

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No.677 of 2003**

1. State Of Chhattisgarh Through The Secretary, Forest Department, D.K.S. Bhawan, Raipur Chhattisgarh. Presently Mahanadi Bhawan, Mantralaya, Atal Nagar, District Raipur Chhattisgarh **---Appellant/Defendant No.1**
2. State Of Chhattisgarh, Through The Collector, Ambikapur, District Surguja Chhattisgarh **----Defendant No.2**

Versus

1. Mundri Devi (Dead), W/o late Shri Khaderan Sao, R/o Ramanuganj, Tahsil Pal, District Surguja (CG) **---Respondent No.1/Plaintiff**

1.Jagannath Prasad Gupta (since dead) Through Lrs.

1(a). Ram Narayan Gupta S/o Late Jagannath Prasad Gupta, Aged About 58 Years R/o Behind Collector Bungalow, Pratap Pur Road, Ambikapur, District Surguja Chhattisgarh

1(b). Arvind Gupta S/o Late Jagannath Prasad Gupta Aged About 52 Years R/o Behind Collector Bungalow, Pratap Pur Road, Ambikapur, District Surguja Chhattisgarh

1(c). Krishna Gupta S/o Late Jagannath Prasad Gupta Aged About 40 Years R/o Behind Collector Bungalow, Pratap Pur Road, Ambikapur, District Surguja Chhattisgarh

1(d). Smt. Yashodhra Gupta D/o Late Jagannath Prasad Gupta Aged About 38 Years R/o Behind Collector Bungalow, Pratap Pur Road, Ambikapur, District Surguja Chhattisgarh., District : Surguja (Ambikapur), Chhattisgarh

1(e). Smt. Jyoti Gupta, D/o Late Jagannath Prasad Gupta, Aged About 35 Years R/o Behind Collector Bungalow, Pratap Pur Road, Ambikapur, District Surguja Chhattisgarh

1(f). Smt. Manorama Gupta D/o Late Jagannath Gupta Aged About 55 Years R/o C/o Manikchand Gupta, Village Bhatgaon, P.S. Jainagar, District Surajpur Chhattisgarh

1(g). Rajendra Prasad Gupta (Dead) Through Lrs.

1(g)(i) Smt. Kanti Gupta, aged about 55 years, W/o Late Rajendra Prasad Gupta, R/o Opp. Janpad Panchayat, Pratappur Road, Ambikapur, District Surguja (CG)

1(g)(ii) Vinay Gupta, aged about 36 years, S/o Late Rajendra Prasad Gupta, R/o Opp. Janpad Panchayat, Pratappur Road, Ambikapur, District Surguja (CG)

1(g)(iii) Vishal Gupta @ Monu, aged about 34 years, S/o Late Rajendra Prasad Gupta, R/o Opp. Janpad Panchayat, Pratappur Road, Ambikapur, District Surguja (CG)

1(g)(iv) Rahul Gupta, aged about 32 years, S/o Late Rajendra Prasad Gupta, R/o Opp. Janpad Panchayat, Pratappur Road, Ambikapur, District Surguja (CG)

2. Shaligram Prasad Gupta (Dead) Through Lrs.

2(a). Vikas Gupta, aged about 32 years, S/o Late Shaligram Prasad Gupta, R/o Cloth Shop, Pipal Chowk, Ward No.11, Ramanujganj, P.S.

Ramanujganj, District Balrampur-Ramanujganj (CG)

2(b) Jitendra Gupta S/o Late Shaligram Prasad Gupta Aged About 28 Years, R/o Cloth Shop, Pipal Chowk, Ward No.11, Ramanujganj, P.S. Ramanujganj, District Balrampur-Ramanujganj (CG)

2(c). Roshan Gupta S/o Late Shaligram Prasad Gupta Aged About 26 Years R/o Cloth Shop, Pipal Chowk, Ward No.11, Ramanujganj, P.S. Ramanujganj, District Balrampur-Ramanujganj (CG)

2(d). Lilamani Gupta S/o Late Shaligram Prasad Gupta Aged About 60 Years, R/o C/o Shri Lagal Gupta, Kunkuri, P.S. Kunkuri, District Jashpur (CG)

2 (e) Smt. Geeta Gupta S/o Late Shaligram Prasad Gupta Aged About 34 Years, W/o Anoop Gupta, R/o Village Tapkara, P.S. Tapkara, District Jashpur (CG)

2(f). Smt. Reeta Gupta S/o Late Shaligram Prasad Gupta Aged About 32 Years, W/o Mahesh Gupta, R/o Gadwa, P.S. Gadwa, District Gadwa (Jharkhand)

3. Manikchand Gupta (Dead) Through Lrs.

3(a). Uday Gupta S/o Late Manikchand Gupta Aged About 46 Years, R/o Manokamna Bhandar, Ramanujganj, District Balrampur Ramanujganj (CG)

3(b). Ajay Gupta, aged about 44 years, S/o Late Manikchand Gupta, R/o Manokamna Bhandar, Ramanujganj, District Balrampur Ramanujganj (CG)

