

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 6084 of 2008

- Jagdish Chand Pasharija S/o Lala Kashi Ram Pasharija aged 50 years,
Through J.K. Pape Converting Industries Yadav Complex Sharda Chowk
Banjari Road Raipur (CG)

**---- Petitioner
(Defendant)**

Versus

- Bal Ram Singh Yadav S/o Late Shri B.S. Yadav, R/o Yadav Complex
Banjari Road Raipur (CG)

**---- Respondent
(Plaintiff)**

For the Petitioner
For the Respondent

Mr. Y.C. Sharma, Advocate
Mr. B.P. Sharma, Advocate

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

21/07/2015

1. On 10.5.1999 one Mannilal Yadav in his capacity as the Karta/Manager of the joint Hindu family filed eviction suit against the defendant/petitioner seeking eviction of the defendant/petitioner-tenant from the joint Hindu family property i.e. Shop No.7 situate at Yadav Complex, Sharda Chowk, Banjari Road, Raipur *inter alia* on the ground that the same is required to fulfil bonafide need of his brother's son namely Omprakash, son of Shri Jhumuklal Yadav. During the pendency of civil suit, said Mannilal Yadav expired on 24.1.2008 and therefore on 7.2.2008 an application under Order 22 Rule 3 read with Rule 10 of the Code of Civil Procedure, 1908 (for short 'the Code') was filed by the respondent herein *inter alia* stating that the suit was originally filed by deceased plaintiff Manni Lal Yadav in his capacity as the Karta/Manager of joint Hindu family and after his death, now he has become Karta/Manager of the family, therefore, he be

substituted in place of deceased plaintiff.

2. On filing such application, the petitioner herein filed reply opposing the application mainly on the ground that as the suit was not filed by said Manni Lal Yadav in his capacity as Karta/Manager of the joint Hindu family, therefore the respondent cannot be substituted in place of said Manni Lal Yadav and the legal heirs of said Manni Lal Yadav can only be substituted.
3. The trial Court, after hearing the parties in the matter, vide order dated 25.4.2008 has allowed the application as filed by the respondent herein and directed for substitution of his name as the plaintiff in the said civil suit. It appears that thereafter the petitioner has filed an application under Order 7 Rule 11 r/w Section 151 of the Code before the trial Court praying that as the actual legal heirs of deceased plaintiff Manni Lal Yadav have not been brought on record, the suit is liable to be dismissed, however, the trial Court has dismissed said application vide order dated 2.9.2008.
4. In the present writ petition, the petitioner has assailed both the above orders passed by the trial Court.
5. Learned counsel for the petitioner submits that as the suit was not filed by said Manni Lal Yadav being the Karta/Manager of joint Hindu family, the respondent herein cannot be substituted in place of deceased plaintiff. He further submits that as the legal heirs i.e. widow & son, of deceased plaintiff are alive, they ought to have been brought on record as plaintiffs instead of respondent. He further submits that as the rent agreement was executed by deceased Manni Lal Yadav not only in his personal capacity but also as the power of attorney holder of Jhumuklal,

Balram Singh & Bhupendra Singh Yadav, therefore, it is apparent that the property in question was not of joint Hindu family but belongs to Manni Lal Yadav and others and as such, the respondent cannot be brought on record being the succeeding Karta/Manager of the joint Hindu family. The Court below ought to have conducted enquiry, as provided under Order 22 Rule 5 of the Code, before allowing the application filed under Order 22 Rule 3 of the Code.

6. On the other hand, supporting the impugned orders learned counsel for the respondent has submitted that eviction suit is pending since 10.5.1999 and unfortunately, on account of one technicality or other, the same could not be decided. In the plaint it has been specifically mentioned by the deceased plaintiff that the suit is being filed by him in his capacity as Karta of the joint Hindu family and therefore after the death of original plaintiff, the succeeding Karta can be brought on record and he can pursue the suit. The position of the petitioner is clear that he is tenant of the shop in question and he cannot object whether the suit is being prosecuted by succeeding Karta or legal heirs of original plaintiff, especially when the legal heirs of original plaintiff have not filed any objection for continuation of suit. In the reply to the application filed by the respondent it has not been submitted by the petitioner that apart from the respondent, there are other persons also who should be brought as legal heirs. Reliance is placed in the matters of **Gujarat State Transport Corporation etc. vs. Valji Mulji Soneji & others etc.** reported in (1979) **3 SCC 202** and **Mukundilal & others vs. State Bank of India** reported in **1972 MPLJ 1048**.
7. So far as the order dated 25.4.2008 by which application filed by the respondent under Order 22 Rule 3 of the Code has been allowed is

concerned, in the plaint itself it has been specifically pleaded by the deceased plaintiff that the suit is being filed by him in his capacity as Karta/Manager of the joint Hindu family and therefore after the death of original plaintiff i.e. former Karta/Manager of joint Hindu family, an application was filed by the succeeding Karta/Manager i.e. respondent herein, seeking his substitution in place of deceased plaintiff to proceed with the suit and except the petitioner, no one from the family of the respondent or deceased plaintiff has objected for substitution of respondent in place of the plaintiff. It is settled position also that in case of death of a party to a proceeding who is joined in his capacity as karta of an undivided Hindu family, if the undivided Hindu family continues to be in existence the succeeding karta can be substituted for the deceased karta of the family and that would be sufficient compliance with order Order 22. [Kindly see Gujarat State Transport Corporation (supra)]

Furthermore, in the light of law propounded in the above cited judgements, after filing of application to bring the person on record on whom the interest devolved pending the suit i.e. the respondent herein being succeeding Karta of the joint Hindu family, there was no need for the Court below to conduct any enquiry as provided under Order 22 Rule 5 of the Code. The status of petitioner is apparent that he is tenant in the shop in question and therefore he should pursue his case on the basis of defence available to him under the provisions of the Chhattisgarh Accommodation Control Act, 1961 and his objection to the application as filed by the respondent under Order 22 Rule 3 of the Code is frivolous. The Court below was justified in allowing the application as filed by the respondent and I find no illegality or infirmity in the said order warranting interference from this Court in exercise of writ jurisdiction.

8. As regards the order dated 2.9.2008 by which the petitioner's application filed under Order 7 Rule 11 of CPC has been dismissed, I am of the view that the Court below was right in rejecting this application because it is settled position that where a suit is brought by the manager/karta of a joint Hindu family in his representative capacity, the other members of family are not necessary parties to the suit, and that the suit will not fail by reason of the non-joinder of those members. It is also settled that if an issue is decided against any party at an earlier stage of litigation, the Court will not allow him to re-agitate the same issue again at a subsequent stage of same proceedings in view of the principles of constructive res judicata.
9. In the result, this Court does not find any reason to interfere with the impugned orders and accordingly the petition is dismissed with cost of Rs.10,000/- (Rupees Ten Thousand) payable by the petitioner to the respondent before the trial Court on the next date of hearing
10. As the civil suit is pending since 1999, therefore the trial Court concerned is directed to conclude the proceedings as expeditiously as possible, preferably within a period of six months from the date of receipt or production of copy of this order. The Registrar (Judicial) is also directed to forward a copy of this order to the trial Court and also to the concerned District Judge.

Sd/-
(Pritinker Diwaker)
Judge