NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 247 of 2015

Vijay Kumar Gupta S/o Kedarnath Gupta Aged About 56 Years R/o Ambikapur Tahsil , Ambikapur, District Surguja Chhattisgarh

---- Petitioner

Versus

Shyam Kumar S/o Mohan Prasad Gupta Aged About 63 Years Occupation Shopkeeping R/o Deviganj Road, Opposite Ram Kuti Ambikapur, District Sarguja Chhattisgarh

---- Respondent

Shri Sanjay Shyam Agrawal, counsel for the petitioner/s.
Shri Rahul Mishra, counsel for the respondent.

Order On Board

11/09/2015

The matter is heard finally.

This petition, under Article 227 of the Constitution of India, is preferred against impugned order dated 19/12/14 by which, the Court below has allowed application under Order 22 Rule 3 CPC filed by the respondent.

2. Sole and short submission of learned counsel for the petitioner is that the order impugned is clearly in the teeth of the order passed in Second Appeal by this Court. It is submitted that in the Second Appeal arising out of the present suit, an issue had arisen for consideration as to whether application under Order 22 Rule 3 CPC could be allowed without allowing the parties to lead evidence with regard to proof of Will dated 13/11/97 on the basis of which, substitution was sought. In Second Appeal, this Court clearly held that the Will is required to be proved for which, evidence is required to be led by the parties, therefore, case was remanded to the Trial Court for providing opportunity of hearing to both the parties for substantiating their claims on the basis of Will by proving due and lawful execution of alleged Will.

3. Learned counsel for the petitioner submits that the Court below has committed the same illegality by allowing the application under Order 22 Rule 3 CPC without allowing the parties to lead evidence.

4. On the other hand, learned counsel for the respondents submits that the Court below has not decided any issue. After allowing the application under Order 22 Rule 3 CPC, all the issues will be decided by the Trial Court after allowing the parties to lead evidence.

5. On the face of it, the order passed by the Trial Court is contrary to the verdict of the order of this Court passed in Second Appeal No.1073/2000 decided on 29/0814. The issue whether the application under Order 22 Rule 3 CPC could be decided without allowing the parties to lead evidence to prove the Will dated 13/11/97 was also considered. The order of this Court in unequivocal and clear terms directs holding enquiry even for the purposes of considering whether the application under Order 22 Rule 3 CPC is to be allowed or rejected. At this stage, the Trial Court was obliged to afford the parties opportunity to lead evidence by framing an issue in this regard and then pass appropriate order on application under Order 22 Rule 3 CPC. Learned Trial Court appears to have completely misguided itself. The impugned order cannot be sustained and is set aside. The Trial Court shall allow both the parties to lead evidence and then decide application under Order 22 Rule 3 CPC on its own merits.

6. The petition is accordingly allowed.

Sd/-

Manindra Mohan Shrivastava
Judge

Deepti