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Single Bench

IN THE HON'BLE HIGH COURT OF CHHATTISGARH
AT BILASPUR

W.P.(227) NO. 311 /2014

PETITIONER
Defendant No.1

: Thaneshwari, W/o. late Amarnath,
aged about 53 years, R/o. Rojgaripara,
Kondagaon, Police Station and Post
Kondagaon, Civil and Revenue District
Bastar (C.G.)

VERSUS

RESPONDENTS
Plaintiffs

- 1] Sumitra Bai, Wd/o. late Padumnath,
aged about 65 years,
- 2] Gayendra Pujari, S/o. late
Padumnath Pujari, aged about 45
years,
- 3] Surendra Pujari, S/o. late Padumnath
Pujari, aged about 43 years,

All above R/o. village Hirri, Police
Station, Post and Tahsil Farasgaon,
Civil and Revenue District Bastar
(C.G.)

- 4] State of Chhattisgarh, through:
Collector, Bastar, District Bastar, at
Jagdarpur (C.G.)



WRIT PETITION UNDER ARTICLE 227 OF THE
CONSTITUTION OF INDIA

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 8/8/15

HIGH COURT OF CHHATTISGARH: BILASPUR

WP(227) No.311 of 2014

PETITIONER:

Thaneshwari

-Versus-

RESPONDENTS:

Sumitra Bai & others

AND

WP(227) No.430 of 2014

PETITIONER:

Thaneshwari

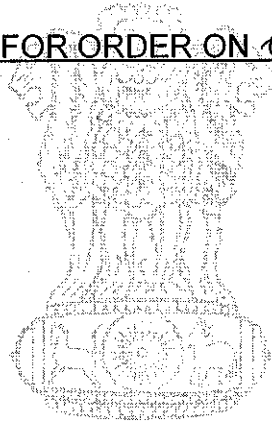
-Versus-

RESPONDENTS:

Sumitra Bai & others

POST FOR ORDER ON 07th APRIL, 2015

Sd/-
Prashant Kumar Mishra
Judge



सत्यमेव जयते

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 311 of 2014**

- Thaneshwari W/o late Amarnath aged about 53 years, R/o Rojgaripara, Kondagaon, Police Station and Post Kondagaon, Civil and Revenue District Bastar (C.G.)

---- Petitioner

Versus

1. Sumitra Bai, Wd/o late Padumnath aged about 65 years
2. Gayendra Pujari, S/o late Padumnath Pujari, aged about 45 years
3. Surendra Pujari, S/o late Padumnath Pujari, aged about 43 years

All above R/o village Hirri, Police Station, Post and Tahsil Farasgaon, Civil and Revenue District Bastar (CG)

4. State of Chhattisgarh, through Collector, Bastar, District Bastar at Jagdalpur (CG)

---- Respondents

And**WP227 No. 430 of 2014**

सत्यमेव जयते

- Thaneshwari W/o late Amarnath, aged about 53 years, R/o Rojgaripara, Kondagaon, Police Station and Post Kondagaon, Civil & Revenue District Bastar, C.G.

---- Petitioner

Vs

1. Sumitra Bai, Wd/o late Padumnath, aged about 65 years
2. Gayendra Pujari S/o late Padumnath, aged about 45 years
3. Surendra Pujari S/o late Padumnath, aged about 43 years

All above R/o Village Hirri, P.S. Post & Tahsil Farangaon, Civil & Revenue District Bastar, CG

4. State of Chhattisgarh through Collector, Bastar, District Bastar at Jagdalpur, C.G.

---- Respondents

For Petitioner : Shri Manoj Paranjpe, Advocate.
For Respondents 1 to 3 : Shri Vishnu Koshta, Advocate.
For the Respondent/State: Shri Ashutosh Pandey, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

Delivered on: 07/04/2015

1. These two petitions under Article 227 of the Constitution have been preferred by defendant No.1 challenging the orders passed by the trial Court on 1.4.2014 allowing the plaintiffs' application under Order 1 Rule 10 CPC and Order 6 Rule 17 of the CPC.
2. The plaintiffs have preferred a suit on 5.1.2011 for declaration, permanent injunction and for cancellation of order of mutation dated 6.12.2010 passed by the Tehsildar, Farasgaon. According to the plaintiffs, the suit property is self acquired property of late Padumnath Pujari, husband/father of the plaintiffs respectively. सत्यमेव जयते The husband of defendant No.1/petitioner got recorded his name in the revenue record pertaining to the suit land behind the back of Padumnath, although Padumnath remained in possession and the husband of respondent No.1 was residing at a far away place at Kondagaon, as he was employed as teacher. After the death of her husband, defendant No.1 got recorded her name. In the written statement filed by defendant No.1 on 12.5.2011, it was stated that after the death of her husband, the names of her daughters, Hemlata, Pushpalata, Omlata and Yamini have already been recorded and they are necessary party to the suit, therefore, the suit suffers from non-joinder of necessary parties.
3. The trial proceeded and after framing of issues in August, 2011, the plaintiffs



field affidavits of their witnesses under Order 18 Rule 4 CPC on 11.10.2011 and the plaintiffs' evidence was closed on 17.12.2010. The plaintiffs thereafter moved the subject applications on 19.2.2014 seeking to implead the said necessary parties as defendants and to seek relief that mutation in favour of newly added defendants is illegal and void.

