC read with application under section 5 of the Indian Limitation Act was dismissed.
2. Perusal of the memo of appeal would reveal that a suit filed by Surendra Nath Gupta, Satish Kumar Gupta, Sushil Kumar Gupta and Naresh Gupta was decreed by the court below against the respondent/State on 23/09/1991. The memo of appeal would show that civil appeal was filed against the judgement and decree which was bearing number 3-A/92. Therefore, as appears that the appeal was filed in the year 1992. Subsequently, the said appeal filed by the State was dismissed in default as per the memo of appeal on 29/08/1995. Consequently, an application under Order 41 Rule 9 of CPC was filed along with an application under section 5 of the Limitation Act for restoration of the appeal on 21/06/1999 i.e. after four years of the dismissal of the appeal. Restoration application to restore the appeal under Order 41 Rule 9 of CPC was numbered as MJC No.8/2007. During pendency of the MJC which was filed for restoring the appeal original plaintiff Surendra Nath Gupta died on 21/12/2002, Satish Kumar Gupta died on 9/08/2005, Sushil Kumar Gupta died on 16/12/2000 and Naresh Gupta died on 30/12/2000. As such an application was filed under Order 22 Rule 9(2) of CPC read with application under section 5 of the Indian Limitation Act. The said application was dismissed by the court below by holding that the

proceeding have been abated and no affidavit has been filed in support of the application under Section 5 of the Indian Limitation Act.

3. Learned counsel for the appellant would submit that sufficient ground existed to restore the MJC which was filed to restore the appeal. Consequently, abatement caused in the proceeding need to be set aside.

4. Shri Pramod Verma, Sr. Advocate assisted by Shri Virendra Verma, Advocate would submit that neither the application have been filed before this court to appreciate the fact nor correct facts have been placed before this court. It is contended that the suit was decreed in 1991 and the appeal was filed in 1992 which was also dismissed in the year 1995 and for four years State was dormant and even the MJC which was filed to restore the proceeding was also dismissed. Learned counsel vehemently opposes the argument and would submit that no affidavit have been filed in support of the application under section 5 of the Indian Limitation Act which was filed in support of application under Order 22 Rule 9(2) of CPC, therefore order is well merited which do not require any interference.

5. Perused the record. The application is filed in this case under Order 22 Rule 4 read with Order 1 Rule 10 of CPC to delete the name of respondent No.2(d) Premkumari as she is dead.

6. On due consideration, same is allowed.

7. Name of respondent No.2(d) is directed to be deleted from the cause title of this petition.

8. Now reverting back to the merits of this case. Entire documents connected to this petition are perused. Averments which are made in the memo of appeal only disclose the faint series of fact. No documents have been placed on record to appreciate the same. It is not been disputed by the parties that original decree was passed on 23/09/1991. Thereafter, an appeal was preferred against such judgement and decree by the State in the year 1992 which was dismissed for want of prosecution on 29/08/1995. Therefore, in order to restore the appeal an application under Order 41 Rule 9 of CPC

read with Section 5 of the Indian Limitation Act was preferred on 23/06/2007.

9. Therefore, apparently it shows that appeal was dismissed on 29/08/1995, after four years the restoration application was filed to restore the appeal on 21/06/1999. In that restoration application as appears an application under Order 22 Rule 9(2) of CPC read with application under section 5 of the Limitation Act was filed as the original plaintiff have died. Surendra Nath Gupta died on 21/12/2002, Satish Kumar Gupta died on 9/08/2005, Sushil Kumar Gupta died on 16/12/2000 and Naresh Gupta died on 30/12/2000. To appreciate the actual facts neither the copy of the different application filed under Order 41 Rule 9 of CPC or application under Order 22 Rule 9(2) of CPC read with application under section 5 of the Limitation Act is placed before this court to evaluate the facts. The application to set aside the abatement was finally adjudicated on 23/06/2007 wherein the court observed that application filed along with application under Order 22 Rule 9(2) CPC i.e. under Section 5 of the Indian Limitation Act is neither supported with any affidavit nor any reasons have been assigned. The copy of these applications are also not placed before this court so as to appreciate the facts. If the application under Section 5 of the Limitation Act is not supported with any affidavit then in such case it is extremely difficult for the court to believe on the facts as the delay in this case appears to be exorbitant and not ordinary delay.

10. Court cannot ignore the fact that suit was decreed on 23/09/1991. Thereafter, appeal was filed in the year 1992 which was dismissed in August 1995 and the restoration application under Order 41 Rule 9 of CPC read with application under Section 5 of the Limitation Act was filed on 21/06/1999. During pendency of the restoration petition for restoration of the appeal original plaintiff died as such appeal itself abated for which an application was filed to set aside the abatement on 20/11/2006. No grounds were shown as to what was the reason existed for such long period to file the application for setting aside abatement. State also failed to place on record before this court

even to examine the same. Under the circumstances, court has no option except to dismiss the appeal as no ground has been apparently projected by the State to set aside the impugned order dated 23/06/2007.

11. Accordingly, the appeal has no merit and it is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE

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