

HIGH COURT OF CHHATTISGARH AT BILASPUR**Second Appeal No. 541 of 2006****Judgment reserved on : 20/08/2019****Judgment delivered on: 26/08/2019**

1. Smt. Meera Bai, W/o Late Mohitram, Aged about 56 years.
2. Roshan Lal, S/o Late Mohitram, Aged about 36 years.
3. Smt. Shobha Bai, W/o Tilakram, Aged about 30 years.
4. Smt. Mala Bai, W/o Janakram, Aged about 29 years.

All the residents of Village Mithhumuda, Raigarh Tahsil & District Raigarh, Chhattisgarh.

---Appellants/Defendants**Versus**

Arjun Prasad Namdev, S/o Divakar Namdev, Aged about 70 years,
R/o Ramgudipara, Raigarh, Tahsil & District, Raigarh, Chhattisgarh.

---- Respondent

For Appellants : Mr. Amit Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
C.A.V. Judgment

1. Heard on the question of admission and formulation of substantial question of law in this second appeal preferred by the defendants under Section 100 of the Code of Civil Procedure, 1908.
2. Mr. Amit Sharma, learned counsel for the appellants/defendants would submit that learned trial Court is absolutely unjustified in rejecting their application under Order 9 Rule 7 of the CPC and not giving them an opportunity to contest the suit on merits by leading evidence, which gives rise to substantial question of law for determination in this second appeal.

3. The original plaintiff – Arjun Prasad Namdev filed a civil suit for restoration of possession of the suit house and for permanent injunction on 27/09/1994 stating *inter alia* that defendants entered into the suit house unauthorizedly after breaking the lock and started residing there illegally. In the said civil suit, plaintiff's evidence was recorded on 14/08/1996 in which, original defendant – Mohit Ram was present and he himself, cross-examined the plaintiff and thereafter, issues were framed on 10/12/2004. On 12/10/1996, learned trial Court proceeded to pass ex-parte decree against the defendants which was ultimately, set aside by the first appellate Court on 24/03/2003 and the civil suit was restored to its original number for hearing and disposal.
4. Thereafter, on 09/11/2004, defendants filed their written statement and thereafter, the case was fixed for evidence of parties on 14/03/2005. On the said date, the defendants did not appear and they were proceeded ex-parte, for which application under Order 9 Rule 7 of the CPC was filed by the defendants/appellants on 06/04/2005. Learned trial Court rejected the application filed by the defendants by order dated 16/06/2005 and the case was fixed for final argument to which defendants participated without protest/demur. The matter was heard finally and judgment and decree were passed by the trial Court on 21/06/2005 which was maintained by the first appellate Court vide judgment and decree dated 29/09/2006 in the first appeal preferred by the defendants.
5. The main submission made by learned counsel for the appellants/defendants is that the trial Court is absolutely unjustified in not setting aside the ex-parte order dated 14/03/2005 and did not give the defendants an opportunity to contest the suit on merits.

6. Learned trial Court has clearly held that despite several calls made on 14/03/2005, neither defendants nor their counsel appeared, therefore, the Court proceeded ex-parte and in the application filed by the defendants under Order 9 Rule 7 of the CPC, no good cause has been shown for their non-appearance.

7. The application filed by the defendants under Order 9 Rule 7 of the CPC is extracted below :-

न्यायालय श्रीमान् अतिरिक्त व्यवहार न्यायाधीश वर्ग- 1, रायगढ़

अर्जुन प्रसाद नामदेव

..... वादी

विरुद्ध

श्रीमती मीराबाई पत्नी स्व० मोहितराम

एवं अन्य

..... प्रतिवादीगण

आवेदन पत्र अंतर्गत आदेश 09 नियम 07 व्य०प्र०सं०

प्रतिवादीगण की ओर से निम्नलिखित निवेदन है:-

1. यह कि दिनांक-14/03/2005 को उक्त वाद वादी साक्ष्य हेतु नियत था । प्रतिवादीगण की अनुपस्थिति के कारण एकपक्षीय करते हुए वादी साक्ष्य हेतु आज दिनांक-06/04/2005 को नियत किया गया है ।
2. यह कि दिनांक-14/03/2005 को वादी पक्ष के साक्षी उपस्थित नहीं थे एवं प्रतिवादीगण के अधिवक्ता द्वारा इस प्रकरण की जानकारी लेने कई बार न्यायालय में उपस्थित हुए थे किन्तु उक्त दिनांक को अन्य सिविल व दाण्डिक प्रकरणों में अत्याधिक भीड़ होने के कारण इस प्रकरण के संबंध में आवश्यक जानकारी नहीं प्राप्त कर सके । एवं पुकार के समय अन्य न्यायालय में व्यस्त होने के कारण उपस्थित नहीं हो सके जो कि सद्भावनापूर्ण है ।
3. यह कि प्रकरण में अभी तक वादी साक्ष्य प्रारंभ नहीं हुआ है इस कारण प्रतिवादीगण को गुण-दोषों के आधार पर सुनवाई का अवसर दिया जाना न्यायसंगत होगा ।

अतः माननीय न्यायालय से निवेदन है कि प्रतिवादीगण के विरुद्ध पारित एकपक्षीय आदेश को निरस्त करते हुए गुण-दोषों के आधार पर प्रतिवादीगण को सुनवाई का अवसर प्रदान करने की कृपा करें ।

सही/-

रायगढ़

दिनांक-6/4/2005

8. A careful perusal of the aforesaid application would show that except narrating the facts of what transpired in the Court, no cause which could be considered as a good cause has been shown by the defendants in their application. Defendants/appellants were required to be vigilant as they had already suffered ex-parte decree which was interfered with by the first appellate Court by setting aside the ex-parte decree, but again, the defendants committed the same mistake, which learned trial Court noticed and found that no good cause has been shown by the defendants, keeping in view that suit was filed way back on 27/09/1994, which is a finding of fact based on evidence available on record and has rightly dismissed the application filed by the defendants under Order 9 Rule 7 of the CPC. Even otherwise, evidence of the plaintiff has also been recorded on 14/08/1996 in the presence of defendant – Mohitram and the suit was pending for the last ten years. The judgment and decree passed by both the Courts below cannot be taken exception to, by the defendants. As such, I do not find any finding of fact which gives rise to substantial question of law for determination in this second appeal.
9. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge