



CGHC010394042026

2026:CGHC:44748

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HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 1335 of 2026

1 - Shivkumar S/o Late Sandhya Uraon Aged About 62 Years Nayan S/o Late. Sandhya Uraon (Dead) R/o Village Chirga Police Station And Tehsil - Batauli District - Surguja C.G.

2 - Kunwar Sai S/o Late Kamu Uraon Aged About 50 Years R/o Village Chirga Police Station And Tehsil - Batauli District - Surguja C.G.

3 - Rajkumar S/o Late Kamu Uraon Aged About 48 Years Patiparhin Alias Birajo (Dead) R/o Village Chirga Police Station And Tehsil - Batauli District - Surguja C.G.

4 - Dalsu S/o Late Kamal Uraon Aged About 51 Years R/o Village Chirga Police Station And Tehsil - Batauli District - Surguja C.G.

5 - Bhole S/o Late Kamal Uraon Aged About 49 Years R/o Village Chirga Police Station And Tehsil - Batauli District - Surguja C.G.

6 - Golendra S/o Late Kamal Uraon Aged About 47 Years R/o Village Chirga Police Station And Tehsil - Batauli District - Surguja C.G.

7 - Ayush Kumar S/o Late Shukhlal Uraon (Minor) Aged About 7 Years Ayush Kuamr Minor Through Her Natural Guardian Mother Petitioner No. 8 Katrina R/o Village Chirga Police Station And Tehsil - Batauli District - Surguja C.G.

8 - Katrina W/o Late Shukhlal Uraon Aged About 30 Years R/o Village Chirga Police Station And Tehsil - Batauli District - Surguja C.G.

... Petitioner(s)

versus

1 - Mangru S/o Late Nadhiya Uraon Aged About 62 Years R/o Village Chirga Police Station And Tehsil - Batauli District Surguja C.G.

2 - Premchand S/o Late Nadhiya Uraon Aged About 60 Years R/o Village Chirga Police Station And Tehsil - Batauli District Surguja C.G.

3 - Jalim S/o Late Dasu Uraon Aged About 55 Years R/o Village Chirga Police Station And Tehsil - Batauli District Surguja C.G.

4 - Gahbar S/o Late Dasu Uraon Aged About 52 Years R/o Village Chirga Police Station And Tehsil - Batauli District Surguja C.G.

5 - Shrawan Kumar S/o Late Dasu Uraon Aged About 49 Years R/o Village Chirga Police Station And Tehsil - Batauli District Surguja C.G.

6 - Dinesh S/o Late Mangal Uraon Aged About 30 Years R/o Village Chirga Police Station And Tehsil - Batauli District Surguja C.G.

7 - Rijhni W/o Late Mangal Uraon Aged About 55 Years R/o Village Chirga Police Station And Tehsil - Batauli District Surguja C.G.

8 - Amosh S/o Late Satish Uraon (Minor) Aged About 6 Years Minor Through Their Mother Babi W/o Late Satish Uraon R/o Village Chirga Police Station And Tehsil - Batauli District Surguja C.G.

9 - Anmol S/o Late Satish Uraon (Minor) Aged About 4 Years Minor Through Their Mother Babi W/o Late Satish Uraon R/o Village Chirga Police Station And Tehsil - Batauli District Surguja C.G.

10 - Babi W/o Late Satish Uraon Aged About 29 Years R/o Village Chirga Police Station And Tehsil - Batauli District Surguja C.G.

11 - Baliram S/o Late Kehtu Uraon Aged About 60 Years R/o Village Chirga Police Station And Tehsil - Batauli District Surguja C.G.

12 - Balwant S/o Late Kehtu Uraon Aged About 51 Years R/o Village Chirga Police Station And Tehsil - Batauli District Surguja C.G.

13 - Sukhiya S/o Late Kehtu Uraon Aged About 56 Years R/o Village Chirga Police Station And Tehsil - Batauli District Surguja C.G.

14 - Sakal S/o Late Beersao Uraon Aged About 55 Years R/o Village Chirga Police Station And Tehsil - Batauli District Surguja C.G.

15 - Kendu S/o Late Beersao Uraon Aged About 55 Years R/o Village Chirga Police Station And Tehsil - Batauli District Surguja C.G.

16 - State Of Chhattisgarh Through Collector District - Surguja C.G.

