

Shirley North

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR
WRIT PETITION (Art.227) NO. 160 OF 2014

WRIT PETITION (Art.227) NO. 160 OF 2014

C-101

PETITIONERS

1. Shivprasad S/o. Late Atrilal, aged about 42 years,
2. Jawahir, S/o. Late Atrilal, aged about 40 years,

Both are Legal Heirs of late Atrilal (non-applicant No.2 in the succession proceeding), R/o. Village Palthajam, Post West Chirmiri (Podi), Tahsil Baikunthpur, P.S. Chirmiri, District Koriya, Civil and Revenue District Koriya (CG)

P.R.No.

Presented by Shri

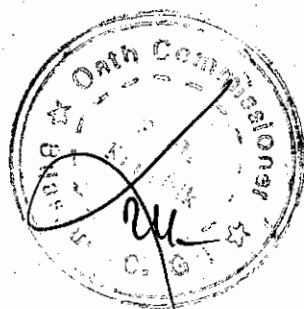
dated

WIP(227) 160/14
by Shri S. B. D. S. 26/3/14

Versus

RESPONDENTS
APPLICANT

1. Ramkishun S/o. late Babulal, aged about 38 years, By Caste Gond, R/o. Village Madanpur, Tahsil and Police Station Baikunthpur, District Koriya, Civil and Revenue District Koriya (CG)
2. Branch Manager, Central Bank of India, Branch West Chirmiri (Podi), Tahsil Baikunthpur, Police Station Chirmiri, District Koriya, Civil and Revenue District Koriya (CG)
3. Bineshwar S/o. Late Babulal, aged about 37 years, By Caste Gond, R/o. Village Jhapar, Police Station Biharpur, Tahsil Wadraf Nagar, District Surajpur, Revenue District Surajpur and Civil District Surguja (CG)
4. Rameshwar S/o. Late Babulal, aged about 33 years, By Caste Gond, R/o. Village Jhapar, Police Station



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Biharpur, Tahsil Wadrafnagar,
District Surajpur, Revenue District
Surajpur and Civil District Surguja
(CG)

5. Public at large

6. Sub Post Master, Sub Post Office,
West Chirmiri Colliery, Police
Station Podi, Tahsil Baikunthpur,
District Koriya, Civil and Revenue
District Koriya (CG)

WRIT PETITION UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA



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HIGH COURT OF CHHATTISGARH AT BILASPUR

WP(227) No.160 of 2014

PETITIONERS

Shivprasad & another

-Versus-

RESPONDENTS:

Ramkishun & others

Present

Smt. Indira Tripathi, counsel for the petitioners.

Shri Shivendu Pandya, counsel for respondents No.1, 3 and 4.

Single Bench: Hon'ble Shri Prashant Kumar Mishra, J.

ORAL ORDER

(10-2-2015)

1. In this petition under Article 227 of the Constitution of India, the petitioners have assailed the legality and validity of the order dated 15.10.2012 passed by the Civil Judge, Class-1, Baikunthpur, District Koriya. By the said order, the petitioners' application for impleadment as legal heirs of deceased Atrilal has been rejected.
2. Respondent Ramkisun has preferred an application under Section 372 of the Indian Succession Act for grant of succession certificate claiming to be the legal heirs of deceased Bhaiyalal, son of Jansai, who was working in the West Chirmiri Colliery, Podi. In the said succession application, the petitioners had earlier moved an application for their impleadment on the ground that they are the adopted son of deceased Bhaiyalal. However, the said application was dismissed by the trial Court on 14.11.2011 for the reason that the petitioners failed to prove that they are the adopted son of Bhaiyalal. Subsequently, when the non-applicant No.2 Atrilal, natural father of the petitioners, died during the pendency of the claim application, the present application under Order 1 Rule 10 of the CPC was filed, which has now been rejected by the impugned order.
3. Learned counsel for the petitioners would submit that the petitioners are the sons of Atrilal and the said Atrilal already being a party, having been impleaded in the original claim application filed by respondent No.1 himself, their prayer could not have been rejected.
4. Learned counsel for respondents No.1, 3 and 4 would submit that the

petitioners had preferred an application for impleadment on the ground that they are the adopted son of Bhaiyalal, therefore, the present application making inconsistent plea has rightly been rejected.

5. When the earlier application filed by the petitioners was rejected on 14.11.2011, the trial Court was of the opinion that the petitioners have not submitted any documentary proof to substantiate that they are the adopted son of Bhaiyalal. However, it is not in dispute that the petitioners are the sons of Atrilal. In the succession application (Annexure-P/2) preferred by respondent No.1, Atrilal has been joined as non-applicant No.2. Thus, the petitioners are legal heirs of Atrilal. Merely because at an earlier point of time they had moved an application for impleadment on the ground that they are the adopted son of Bhaiyalal and the same having been rejected, they are not estopped from claiming impleadment as legal heirs of one of the party, who was already arrayed in the succession application. The petitioners cannot be refused to be impleaded for 2 different reasons in the two different applications.
6. At this stage, learned counsel for respondents No.1, 3 & 4 would submit that the writ petition suffers from delay and laches because the impugned order has been assailed after 13 months.
7. In cases where an interim order passed during the pendency of the proceeding is assailed in a petition under Article 227 of the Constitution and any other right pursuant to the impugned order has not been created in favour of other party and they are not going to be prejudiced, delay should not defeat the ends of justice. It is not a case where this Court is hearing a petition like consideration for grant of temporary injunction or any other order of like nature wherein after passing of the impugned order by the trial Court, the parties have improved their position and any interference at the subsequent stage after lapse of time would prejudice the opposite party.
8. In the opinion of this Court, the writ petition does not suffer from delay and laches and further that impleadment as legal heirs of one of the party would not decide the dispute finally, therefore, respondent No.1 would not be prejudiced if the petitioners are allowed to appear and participate in the succession application.
9. For the foregoing, if the impugned order is allowed to remain intact, it would



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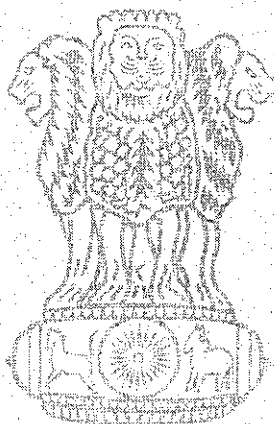
cause irreparable loss to the petitioners and would occasion failure of justice, therefore, the impugned order is set aside.

10. The writ petition is accordingly allowed.

Barve

Sd/-
Prashant Kumar Mishra
Judge

CHHATTISGARH HIGH COURT



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