

HIGH COURT OF CHHATTISGARH, BILASPUR

SA No. 1 of 2004

1. Phekan Bai Wd/o Late Arjun, Aged About 56 Years Occupation House Work, Caste - Lodhi, R/o Village Golpuri, Vijaynagar, Tatanagar, Jamshedpur Jharkhand.....Died.....Deleted, Jharkhand
2. Mahendra Lal S/o Shri Arjun, Aged About 33 Years Caste - Lodhi, Labourer,
3. Narendra Lal S/o Arjun, Aged About 30 Years Occupation - Labourer, Caste - Lodhi,
4. Parmeshwarlal S/o Shri Arjun, Aged About 28 Years Occupation - Labourer, Caste - Lodhi,
5. Akhileshwar Lal, S/o Arju Lal, Aged About 26 Years Occupation - Labourer, Caste - Lodhi,
6. Sumitra Devi D/o Shri Arjun, Aged About 36 Years Occupation House Work, Caste - Lodhi,
7. Mohinidevi D/o Arjun Aged About 34 Years Occupation - House, Caste Lodhi,
8. Tarakumari D/o Shri Arjun, Aged About 31 Years Occupation House Work, Caste Lodhi,

All are R/o Village Golpuri, Vijaynagar, Tatanagar, Jamshedpur Jharkhand
---- **Plaintiffs**

Versus

1. Neera Bai Wd/o Late Ramlal, Aged About 61 Years Occupation Agriculturist, Caste - Lodhi, And R/o Village Chorbhatti, Tahsil Saaja, District Durg Chhattisgarh.....Died.....Deleted, Chhattisgarh
2. Latmar S/o Late Ramlal, Aged About 35 Years Occupation Agriculturist, Caste - Lodhi
3. Laxman S/o Late Ramlal, Aged About 32 Years Occupation Agriculturist, Caste – Lodhi

Both are R/o Village Chorbhatti, Tahsil Saaja, District Durg Chhattisgarh,

4. Khorbahrin Bai, D/o Late Ramlal, Caste Lodhi, R/o Dhaar, P. O. Kongiyakala, Tahsil Saaja, District Durg Chhattisgarh,
5. State Of M. P. Now C. G. Through Collector Durg Chhattisgarh
---- **Respondents**

For Petitioner	:	Mr. P.K.C. Tiwari, Senior Advocate with Mr. Ashutosh Trivedi, Advocate
For Respondents	:	Mr. Manoj Paranjpe & Mr. Anurag Singh, Advocates

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

01.07.2019

1. The substantial question of law involved, formulated and to be answered in the second appeal preferred by plaintiffs/ appellants is as under:-

“Whether the Courts below were justified in dismissing the suit on the ground of non-payment of Court fee within the time stipulated by the learned appellate Court in its remand dated 09.10.2001?

(For the sake of convenience, parties would be referred hereinafter as per their status shown in the suit before the trial Court).

2. The plaintiffs' suit for declaration of title and permanent injunction was dismissed by the trial Court on 19.09.1983. Feeling aggrieved against the judgment and decree passed by the trial Court, the original plaintiff preferred first appeal under Section 96 of the Code of Civil Procedure (in short 'the CPC') which was allowed by the first appellate Court on 09.10.2001 and remanded the matter to the trial Court to make valuation of suit land within one month and pay proper Court fee before the trial Court.
3. The plaintiff preferred an application under Section 149 of the CPC for extension of time to pay the court fee which was rejected by the trial Court on 15.05.2003 and the suit was dismissed. The appeal preferred by the plaintiffs was also dismissed by the impugned judgment and decree. Questioning the same, this second appeal by the plaintiffs has been preferred under Section 100 of the CPC in which substantial question of law has already been framed which has

been set out in the opening paragraph of this judgment.

4. Mr. P.K.C. Tiwari, learned Senior Counsel for the appellants/ plaintiffs, would submit that both the Courts below were absolutely unjustified in rejecting the application under Section 149 of CPC and failed to consider the dispute in proper perspective, as after remand, the legal representatives of the plaintiffs and the defendants were substituted and notices were served and in the meantime, valuation was made and court fee was sought to be paid by filing an application on 22.03.2002, which was not considered in proper perspective by learned trial Court and the application was rejected and consequently, the suit was dismissed. The first appellate Court also did not notice the illegality committed by the trial Court in the judgment and decree, as such, the judgment and decree passed by two Courts below deserve to be set-aside.
5. Mr. Manoj Paranjpe & Mr. Anurag Singh, learned counsel for the defendants, would support the impugned judgment and decree.
6. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and went through the records with utmost circumspection.
7. The plaintiffs' suit was originally dismissed by the trial Court. In first appeal preferred by the plaintiff herein, the first appellate Court while setting aside the judgment and decree of the trial Court remanded the matter to the trial Court permitting the plaintiffs to correct valuation of civil suit and to pay proper and requisite court fee. When the matter was taken up before the trial Court on remand on 29.10.2001, the trial Court noticed that the original plaintiffs and the original defendant both have died and, therefore, the trial Court directed the parties to do the needful for bringing their legal representatives on record and further