... Respondent(s)

For Petitioner(s) : Mr. Aditya Kumar Mishra, Advocate

For Respondent No.16 : Ms. Isha Jajodia, P.L. for the State

(Hon'ble Shri Justice Ravindra Kumar Agrawal, J.)

Order on Board

15/10/2026

1. Heard.
2. Present is a writ petition under Article 227 of the Constitution of India filed by the petitioners against the impugned order dated 01.09.2026 passed by learned First Civil Judge, Junior Division, Sitapur, District Surguja in Civil Suit No.8A/2024, whereby the application filed by the plaintiffs under Section 151 of CPC has been allowed and permitted the plaintiffs to examine another witness, Bandhan Ram, in place of his cited witness, Ramsai.
3. Learned counsel for the petitioners would submit that the petitioners are defendants before the learned trial Court where the respondents No.1 to 15 are prosecuting a suit for declaration of title, partition and separate possession of the suit properties. During pendency of the suit, the plaintiffs have filed an application on 22.06.2026 under Section 151 of CPC stating that their cited witness, Ramsai, is suffering from paralysis and he is unable to walk and unable to speak anything, and therefore, in his place, the plaintiffs want to examine one Bandhan Ram and they may be permitted to produce him as a witness. He would further submit that the application was objected by the defendants on the ground that there is no sufficient cause shown by the plaintiffs for non-examination of the cited witness, Bandhan Ram was not the cited witness and he cannot be substituted in place of the cited witnesses, even if the cited witness Ramsai is suffering from paralysis, the defendants can take the commission for his examination and he may be examined by the Commissioner duly appointed by the Court as provided under Order 26 Rule 1 of CPC and further that where the

specific provision is there under Order 16 Rule 1 of CPC, the inherent jurisdiction under Section 151 of CPC cannot be invoked. He would further submit that the learned trial Court has considered the application filed by the petitioners by invoking the jurisdiction under Order 16 Rule 1 of CPC without considering the fact that there is no documents filed by the plaintiffs with respect to illness of their witness, Ramsai. Therefore, permitting the plaintiffs to examine Bandhan Ram is erroneous and the same is liable to be set aside. In support of his submission, he would rely upon the order passed by the Co-ordinate Bench of this Court dated 27.07.2016 passed in WP227 No.445/2016 (Jeevanlal & Ors V/s Smt. Devki Jaiswal & Ors.).

4. I have heard learned counsel for the petitioners and perused the documents annexed with the petition.
5. The petitioners' submission in the present case is that the learned trial Court cannot invoke the jurisdiction under Order 16 Rule 1 of CPC when the non-examination of the cited witness of the plaintiffs has not been explained duly supported by the documents. From perusal of the application (Annexure P-4) filed by the plaintiffs, it transpires that they have averred in their application that earlier the affidavit in the form of examination-in-chief of the witness Ramsai has been filed. However, at present, he is suffering from paralysis, and therefore, he is unable to walk and speak and in such circumstance, they want to get Bandhan Ram, son of Late Dhaniram, examined in support of their case.
6. Order 16 Rule 3 of CPC provided the following:

“3. Tender of expenses to witness.—The sum so paid into Court shall be tendered to the person summoned,

at the time of serving the summons, if it can be served personally.”

7. It is not in dispute that Ramsai, son of Maniram was the cited witness from the plaintiffs' side and Bandhan Ram is not the cited witness. Though the objection was raised by the defendants that no documents of his ailment has been filed by the plaintiffs in support of their submissions that Ramsai is actually suffering from paralysis, however, looking to the nature of his ailment and the averment made in the application that Ramsai is unable to walk and speak, the reasons assigned by the defendants in their application appears to be sufficient for its consideration by the learned trial Court while permitting the plaintiffs to examine another witness.
8. The submission of the learned counsel appearing for the petitioners that the plaintiffs may take commission for examination of their witness, Ramsai, and he may be examined through the commission but as has been averred in the application that Ramsai is unable to walk and speak anything, even if the commission would be issued, no purpose would be served as the plaintiffs have averred in their application that the witness Ramsai is unable to speak anything. Even if the learned trial Court permits the plaintiffs to examine their witness Bandhan Ram while invoking the jurisdiction under Order 16 Rule 1 of CPC, the defendants have every right to cross-examine the witness and no prejudice is appears to be caused to the defendants.
9. The further submission of the learned counsel appearing for the petitioners that the application has been filed under Section 151 of CPC and the jurisdiction under Order 16 Rule 1 of CPC cannot be invoked and is also misconceived in view of the judgment passed by

Hon'ble Supreme Court.

