

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Sheet

W.P.(227) No.292 of 2024

Phulsundari **Versus** Rambai & Ors.

28.06.2024	Shri Anurag Singh, counsel for the Petitioner. Shri Sanjay Pathak, Advocate and Shri Pramod Ramteke, PL for the respective Respondents. Shri Singh does not press IA No.01/2024, which is accordingly dismissed as not pressed. Heard on admission. Admit. Also heard on IA No.02/2024, an application for grant of stay. Shri Singh submits that the Petitioner has filed a Civil Suit for declaration of title and permanent injunction which was decreed on 08.01.2008 wherein, Respondent-Late Sairam was proceeded <i>ex parte</i>. He further submits that the original Defendant i.e. Defendant No.2 has challenged the decree before the 4th Additional District Judge, Ambikapur in Civil Appeal No.98/2011 wherein, Late Sairam was arrayed as party/Respondent No.1 and during the Appeal proceeding, as Sairam was not present, therefore, in his absence, the appellate Court has also proceeded <i>ex parte</i> and affirmed the decree passed by the trial Court and the Appeal was dismissed as the other Defendant against whom, the decree was passed was not permitted by the trial Court to be arrayed as a party and the said application remained pending for adjudication under Order 1 Rule 10 CPC. He further submits that though their names have been

incorporated in the original Civil Suit, but as there was no decree against the other Defendant, therefore, the main decree has been passed against Late Sairam and Late Parsadi which has not been challenged and thereafter, Late Sairam, on 12.09.2017, has filed an application to set aside the *ex parte* decree passed under Order 9 Rule 13 r/w Section 151 CPC before the trial Court i.e. 3rd Civil Judge, Class-2, Ambikapur in which, the impugned order has been passed on 13.04.2024 and the *ex parte* decree was set aside in Misc. Civil Case No.31/2017. He lastly submits that a decree of the trial Court has already been merged in the decree of the appellate Court, therefore, the impugned order is bad in law and prays to allow the said application.

Shri Pathak prays time to address on the main Petition.

In the meantime, purely as an interim measure, it is ordered that the effect and operation of the impugned award dated 13.03.2024 passed by the 3rd Civil Judge, Class-2, Ambikapur in Misc. Civil Suit No.31/2017 shall remain stayed till the next date of hearing.

In consequence thereof, the proceedings in the original Civil Suit shall also remain stayed till the next date of hearing.

Post it for final hearing.

Sd/-

(Deepak Kumar Tiwari)
JUDGE