3(c) Rajesh Gupta S/o Late Manikchand Gupta Aged About 42 Years, R/o Manokamna Bhandar, Ramanujganj, District Balrampur Ramanujganj (CG)

3(d). Chhotelal Gupta S/o Late Manikchand Gupta Aged About 37 Years, R/o Manokamna Bhandar, Ramanujganj, District Balrampur Ramanujganj (CG)

3(e). Smt. Uma Devi W/o Shambhu Prasad Gupta Aged About 54 Years, R/o Bhadar, Rajpur, P.S. Rajpur, District Balrampur-Ramanujganj (CG)

3 (f). Smt. Asha Devi W/o Srinath Gupta Aged About 52 Years, R/o Power Chowk, Gumla (Jharkhand)

3 (g). Smt. Meena Devi W/o Uttam Prasad Gupta Aged About 50 Years, R/o Shanti Nagar, Sitapur, P.S. Sitapur, District Surguja (CG)

3(h). Smt. Rekha Devi S/o Late Manikchand Gupta Aged About 48 Years, R/o Manokamna, Pipal Chowk, Ward No.11, Ramanujganj, District Balrampur-Ramanujganj (CG)

3(i). Smt. Pavitri Devi, W/o Late Manikchand Gupta, Aged About 75 Years, R/o Manokamna, Pipal Chowk, Ward No.11, Ramanujganj, District Balrampur-Ramanujganj (CG)

4. Sitaram Gupta (Dead) Through Lrs.

4.(a). Sudhir Gupta S/o Late Sita Ram Gupta Aged About 48 Years, R/o Ward No.12, Ramanujganj, District Balrampur-Ramanujganj (CG)

4.(b). Dharmendra Gupta S/o Late Sita Ram Gupta Aged About 47 Years, R/o Ward No.12, Ramanujganj, District Balrampur-Ramanujganj (CG)

4.(c). Smt. Anita Gupta @ Guddi, W/o Vinod Gupta Aged About 45 Years, R/o Village Rehala, Gadwa Road (Jharkhand)

4.(d). Smt. Pushpa Gupta, W/o Sunil Gupta, Aged About 43 Years, R/o Aurangabad (Bihar)

4.(e). Smt. Sarita Gupta, W/o Dayanand Gupta, Aged About 41 Years, R/o Jamhor Aurangabad (Bihar)

5. Rameshwar Prasad Gupta S/o Late Shri Khaderan Sao

6. Subhash Chandra Gupta S/o Late Shri Khaderan Sao

7. Smt. Devanti Gupta D/o Late Shri Khaderan Sao

8. Shri Cholaram Jogi, Deputy Ranger, Ramanujganj, Tahsil Pal, Now Posted
At Dhourpur Forest Range, East Surguja, Ambikapur Chhattisgarh
....**Respondent No.8/Defendant No.3**

For Appellants/Defendant No.1&2:	Mr. Rahul Jha, G.A. with Mr. Anmol Sharma, Panel Lawyer
For Respondents No.2(a) & 2(b) :	Mr. Anurag Singh, Advocate

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

07.08.2019

Heard.

1. This appeal is directed against impugned judgment and decree dated 25.03.2003 passed by the Additional District Judge, Ramanujganj, Surguja (CG) in Civil Appeal No.109-A/2002, by which, the appellant's appeal has been dismissed as barred by limitation.

2. The respondent/plaintiff filed a suit seeking declaration of title in respect of the land in dispute stating that the respondent is Bhumiswami of the said land and is enjoying such rights since long and his name is through out being registered and recorded as Bhumiswami in respect of the land in dispute which was granted to respondent under a valid authority of the revenue department but later on, the forest department started raising dispute with regard to the right of the plaintiff to enjoy the property as recorded Bhumiswami. Despite service of notice, the defendants did not file any return. Representation on behalf of defendant was made on certain dates of hearing but, thereafter, they did not appear, therefore, the trial Court proceeded ex parte against the defendants and passed a decree in favour of the plaintiff/respondent on 28.07.1992. The appellant, herein, preferred an appeal under Section 96 CPC, which was delayed by about 6 years. Along with memo of appeal, an application for condonation of delay was also filed. Learned Lower Appellate Court, however, found that the appellants failed to explain such a long delay and therefore, dismissed the application for condonation of delay and so also, the appeal as barred by limitation.

3. This appeal was admitted on the following substantial question of law :
“(i) Whether in the absence of any proof as to the source of title of the plaintiffs, the Courts below could have decreed the suit for declaration and possession.

(ii) Whether in view of the fact that the plaintiffs' claim for declaration of title and recovery of possession was against the Forest Department of the State Government, the suit was barred under Section 57(2) read with Section 257(a) of the Chhattisgarh Land Revenue Code, 1959.

(iii) Whether the First Appellate Court has committed an error of law while rejecting the appellants' prayer for condonation of delay."