10. The Hon'ble Supreme Court in the matter of **P.k. Palanisamy v. N**

Arumugham and another (2009) 9 SCC 173 has held as under :-

"27. Section 148 of the Code is a general provision and Section 149 thereof is special. The first application should have been filed in terms of Section 149 of the Code. Once the court granted time for payment of deficit court fee within the period specified therefor, it would have been possible to extend the same by the court in exercise of its power under Section 148 of the Code. Only because a wrong provision was mentioned by the appellant, the same, in our opinion, by itself would not be a ground to hold that the application was not maintainable or that the order passed thereon would be a nullity. It is a well-settled principle of law that mentioning of a wrong provision or non-mentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor.

28. In Ram Sunder Ramv. Union of India (2007)13 SCC 255, it was held: (SCC pp. 260-61, para 19)

"19. ... It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act.

'9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law' (See N. Maniv. Sangeetha Theatre 2, SCC p. 280, para 9.)

Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the learned counsel for the appellant."

29. In N. Maniv. Sangeetha Theatre (2004) 12 SCC 278, it is stated: (SCC p. 280, para 9)

"9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

11. The Hon'ble Supreme Court in the matter of ***Pankajbhai Rameshbhai Zalavadiya v. Jethabhai Kalabhai Zalavadiya (Deceased) through legal representatives and others (2017) 9 SCC 700*** has held as under :-

"14. In Banwari Lalv. Balbir Singh (2016) 1 SCC 607, Defendant 1 (who was Respondent 1 in the first appeal), had expired 2 years prior to the decision in the first appeal, but no steps were taken to bring his legal representatives on record. The first appellate court decided in favour of the plaintiff. When the matter came up in second appeal, the legal representatives of Defendant 1 filed an application for condonation of delay and restoration. This Court though observed that the application ought to have been filed under Order 22 Rule 4 of the Code inasmuch as the death had occurred during the subsistence of the matter before the Court and the application under Order 1 Rule 10 of the Code was not maintainable, had proceeded to allow the application on the ground that it would be unjust to non-suit the applicant on the ground of technicalities. This Court permitted the legal representatives of Defendant 1 to convert the application into one filed under Order 22 Rule 4 of the Code.

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16. In the matter on hand, though the trial court had rightly dismissed the application under Order 22 Rule 4 of the Code as not maintainable at an earlier point of time, in our considered opinion, it needs to be mentioned that the trial court at that point of time itself could have treated the said application filed under Order 22 Rule 4 of the Code as one filed under Order 1 Rule 10 CPC, in order to do justice between the parties. Merely because of the non-mentioning of the correct provision as Order 1 Rule 10 of the Code at the initial stage by the advocate for the plaintiff, the parties should not be made to suffer. It is by now well settled that a mere wrong mention of the provision in the application would not prohibit a party to the litigation from getting justice. Ultimately, the courts are meant to do justice and not to decide the applications based on technicalities. The provision under Order 1 Rule

10 CPC speaks about judicial discretion of the Court to strike out or add parties at any stage of the suit. It can strike out any party who is improperly joined, it can add anyone as a plaintiff or defendant if it finds that such person is a necessary or proper party. The Court under Order 1 Rule 10(2) of the Code will of course act according to reason and fair play and not according to whims and caprice.”

12. Merely quoting an incorrect provision of law in an application does not disentitle a party from having its application considered on merits. The contents of the application, rather than the mere reference to a particular statutory provision, are relevant for determining its maintainability and consideration. Accordingly, the petitioners cannot claim any relief on this ground for setting aside the impugned order passed by the learned trial Court.
13. The judgment in *Jeevanlal* (supra) relied upon by learned counsel for the petitioners is distinguishable on facts, and therefore, does not extend any benefit to the petitioners. Accordingly, I do not find any perversity or jurisdictional error in the impugned order passed by the learned trial Court warranting interference by this Court.
14. Accordingly, the writ petition fails and is hereby **dismissed**.

Sd/-
(Ravindra Kumar Agrawal)
Judge