

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 378 of 2015**

1. Smt. Karan @ Kiran Komre W/o Late Ramesh Kumar Komre, aged about 34 years, Caste Gond R/o Shanti Nagar, Tahsil Thana District Narayanpur Chhattisgarh
2. Ku. Dolly Komre D/o Late Ramesh Kumar Komre, aged about 6 years, Minor through Mother Smt. Karan @ Kiran Komre, Caste Gond, R/o Shanti Nagar, Tahsil Thana District Narayanpur Chhattisgarh
3. Vickey Komre S/o Late Ramesh Kumar Komre, aged about 3 years, Minor through Mother Smt. Karan @ Kiran Komre, Caste Gond, R/o Shanti Nagar, Tahsil Thana District Narayanpur Chhattisgarh
4. Ashok Kumar Komre S/o Sukhlal Komre, aged 35 years, Caste Gond, R/o Village Ghotiya Tahsil Manpur, District Rajnandgaon Chhattisgarh

---- Petitioners**Versus**

1. Smt. Sudhanbai @ Sumanbai W/o Late Shyamlal Sori, By Caste Gond, R/o Sanjaypara Tahsil and Thana Bhanupratappur, Distt. Uttar Baster Kanker Chhattisgarh
2. The Collector, Uttar Baster Kanker, Chhattisgarh
3. The Conservator of Forest Kanker Circle, Distt. Uttar Baster Kanker Chhattisgarh
4. The Divisional Forest Officer, Bhanupratappur Forest Division, Distt. Uttar Baster Kanker Chhattisgarh
5. General Public

---- Respondents

For Petitioners – Shri Parag Kotecha, Advocate.
 For Respondent No.1 – Shri P.K.Patel, Advocate.
 For Respondents 2, 3 and 4 – Shri Lav Sharma, Panel Lawyer.
 For Respondent No.5 – None, notice dispensed with.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****08/12/2015**

1. By this order WP(227) filed on behalf of the petitioners against the order passed in Succession Case No.7/14 (Karan Komare Vs Smt. Sudhanbai @ Sumanbai and Others) vide order dated 13-03-2015 whereby and whereunder applications filed on behalf of the applicants/petitioners under Order 17 Rule 1, under Order 1 Rule 10 and under Order 6 Rule 17 of the Code of Civil Procedure, 1908 (in brevity 'the Code') have been rejected by the Civil Judge Class-I Bhanupratappur, C.G. is being disposed of.

2. Reply on behalf of respondents 2 to 4 has been filed in the petition. By other respondents no reply has been filed.
3. Heard learned counsel for the parties and perused the record.
4. Learned counsel for the petitioners would submit that though there was delay in filing the application regarding impleadment of other LR's., but that was due to lapses of the facts, for the same it is submitted that succession proceeding is of summary nature, therefore it would be appropriate to decide the matter having all the necessary parties impleaded, given them opportunity to be heard. The trial Court committed error while rejecting all the three applications. The delay itself is not a core issue for rejecting all the three applications on their merits. Hence, it is prayed that the petition may be allowed and the applications as filed by the applicants/petitioners may be allowed and the matter, after affording opportunity after impleadment of the LR's., be heard and disposed of on its merit in toto.
5. It is submitted on behalf of respondent No.1 that as all these three applications were filed after about three years, looking to the inordinate delay, the trial Court not committed any illegality or impropriety for rejecting the same, hence, the petition may be dismissed.
6. On behalf of respondents 2 to 4, the petition is opposed and it is submitted that on the basis of the grounds taken in the reply filed in this behalf by respondents 2 to 4, the petition may be dismissed.
7. For the purposes of appreciation of the arguments advanced on behalf of the parties, I have perused the material annexed along with the petition and the reply.
8. As per settled law, scope of succession Court is limited and is of summary nature in comparison to the authority and jurisdiction of the Civil Court. As per settled law, all the necessary parties must and should be impleaded in dispute so as to dispose of the matter properly; also this is well

settled that merely delay in filing the applications may not be held as core issue to reject the said applications. For sake of argument, if other LR's. are not impleaded as party, it would create complexity and further litigation, to avoid this, it would be better to hear all the necessary parties in the present litigation so as to enable them to defend and after due opportunity Court may be in a position to adjudicate the matter effectively.

9. On due consideration, though there was delay in filing all these three applications, but in the larger interest of justice, in the considered view of this Court and also with fact remains that even without affidavit in support of the application, the Court below not considered this fact and the matter remains pending for about 3 years even when the affidavit is not filed by the applicant/petitioners, it shows the absence of due procedural caution in the matter by the Court below.

10. To conclude, I am inclined to grant an opportunity to the applicants/petitioners. Consequently, the order passed by the Court below on 13-03-2015 requires interference and therefore the same is hereby set aside. The applications filed by the applicants/petitioners under Order 17 Rule 1, under Order 1 Rule 10 and under Order 6 Rule 17 of the Code are hereby allowed. The Court below is directed that after incorporation of the LR's., amendment in the petition, the present non-applicants and the other proposed LR's. be given opportunity to amend their pleadings/file their written statement, if any and after affording opportunity to all the parties to adduce evidence, proceed further as per law. The petition thereby allowed.

11. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE