

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 43 of 2012**

1. Nainsingh, aged about 45 years, S/o Sangramsingh
2. Jaisingh, aged about 35 years, S/o Sangramsingh

Both R/o village Baima, Thana Khadgawa, Tahsil Manendragarh, Distt. Koriya

---- **Petitioners**

Versus

1. Balbhaddar, aged about 50 years, S/o Balidas
2. Jaimangal, aged about 45 years, S/o Balidas
3. Shivmangal, aged about 40 years, S/o Balidas

Respondents No.1 to 3, by Caste Panika, R/o Baima, Tahsil Manendragarh, Distt. Koriya

4. Ramkumar, aged about 70 years, W/o Sangramsingh
5. Sulochani Bai, aged about 32 years, D/o Sangramsingh

---- **Respondents**

For Petitioners	:	Shri Parag Kotecha, Advocate
For Respondents 1 to 3	:	Shri R. K. Gupta, Advocate

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Order on Board

09/03/2018

1. This is an application under Article 227 of the Constitution of India. The additional defendants, who are the legal representatives of the original defendant, are the Petitioners. The suit is one for declaration, partition and for separate possession. The subject matter of the suit is stated to be a parcel of land around 18.6 acres (7.527 hectares).
2. Upon receipt of summon by the father of the Appellants, he went to the Court and marked his presence in the proceedings paper. It appears that thereafter, the defendants did not appeared and the *ex-parte* decree was passed. Alleging that the defendants came to know about the decree only on 01.10.1999, an application was filed invoking Order IX Rule 13 of CPC on 06.10.1999 i.e. within 30 days from the date of passing of the *ex-parte* decree, as pleaded by the

additional defendants. But, the first defendant having marked on the proceedings paper, he is deemed to have participated and was aware of the suit, therefore, the trial Court took the view that the knowledge of date of the *ex-parte* decree is the date of decree itself and not any later date as pleaded by the defendant. Technically that may be correct. But, the fact of the matter remains that the additional defendants had filed the application after they lost their father. Substantial interest and valuable property is involved in the litigation.

3. The trial Court dismissed the application under Order IX Rule 13 of the CPC on the premise that no application under Section 5 of the Limitation Act has been filed. If the application under Order IX Rule 13 of the CPC was belated, definitely application under Section 5 of the Limitation Act was necessary. The appeal filed by the additional defendants was dismissed by the District Court. This is under challenge.
4. The application filed under Order IX Rule 13 of the CPC discloses the reasons why the defendants did not contest the suit. It discloses a bonafide reason for the delay in applying to set aside the *ex-parte* decree. The reason so attributed is the delayed information regarding the passing of the decree. Though technically, it is a situation which called for an application under Section 5 of the Limitation Act, on the whole, the learned Counsel for the Petitioners is justified in referring the judgment passed by the Apex Court in **State of M.P. & Another Vs. Pradeed Kumar & Another; 2000 SAR (Civil) 869** and **Bhagmal & Ors V. Kunwar Lal & Ors.; 2010 AIR SCW 4799**, to argue for the position that a lenient view may be taken to secure the ends of justice and to prevent miscarriage of justice because if the *ex-parte* decree were to be extend the appealing defendants are being deprived of valuable right to property without an opportunity of trial.

5. The learned counsel appearing for the Respondents/Plaintiffs argued that the impugned orders have been passed since there is no application under Section 5 of the Limitation Act and the appealing defendants cannot take shelter under Section 14 of the Limitation Act because of the participation of their predecessor, the first defendant, by marking in the proceedings paper of the Court below.
6. Having examining the basic facts of the case and the contentions of the parties, in exercise of power under Article 227 of the Constitution of India, it appears to be necessary that requisites order be passed to secure the ends of justice and thereby letting the parties to proceed with trial.
7. For the aforesaid reasons, this writ petition is ordered directing that the impugned judgment of the District Court and the order of the trial Court is stand set aside and the application under Order IX Rule 13 is allowed, thereby setting aside the *ex-parte* decree, on the condition that the Appellants pay the Plaintiffs an amount of Rs.25,000/- (Rupees Twenty Five Thousand only) as costs payable within four weeks from today. If such amount is deposited before the Court below as costs, the Respondents/Plaintiffs are permitted to withdraw said amount.

Sd/-

(Thottathil B. Radhakrishnan)
CHIEF JUSTICE