4. On the third substantial question of law framed by this Court, learned counsel for the State would submit that merely because delay was long, that by itself, could not be a ground to reject the application for condonation of delay because irrespective of the length, learned Lower Appellate Court was required to properly consider the cause shown by the appellant. He would argue that the appellant had clearly stated in the application for condonation of delay that the appellant came to know about the judgment and decree passed by the trial Court only when they received notices in the execution proceeding, whereafter communication was made from the office of Secretary Department of Forest Government of Madhya Pradesh, Bhopal to Divisional Forest Officer and Sub-Divisional Officer concerned and thereafter on 11.12.1998, Collector Surguja appointed Sub-Divisional Officer, Ramanujganj as the Officer In charge of the case, who moved an application for staying execution proceeding which was rejected on 13.05.1999. Thereafter, requisite permission for taking further legal proceeding was obtained from higher authority and finally, appeal has been filed on 02.06.1999. As the appellant's came to know about the impugned judgment of the trial Court only after receipt of notice of execution proceeding, delay in filing appeal though long, is nevertheless bonafide one. He would further submit that learned Lower Appellate Court did not appreciate in proper perspective, the aforesaid circumstances of the case and rejected the application for condonation of delay.

5. On the other hand, learned counsel for the respondent/plaintiff would argue that the very ground on which, condonation was sought is non-existing and false to the knowledge of the appellants. He would submit that learned Lower Appellate Court has clearly recorded finding that after service of summons on the plaintiff they had appeared before the Court but later on, remained ex-parte. Learned counsel for the respondent would submit that it is not a case where the defendants were not served with the summons of the case. He would further argue that despite having appeared in the case, the defendants and their counsel did not take any steps to contest the matter so much so that even written

statement was not filed. Later on, when the defendants were not represented through their counsel and no one appeared, the trial Court proceeded ex-parte and ex-parte judgment was delivered. Therefore, the learned Lower Appellate Court was fully justified in rejecting the application. Submission of learned counsel for the respondent is that the aspect of sufficiency of cause is essentially a determination of fact and does not involve any substantial question of law unless while deciding application for condonation of delay, provision of law have been misinterpreted or the cause shown has not at all been adverted to, which is not the case here.

6. Apparently, as is clear from the order passed by the learned Lower Appellate Court as also records of the trial Court, the appellants/defendants were duly served with the summons in the suit. Not only this, they also appeared before the trial Court through their counsel. However, no written statement was filed. Later on, the defendants stopped appearing before the trial Court and the trial Court was left with no option but to proceed to pass ex-parte judgment and decree. Where the party has been duly served and summoned and also represented through their counsel, they are presumed to be having knowledge of the judgment and decree passed by the Court and it cannot be contended that they were not aware of the judgment and decree passed by the Trial Court. In this case, the appellants, for reason best known to them, having not contested the matter, despite service of summons, also sat over the matter for about 6 years and filed appeal before the learned Lower Appellate Court after a long time. The cause shown in the appeal that the respondents had no notice or knowledge of the judgment and decree passed by the Trial Court, is completely afterthought and has no basis. This was clearly a very flimsy ground taken to seek condonation of delay of such a long period.

7. Interference by the second appellate Court against such an order can be justified only when the case involves substantial question of law and not otherwise. Whether or not delay should be condoned in a given case, is a matter of discretionary jurisdiction of the Court. In view of provision contained in Section 5 of the Limitation Act, delay could be condoned only when the Court is satisfied that the party applying for condonation of delay, had sufficient cause for such delay. In the present case, the cause shown by the appellant appears to be afterthought, much less sufficient. A perusal of the application under Section 5 of the Limitation Act filed by the appellant before the Court below shows as if the appellant/defendant did not know about the proceeding of the trial Court culminating in decree passed against them. They were not only served with summon but were also represented through their lawyer, who appeared on certain dates and thereafter, there were no representation much less any contest.

Even written statement was not filed by the appellants before the trial Court. Even after judgment and decree was passed by the learned trial Court, of which, the appellants are presumed to have notice and knowledge, no steps were taken until appeal was filed after long delay of 6 years. Though an attempt has been made to explain delay, after receipt of notice in execution proceeding, there is absolutely no cause much less sufficient cause shown as to why appeal could not be filed during long 6 years, prior receipt of notice of execution proceeding by the appellants. The appellants have not come out with any explanation whatsoever as to why they were sitting over the matter without taking any remedy of appeal for about 6 years.

8. Learned counsel for the State would submit that the records in his possession show that against the ex-parte judgment and decree, a parallel proceeding for setting aside ex-parte decree were also drawn and application under Order 9 Rule 13 CPC was rejected by the trial Court, against which, a miscellaneous appeal was also preferred before this Court in MA 181/ 2001 and that appeal has also been disposed off on 06.11.2017.

9. In the absence of there being any perversity, patent illegality committed by Learned Lower Appellate Court in rejecting application for condonation of delay in filing appeal, the third substantial question of law is answered in the manner that the First Appellate Court has not committed any error of law while rejecting the appellant's prayer for condonation of delay.

10. In view of consideration on the third substantial question of law, where this Court does not find any ground to interfere with the order of the Learned Lower Appellate Court dismissing appeal as barred by limitation, there is no need for this Court to examine other two substantial question of law No.1 & 2.

11. In the result, this appeal fails and is hereby dismissed.

12. Parties to bear respective costs.

13. Let appellate decree be accordingly drawn.

Sd/-
(Manindra Mohan Shrivastava)
Judge