2024:CGHC:40996

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

MA No. 666 of 2003

1 - Deleted (Jubel) (Died) Honble Court Order Dated 28/11/2023.
1.1 - (A) Innocent Baxla S/o Jubel, Aged About 43 Years R/o Indus Parigya Parisar, Khajurikala Road, House No. 6, BDA Road, Bhopal District Bhopal (M.P.)
1.2 - (B) Smt. Usha Raghuvanshi W/o Shri Jitendra Raghuvanshi, Aged About 42 Years R/o Taigore Nagar Bhopal District Bhopal (M.P.)
1.3 - (C) Smt. Shusma Kujur W/o Shri Agnesh Kujur, Aged About 40 Years R/o Rachna Vihar, Bhopal, District Bhopal (M.P.)
1.4 - (D) Smt. Tabita Lakda W/o Vijay Lakda, Aged About 38 Years R/o Khanugaon, Bhopal, District Bhopal (M.P.)
1.5 - (E) Smt. Priskila Minj W/o Anuj Minj, Aged About 36 Years R/o Prem Nagar, Bhopal, District Bhopal (M.P.)

2 - Albert S/o Lajras Kuzur Aged About 32 Years R/o Barkheda, B.H.E.L. Bhopal, Madhya Pradesh.

3 - Saligram Tigga (Died) Through Legal Hrs. As Per Honble Court Order Date- 09-09-2019.
3.1 - (A) Smt. Basanti Tigga W/o Late Shri Saligram Tigga Aged About 52 Years R/o Barkheda Bhel, Bhopal At Present, R/o 156-B, Radha Kunj, Khajurikalan Piplani, Bhopal, Madhya Pradesh
3.2 - (B) Smt. Kusum Bhagat D/o Late Shri Saligram Tigga Aged About 38 Years R/o Barkheda Bhel, Bhopal At Present, R/o 156-B, Radha Kunj, Khajurikalan Piplani, Bhopal, Madhya Pradesh
3.3 - (C) Sandeep Tigga S/o Late Shri Saligram Tigga Aged About 40 Years R/o Barkheda Bhel, Bhopal At Present, R/o 156-B, Radha Kunj, Khajurikalan Piplani, Bhopal, Madhya Pradesh

3.4 - (D) Smt. Deepa D/o Late Shri Saligram Tigga Aged About 30 Years R/o Barkheda Bhel, Bhopal At Present, R/o 156-B, Radha Kunj, Khajurikalan Piplani, Bhopal, Madhya Pradesh
3.5 - (E) Sanjeev Tigga S/o Late Shri Saligram Tigga Aged About 34 Years R/o Barkheda Bhel, Bhopal At Present, R/o 156-B, Radha Kunj, Khajurikalan Piplani, Bhopal, Madhya Pradesh

---- **Appellants**

versus

1 - Seva Sahakari Samiti R/o Village Mavali Bhata, Tokapal, Through Chairman.

2 - Sonu Singh (Died) Through Legal Hrs. As Per Honble Court Order Date- 09-09-2019.
2.1 - (A) Bal Singh S/o Late Sonu Singh Aged About 45 Years R/o Village Podaguda, Post Govardand, Tehsil Narayanpur, District : Bastar(Jagdalpur), Chhattisgarh
2.2 - (B) Bhagwati D/o Late Sonu Singh Aged About 40 Years R/o Village Podaguda, Post Govardand, Tehsil Narayanpur, District : Bastar(Jagdalpur), Chhattisgarh
2.3 - (C) Kunti D/o Late Sonu Singh Aged About 38 Years R/o Village Podaguda, Post Govardand, Tehsil Narayanpur, District : Bastar(Jagdalpur), Chhattisgarh
2.4 - (D) Mahesh S/o Late Sonu Singh Aged About 35 Years R/o Village Podaguda, Post Govardand, Tehsil Narayanpur, District : Bastar(Jagdalpur), Chhattisgarh

3 - Natvarlal S/o Jethram Aged About 45 Years R/o Village Pandripani, In Front Of Jai Bajrang Cement, Jagdalpur, District : Bastar (Jagdalpur), Chhattisgarh

4 - Raghu Singh (Died) Through Legal Hrs. As Per Honble Court Order Date- 09-09-2019.
4.1 - (A) Smt. Ratni W/o Shri Raghu Singh R/o Village Maulibhata, Tehsil Jagdalpur, District- Bastar,chhattisgarh.
4.2 - (B) Sukhmati D/o Late Raghu Singh R/o Village Maulibhata, Tehsil Jagdalpur, District- Bastar,chhattisgarh.
4.3 - (C) (Deleted) Bharti Nil
4.4 - (D) Jaymati D/o Late Raghu Singh R/o Village Maulibhata, Tehsil Jagdalpur, District- Bastar,chhattisgarh.

5 – Deleted Manher Singh Nil
6 - Mandhar S/o Gangaram Aged About 30 Years R/o Village Mavli, Bhata, Tehsil Jagdalpur, District : Bastar(Jagdalpur), Chhattisgarh

7 - Rupdhar S/o Gangaram Aged About 27 Years R/o Village Mavli, Bhata, Tehsil Jagdalpur, District : Bastar(Jagdalpur), Chhattisgarh

8 - (Deleted) Smt. Sambalvati As Per Honble Court Order Date- 16-01-2017.

