

HIGH COURT OF CHHATTISGARH, BILASPUR**MCC No. 1020 of 2019**

- Santosh S/o Late Tetkuram, Aged About 42 Years R/o. Talapara, Bilaspur, P.S. Civil Line, District Bilaspur Chhattisgarh. ---- **Petitioner**

Versus

1. Shri Shabbir Hussain S/o Late Shri Rajbali, Aged About 46 Years Businessme Of Machine, R/o Juniline, Bilaspur, P.S.- Civil Line, District Bilaspur Chhattisgarh.
2. Abbas Asli, S/o Late Shri Rajbali, Aged About 44 Years Businessme Of Machine, R/o Juniline, Bilaspur, P.S.- Civil Line, District Bilaspur Chhattisgarh.
3. State Of Madhya Pradesh (Now C.G.), Through The Collector, Bilaspur Chhattisgarh.
4. Chandrashekhar S/o Late Tetkuram, Aged About 34 Years R/o Talapara, Bilaspur, P.S. Civil Line, District Bilaspur Chhattisgarh.
5. Vijay S/o Late Tetkuram, Aged About 25 Years R/o Talapara, Bilaspur, P.S. Civil Line, District Bilaspur Chhattisgarh

--- Respondents

For Appellant : Shri Anup Majumdar, Advocate

For State/respondent : Ms. S. Harshita, PL

D.B.: Hon'ble Shri Justice Manindra Mohan Shrivastava**Hon'ble Smt. Justice Vimla Singh Kapoor****Order on Board****Per Manindra Mohan Shrivastava****10/12/2019**

This is an application for recall of order dated 24.07.2014 filed by Santosh legal representative of deceased Tetku the original defendant No. 1 in the suit.

2. Learned counsel for the appellant submits that the judgment and decree dated 13.12.1995 passed in Civil Suit No. 51-A of 1990 was against Tetku, Hagru and Smt. Jugmati all son and daughter of Late Basawant. Appeal against the said judgment and decree was filed by those defendants along with an application for grant of permission to sue as forma pauperis. He would also submits that during the pendency of

appeal when Tetku died, the appellant who is the son of Tetku never moved any application for substitution of his name as legal representative of Tetku nor any application for setting aside abatement and behind his back and without notice and knowledge, the other two appellants appeared in the Court and at their instance, not only application for setting aside abatement and substitution of legal representative of deceased Tetku was allowed but at their instance, without any involvement of the appellant, the appeal was also dismissed as withdrawn.

3. It appears that the grievance of the appellant is that he is the son of Tetku and without his notice and knowledge the proceedings in the MCC No. 531 of 1996 were drawn and though, he neither filed any application for substitution of legal representative and he was not present in those proceedings, behind his back and without his notice, the other two appellants withdrew the entire appeal. Learned counsel for the appellant submits that the appellant being son of Tetku was very much willing to pursue appeal the judgment and decree dated 13.12.1995.

4. Having considered the aforesaid submission, we are inclined to recall order dated 24.07.2014 and restore MCC (FA No. 531 of 1996) to its original number. This order however shall not have the effect of restoring in so far as the other two appellants of the appeal Hagru and Smt. Jugmati are concerned.

5. Application is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Sd/-
(Vimla Singh Kapoor)
Judge