4. While allowing the applications, the trial Court has observed that as per the documents filed by the plaintiffs, resolution of Gram Panchayat for mutation of the name of legal heirs of Amarnath only mentioned the name of defendant No.1 Thaneshwari and not of his daughters, therefore, the plaintiffs have impleaded defendant No.1 only and not the daughters of deceased Amarnath. Therefore, prayer for impleadment and amendment is bona fide. It has also observed that prayer made in the applications does not change the nature of the suit, therefore, the same deserves to be allowed. However, because of delay in filing the applications, the plaintiffs would be liable to pay cost of Rs.2,000/- to the defendants.

5. Shri Paranjpe, learned counsel for the petitioner has referred to the judgments in the cases of **Vidyabai and others Vs. Padmalatha and another**¹, **Abdul Rehman & Another Vs. Mohd. Ruldu & others**² and **Ramprasad Dagaduram Vs. Vijaykumar Motilal Hirakhanwala and others**³ to argue that in view of the proviso to Rule 17 of Order 6 CPC, amendment cannot be allowed because there is no averment in the amendment application regarding due diligence and that the suit against newly added defendants would be treated to be instituted on the date when the application was made and on such date, the suit against them would be barred by limitation, therefore, they cannot be impleaded as party.

1 (2009) 2 SCC 409
2 (2012) 11 SCC 341
3 AIR 1967 SC 278

6. Per contra, Shri Koshta, learned counsel for the respondents would submit that the petitioner/defendant is not prejudiced by the subject amendment and impleadment and that for the delay caused in making application, the trial Court has already compensated the petitioner.
7. True it is that in the application filed by the plaintiffs under Order 6 Rule 17 CPC, there is no averment that despite due diligence the plaintiffs could not have moved the subject application for amendment, but once amendment application having been allowed, this Court is also required to evaluate the reasons assigned by the trial Court while allowing the application. The trial Court has found that under the relevant rules for mutation, defendant No.1 moved an application for mutation before the concerned Panchayat, the Panchayat passed the resolution for mutation of the name of defendant No.1 only, therefore, non-impleadment of the newly added defendants or not seeking any relief against them on account of their non-impleadment is bonafide. Nothing has been placed before this Court to contradict the said reasoning of the trial Court. It is also to be seen that the source of title of the original defendant and the newly added defendants is the same. Therefore, the petitioner would not be prejudiced in trial. Moreover, these petitions are not preferred by the newly added defendants challenging their impleadment.
8. In **Ramprasad Dagaduram** (Supra), the Supreme Court was dealing with a case where new plaintiff was added and in that context, the Supreme Court held that since the suit was filed in the name of wrong-plaintiff, the suit shall be deemed to have been instituted by the new plaintiff on the date when he was impleaded. Thus, the facts are entirely different.
9. Present is a case where the new defendants have been added and the



source of title of new defendants and the original defendant is the same. The question as to whether the suit against them would be barred by limitation can be determined by the trial Court as and when the said defendants submit their written statement and raise such objection. It is trite that while allowing the amendment, the Courts should be liberal. Multiplicity of litigations should be avoided and efforts should always be made to shorten the litigation between the parties or amongst the persons who are interested or represent estate on behalf of any of the parties to the suit.

10. In **Subodh Kumar Gupta and others Vs. Alpana Gupta and others**⁴ it has been held thus:-

"3. Having heard the learned counsel for the parties, we are satisfied that the order passed by the High Court cannot be sustained. The trial court had exercised its discretion and assigned reasons for permitting impleadment. In exercise of limited jurisdiction conferred by Article 227, the High Court should not have interfered with the discretion exercised by the trial court. Even otherwise, having heard the learned counsel for the parties, we are satisfied that the impleadment of wife, daughters and HUF of Subodh Kumar Gupta is justified on the facts and in the circumstances of the case."

11. For the foregoing as also keeping in view the limited scope of interference in a petition under Article 227 of the Constitution, as reiterated by the Supreme Court in **Surya Dev Rai Vs. Ram Chander Rai**⁵, **Shalini Shyam Shetty Vs. Rajendra Shankar Patil**⁶, & **Sameer Suresh Gupta through PA Holder Vs. Rahul Kumar Agarwal**⁷, both the writ petitions are dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Barve

4 (2005) 11 SCC 578

5 (2003) 6 SCC 675

6 (2010) 8 SCC 329

7 (2013) 9 SCC 374