

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CIVIL REVISION No. 34 of 2020**

Reserved on 20-1-2021

pronounced on 25-1-2021

1. Shivanand Shende S/o Late Shri Hrishikesh Shyam Rao Shende
Aged About 56 Years
 2. Sachidanand Shende S/o Late Shri Hrishikesh Shyam Rao Shende
Aged About 53 Years
- Both R/o Mahamaya Chowk, Sarkanda, Tahsil And District Bilaspur
CG

---- Applicants**Versus**

1. Smt. Sanjana Tiwari D/o Late Shri Hrishikesh Shyam Rao Shende
Aged About 48 Years R/o L - 7, Vinoba Nagar, Bilaspur, Tahsil And
District Bilaspur CG
2. Smt. Aruna Bhagwat D/o Late Shri Hrishikesh Shyam Rao Shende
Aged About 60 Years W/o Ravikant Bhagwat, R/o House No. I - 12,
Sector - 2, Agroha Nagar, Post Sundar Nagar, Raipura, District
Raipur CG.
3. Smt. Anjali Kothe W/o Rajendra Kothe R/o Near Sahu Sadan,
Kelabadi Durg, District Durg CG
4. Smt. Aparna Deshpande W/o Nitin Deshpande R/o House No. 581,
Ward No. 4, Near Chandigarh Enclave, Plot Vipej Bishanpura,
Jirakpur, District Mohali (Punjab)
5. State Of Chhattisgarh Through The Collector, Bilaspur, District
Bilaspur CG

---- Non-applicants

For applicant	: Mr. Rajiv Shrivastava, Adv.
For non-applicant No. 5	: Mr. D.C. Verma, Govt. Adv.
For non-applicants No. 1 to 4	: Not noticed.

Hon'ble Mr. Sharad Kumar Gupta, Judge**C.A.V. ORDER**

1. Applicants have preferred instant Civil Revision against the order dated 19-3-2020 passed by the 5th Addl. District Judge, Bilaspur (C.G.) in Misc. Civil Appeal No. 6/2020 whereby and whereunder she allowed the said misc. civil appeal filed by non-applicant No. 1 Smt. Sanjna Tiwari and set aside the order dated 23-12-2019 passed by 8th Civil Judge Class 2,

Bilaspur whereby she rejected the application filed under Section 5 of the Limitation Act and an application filed under Order 9 Rule 9 of the Civil Procedure Code (in short 'CPC') by non-applicant No. 1 Smt. Sanjna Tiwari.

2. Non-applicant No. 1, non-applicant No. 2 Smt. Aruna Bhagwat, late Smt. Malini Shende and applicant No. 2 Sachchidanand Shende filed a civil suit No. 147-A/2005 before 3rd Civil Judge Class 2, Bilaspur for title declaration and permanent injunction against applicant No. 1 Shivanand Shende, non-applicant No. 3 Smt. Anjali Kothe, non-applicant no. 4 Smt. Aparna Deshpande, non-applicant no. 5 State of CG. On 25-11-2006 the civil suit was dismissed in default by 2nd Civil Judge Class 1, Bilaspur.

3. Being aggrieved, non-applicant no. 1 filed an application under Order 9 Rule 9 of CPC along with an application under Section 5 of the Limitation Act before the 8th civil Judge Class 2, Bilaspur, she rejected both the applications on 23-12-2019.

4. Being aggrieved, non-applicant No. 1 preferred misc. civil appeal No. 6/2020 before 5th Addl. Distt. Judge, Bilaspur who by order dated 19-3-2020 turned down the order of 8th Civil Judge Class 2, Bilaspur and remanded the case to her with direction that she will dispose of the application filed under order 9 Rule 9 of CPC on merit.

5. Being aggrieved, applicants preferred instant revision.

6. Brief case of the applicants regarding the civil revision is that the impugned order of appellate Court is illegal and contrary to the law, the appellate Court exceeded its jurisdiction, the findings are perverse, appellate Court failed to see that application for restoration was filed after 10 years of dismissal of the suit, appellate Court committed gross irregularity. The husband of non-applicant No. 1 is regular practitioner in the same court hence it is impossible to believe that he had no knowledge about death of the Senior Advocate Shri Ramakant Mishra.

7. Counsel for the applicants argued that 10 years long delay was not satisfactorily explained by the non-applicant No. 1. The suit was dismissed on 25-11-2006 and Shri Ramakant Mishra Advocate died on 24-10-2010, 4 years after dismissal of the suit, hence reasons put-forth by non-applicant No. 2 is not satisfactory.

8. For the proper adjudication it would be pertinent to mention the provisions of Section 115 of Civil Procedure Code (for short, 'CPC') which

reads as under :-

“115. Revision [(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation.—In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.”

9. As per the certified copy of the order sheet dated 25-11-2006 which is part of the record and filed by applicants, the said suit was dismissed in default in the absence of both the parties.

10. Thereafter, non-applicant No. 2 filed Civil MJC No. 28/2016 before 8th Civil Judge Class 2 Bilaspur raising the grounds that in the civil suit late Sr. Adv. Shri Ramakant Mishra and Jr. Adv. were appearing on behalf of non-applicants No. 1, 2 late Smt. Malini Shende, applicant No. 2, non-applicants No. 1 and 2 were living in their in-laws house, Advocates had told them that they will be informed if so required, after the death of Shri Ramakant

Mishra, non-applicant No. 1 did not get any information regarding progress of the civil suit, the applicants filed order sheets of the civil suit in another civil suit no. 84-A/2016 then she came to know that suit has been dismissed in default for want of prosecution.

11. From certified copies of the order sheets of the civil suit which are part of the record and filed by the applicants, it is emerged that non-applicant No. 1 never appeared in person before the trial Court in the civil suit, non-applicants No. 1 and 2 late Smt. Malini Shende, applicant No. 2 were represented by Shri R.P. Gahvai, Adv. From the fact that husband of the non-applicant No. 1 was practising in District Court, Bilaspur, the inference cannot be drawn that non-applicant No. 1 had got intimation from her husband about dismissal of the suit.

12. This is not important that delay is short or long. This is important that whether delay is satisfactorily explained or not.

13. Looking to the above mentioned facts and circumstances of the case, prima facie this Court finds that 5th Addl. Distt. Judge, Bilaspur did not commit any irregularity or material irregularity while exercising its jurisdiction to set aside the order of the 8th Civil Judge Class 2, Bilaspur dated 23-12-2019. Hence the instance revision is not fit for admission. Consequently, the revision is dismissed at motion hearing stage.

14. As a result, I.A. No. 1/2020 application for interim stay is also rejected.

Sd/-
(Sharad Kumar Gupta)
Judge