directed that for complying the order of the first appellate Court, the date will be fixed later on. Ultimately, the legal representatives were brought on record on 18.12.2001 and thereafter they were noticed also. On 23.03.2002 the plaintiffs filed an application in compliance of the order of the first appellate Court and sought permission to pay the court fee of Rs. 2200/-, which the trial Court rejected holding that there is gross negligence on the part of the plaintiff in complying the order of the first appellate Court on remand, which the first appellate Court accepted in appeal. Ignoring the fact that after remand, the trial Court noticed that the original plaintiffs and defendant both have died and their legal representatives were permitted to be brought on record and the first appellate Court has directed to correct valuation of the suit within one month and then to pay the proper fee. The first appellate Court did not fix 30 days period for payment of court fee. It appears from the record that the payment of court fee by plaintiffs was delayed on account of bringing legal representatives of the deceased, plaintiffs and defendant on record.

8. In the matter of ***Madanlal Agrawal vs. Smt. Kamlesh Nigam***¹, the High Court of Madhya Pradesh held as under:-

“During the pendency of a stay order passed by appellate or revisional Court although the trial Court or the Court below may not have any jurisdiction to proceed with the trial of the suit on merit it can certainly take such other steps which are collateral or which may be protective or which would be for the purpose of keeping the lis alive and all such steps. Such as any application under O. 22, R. 3 or 4 or an application under O. 39, R. 1 or 2, or an application under O. 40 R. 1 or an application under O. 38, R. 5 of the Code of Civil Procedure would be maintainable in the trial Court in spite of such stay order. Therefore, order of attachment passed by

1 AIR 1975 MP 132

Court under O. 38, R. 5 of the Code of Civil Procedure during the pendency of the stay order is not without jurisdiction.”

9. The Supreme Court in the matter of **A. Nawab John and Others vs. V.N. Subramaniam**² held that the power and jurisdiction of the Court under Section 149 of CPC to allow the payment of requisite Court fee is discretionary in nature, provided that the Court must be satisfied, that the party concerned has every legally acceptable explanation for not paying the Court fee within the period of limitation and observed as under: -

“44.It is well settled that the judicial discretion is required to be exercised in accordance with the settled principles of law. It must not be exercised in a manner to confer an unfair advantage on one of the parties to the litigation. In a case where the plaint is filed within the period of limitation prescribed by law but with deficit court fee and the plaintiff seeks to make good the deficit of the court fee beyond the period of limitation, the Court, though has discretion under Section 149 CPC, must scrutinise the explanation offered for the delayed payment of the deficit court fee carefully because exercise of such discretion would certainly have some bearing on the rights and obligations of the defendants or persons claiming through the defendants. (The case on hand is a classic example of such a situation.) It necessarily follows from the above that Section 149 CPC does not confer an absolute right in favour of a plaintiff to pay the court fee as and when it pleases the plaintiff. It only enables a plaintiff to seek the indulgence of the Court to permit the payment of court fee at a point of time later than the presentation of the plaint. The exercise of the discretion by the Court is conditional upon the satisfaction of the Court that the plaintiff offered a legally acceptable explanation for not paying the court fee within the period of limitation.”

10. Reverting to the facts of the present case, in light of the discussion made hereinabove, though the plaintiff was required to do the needful within one month from 09.08.2001 to make proper valuation and pay

² (2012) 7 SCC 738

the court fee, but as noticed hereinabove, the plaintiff took time in substitution of legal representatives of defendants and then noticing them, applications were filed for payment of court fee, which is already placed on record, particularly, both the Courts have not noticed that fact. On 19.10.2001, the trial Court clearly held that after complying with the direction of the first appellate Court, the date will be fixed, which the trial Court never fixed and rejected the application under Section 149 of the CPC. In my considered opinion, the trial Court is absolutely unjustified in rejecting the application, as lis to the suit was suspended on account of death of original plaintiffs and defendant, as the trial Court ought to have exercised the discretion in favour of the plaintiff in granting application under Section 149 of the CPC and the illegality was perpetuated by the first appellate Court in not noticing the illegality committed by the trial Court .

11. In view of the aforesaid analysis, the order passed by the first appellate Court as well as judgment and decree passed by the trial Court, both are set-aside and the application under Section 149 of CPC is allowed. Court fee is taken on record. The trial Court is directed to proceed with suit.
12. Now, the trial court is to proceed to the next stage and conclude the suit within three months from the date of receipt of certified copy of this judgment. The parties are directed to appear before the trial Court on 29.07.2019. No further notice is necessary to the parties.

Sd/-
(Sanjay K. Agrawal)
Judge