9 - Manu Singh (Died) Through Legal Hrs. As Per Honble Court Order Date- 09-09-2019.
9.1 - (A) Chapa Bai Wd/o Late Manu Singh Aged About 60 Years R/o Village Aghanpur, Tehsil Jagdalpur, District : Bastar(Jagdalpur), Chhattisgarh
9.2 - (B) Basanti D/o Late Manu Singh Aged About 40 Years R/o Village Aghanpur, Tehsil Jagdalpur, District : Bastar(Jagdalpur), Chhattisgarh
9.3 - (C) Shail Singh Tahkur D/o Late Manu Singh Aged About 32 Years R/o Village Aghanpur, Tehsil Jagdalpur, District : Bastar(Jagdalpur), Chhattisgarh

---- **Respondents**

(Cause-title taken from the Case Information System)

For Appellant :- Mr. Keshav Dewangan, Advocate
For Respondent
Nos.4 to 9 :-Mr. Manoj Chauhan, Advocate

SB- Hon'ble Shri Justice Sanjay K. Agrawal
Judgment On Board

17.10.2024

1. This appeal filed under Order 43 Rule 1(d) of the Code of Civil Procedure is directed against the impugned order dated 01.04.2003 passed by learned I Additional District Judge, Jagdalpur in Misc. Civil Suit No.2/2001 (*"Jubel v. Sewa Sahkari Samiti & Ors."*), by which the application filed by the appellants herein/legal representatives of defendant Nos.4 to 6 under Order 9 Rule 13 of the CPC have been dismissed by the Appellate Court finding that the appellants/legal representatives of defendant Nos.4 to

6 were duly served in Misc. Civil Appeal No.4/1997 (*"Raghu singh v. Sewa Sahkari Samiti & Ors."*), which was decided on 16.08.1999.

2. Mr. Keshav Dewangan, learned counsel for the appellants submits that the Appeal Court is absolutely unjustified in rejecting the application filed by the appellants herein under Order 9 Rule 13 of the CPC holding that the appellants were duly served in the proceedings, thereby, recording a finding perverse to the record. Therefore, the impugned order is liable to be set aside.

3. Mr. Manoj Chauhan, learned counsel appearing for respondent Nos.4 to 9 would support the impugned order.

4. I have heard learned counsel appearing for the parties, considered their rival submissions made herein and gone through the materials available on record with utmost circumspection.

5. In the case at hand, admittedly, the plaintiffs/respondent Nos.4 to 9 herein filed a civil suit on 26.08.1987, in which issues were framed and issue Nos.12A & B were decided by the trial Court holding that the suit against defendant Nos.4 to 6/appellants herein could not be proceeded and is not maintainable as they are members of the aboriginal tribes and prior permission of the Collector has not been

obtained. This order was challenged by the plaintiffs before the learned III Additional District Judge, Jagdalpur, which was registered as Misc. Civil Appeal No.4/1997 (*"Raghu singh v. Sewa Sahkari Samiti & Ors."*). The appeal of the plaintiffs were allowed vide order dated 16.08.1999 and the order of trial Court dated 17.03.1997 was set-aside, holding that the issue was maintainable against the appellants herein/defendant Nos.4 to 6 also. Thereafter, the appellants herein filed an application under Order 9 Rule 13 of the CPC, before the learned I Additional District Judge, Jagdalpur for setting aside the order dated 16.08.1999, which was registered as Misc. Civil Suit No.2/2001 (*"Jubel v. Sewa Sahkari Samiti & Ors."*), however, the same was dismissed vide the impugned order, against which this appeal has been preferred holding that they were not served.

6. The Appellate Court by rejecting the application of the appellants filed under Order 9 Rule 13 of the CPC has clearly recorded that the appellants herein were deemed to be duly served by registered post and in this regard, has relied upon the decisions of the Supreme Court in the matters of **Attabira Regulated Market Committee v.**

Ganesh Rice Mills[1] and **Madan and Co. v. Wazir Jaivir Chand**[2]**.**

7. After hearing learned counsel for the parties and going through the findings recorded by the trial Court that the appellants were deemed to have been served in their given address, is a correct finding of fact based on material available on record, as such, I do not find any merit in this appeal, it deserves to be and is accordingly, dismissed. However, since the civil suit is pending before the trial Court from 26.08.1987, and thirty-seven years have already lapsed from the date of institution of the suit and also, the appellants herein/defendants therein are already appearing before the trial Court and are contesting the suit, in that view of the matter, the trial Court is expected to conclude the trial expeditiously.

8. Accordingly, the appeal is **dismissed**, leaving the parties to bear their own costs.

9. A copy of this order be sent to the concerned trial Court through e-mail for compliance.

Sd/-
(Sanjay K. Agrawal)
Judge

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1 AIR 1997 SC 1540

2 AIR 1989 SC 630