

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 38 of 2021**

1. Shivshankar S/o Shri Govind, Aged About 50 Years Caste - Kurmi, R/o Village - Kachanda, Tahsil - Nawagarh, Civil And Revenue District - Janjgir - Champa Chhattisgarh
2. Murari S/o Shri Gokul Prasad, Aged About 52 Years Caste - Kurmi, R/o Village - Kachanda, Tahsil - Nawagarh, Civil And Revenue District - Janjgir - Champa Chhattisgarh
3. Hem Prasad S/o Shri Gokul Prasad, Aged About 35 Years Caste - Kurmi, R/o Village - Kachanda, Tahsil - Nawagarh, Civil And Revenue District - Janjgir - Champa Chhattisgarh
4. Rajaram S/o Shri Tulasiram, Aged About 65 Years Caste - Kurmi, R/o Village - Kachanda, Tahsil - Nawagarh, Civil And Revenue District - Janjgir - Champa Chhattisgarh
5. Sitaram S/o Shri Tulasiram, Aged About 40 Years Caste - Kurmi, R/o Village - Kachanda, Tahsil - Nawagarh, Civil And Revenue District - Janjgir - Champa Chhattisgarh
6. Siyaram S/o Shri Tulasiram, Aged About 35 Years Caste - Kurmi, R/o Village - Kachanda, Tahsil - Nawagarh, Civil And Revenue District - Janjgir - Champa Chhattisgarh
7. Ramsevak S/o Shri Govind, Aged About 65 Years Caste - Kurmi, R/o Village - Kachanda, Tahsil - Nawagarh, Civil And Revenue District - Janjgir - Champa Chhattisgarh

---- Petitioner

Versus

1. Shivkumar S/o Shri Bahadur, Aged About 42 Years Caste - Kurmi, R/o Village - Salkhan, Tahsil - Nawagarh, Civil And Revenue District - Janjgir - Champa Chhattisgarh. (Plaintiff)
2. Padma Bai D/o Shri Ganesh, Aged About - 65 Years (Now Died)
Through Lrs.,
2 (i) Geeta Devi W/o Late Ramadhar Kashyap, Aged About 52 Years
R/o Village Birra, Dau Mohalla, Tahsil Champa, Civil & Revenue
District Janjgir Champa (CG)

2 (ii) Ramkumar Chandrama S/o Shri Keshav Chandrama, Aged
About 50 Years, R/o Ward No.13, Khapara Bhatti, Nagar Panchayat
Kirodimal, Raigarh, Civil & Revenue District Raigarh (CG)

2 (iii) Murti Kashyap W/o Shri Kranti Kashyap, Aged About 50 Years, R/o Ward No.13, Khapara Bhatti, Nagar Panchayat, Kirodimal, Raigarh, Civil & Revenue District Raigarh (CG)

2 (iv) Shyamata Kashyap W/o Shri Girwar Kashyap, Aged About 46 Years, R/o Village Karra, Tahsil Nawagarh, Civil & Revenue District Janjgir Champa (CG)

2(v) Keshav Chandrama S/o Shri Sadhram Chandrama, Aged About 80 Years, R/o Ward No.13, Khapara Bhatti, Nagar Panchayat Kirodimal, Raigarh, Civil & Revenue District Raigarh (CG)

(Respondent Nos. 2(i) to 2(v) are Legal representatives of the Defendant No.7)

3. State Of Chhattisgarh Through - The District Collector Janjgir, Civil And Revenue District - Janjgir - Champa Chhattisgarh (Defendant No.8)

---- Respondent

For Petitioners : Shri PM Shriwas, Advocate.

For Respondent/State : Shri Vaibhav Kartikey Agrawal, Panel Lawyer.

Hon'ble Shri Deepak Kumar Tiwari, J

Order On Board

22/10/2021 :

1. The present revision has been preferred against the order dated 24th August, 2021 passed by the Civil Judge, Class-2, Nawagarh, District Janjgir Champa in MJC No.3/2019 whereby the application filed by the plaintiff/respondent No.1 under Order 9 Rule 9 of the CPC for restoration of the Civil Suit No.21-A/2013 has been allowed.
2. Brief facts of the case are that the respondent No.1/plaintiff has filed the civil suit No.21-A/2013 before the learned trial Court for declaration of title over suit land bearing Khasra No.57/1, ad measuring area 1.00 acre situated at Village Kachanda, Tehsil Nawagarh, District Janjgir Champa.
3. The plaintiff had earlier also filed a civil Suit No.154-A/2007 which was

rejected on 11.2.2010. The said civil suit was dismissed for want of prosecution on 3rd April, 2019 and on the next day i.e. 4th April, 2019, an application for restoration duly supported with affidavit was filed. After hearing the said application, the impugned order was passed.

4. The petitioner contended that the learned trial Court has committed material irregularity in allowing the application filed under Order 9 Rule 9 of the CPC, as the earlier civil suit between the same parties was already dismissed for want of prosecution on 11.2.2010.
5. The seminal question that arises for consideration is whether the order passed by the learned trial Court is legally proper and justifiable or it calls for any interference by invoking revisional jurisdiction.
6. Heard learned counsel for the parties and perused the impugned order.
7. In the matter of **P.D. Shamdasani Vs. Central Bank of India** {AIR 1938 Bom 199}, it was held that application for restoration should be refused under Order 9 Rule 9 CPC only if there is gross negligence or gross carelessness and that if a person, whose suit had been dismissed subsequently appeared on the same day and produced excuse for his absence which was not unreasonable, the Court ought to exercise its discretion in his favour.
8. In the matter of **Rama Shankar Vs. Iqbal Husain** {AIR 1932 All 450}, an application for restoration of suit under Order 9 Rule 9 CPC was rejected by the Court on the ground that the applicant was called twice but did not appear. Plaintiff immediately filed an application for restoration and sworn an affidavit on the same day that he was present when the case was called but went to search for his pleader

and that when he returned later on, he found that the suit had been dismissed for default. It was held that it is a fit case for allowing the application.

9. In the present case, on the next day of dismissal of the suit, the petitioner had moved restoration application which shows his seriousness for contesting the suit. As per the pleading of the petitioner, the suit was not decided on merits, therefore, earlier only the suit was dismissed for want of prosecution. It is stated that the said argument may be raised before the trial Court and the trial Court may examine whether earlier dismissal of the suit precludes the plaintiff from bringing a fresh suit in respect of the same cause of action.
10. However, ends of justice requires that the plaintiff should not go unheard in the suit. Every case ought to be decided on merits. Therefore, the order of restoration made by the trial Court does not require any interference.
11. In the circumstances, this Revision fails and is hereby dismissed.

Sd/-
(Deepak Kumar Tiwari)
Judge

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