

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 804 of 2015

1. Dr. R. Shashi Kumar S/o Shri Raghwan Achari, Aged About 40 Years R/o Quarter No. 1 A, Street No.2, Sector-10, Bhilai, District Durg, (Chhattisgarh).....(Defendant No.2)
2. Dr. (Smt.) Aabha Shashi Kumar, W/o Dr. R. Shashi Kumar Achari, Aged About 37 Years R/o Quarter No. 1 A, Street No.2, Sector 10, Bhilai, District Durg, (Chhattisgarh).....(Defendant No.3)

---- Petitioners

Versus

1. Smt. Mamta D/o Shri Rajeshwar Pandey, & W/o Shri Arun Kumar Alias Raju Paadhi, Aged About 30 Years, Caste- Brahman, R/o Chikhlakmari, Development Block, Bakawand, Tahsil & District Bastar At Jagdalpur, (Chhattisgarh).....(Plaintiff)
2. Arun Kumar Alias Raju Paadhi, S/o Gadadhar Paadhi, Aged About 34 Years R/o Village Aasna, Jagdalpur, District Bastar, (Chhattisgarh).....(Defendant No.1)
3. Mukesh Sharma, Prescription Form Writer, Dr. Smt. Lagoo Nursing Home, Near Anupama Talkies, Jagdalpur, Distt. Bastar, (Chhattisgarh).....(Defendant No.4)
4. Dr. (Smt.) Prabha Chouhan, R/o Near Jain Temple, Thakur Road, Jagdalpur, Distt. Bastar, (Chhattisgarh).....(Defendant No.5)
5. Shailendra Chouhan, Advocate, R/o Near Jain Temple, Thakur Road, Jagdalpur, Distt. Bastar, Presently Civil Judge Class-2, Raigarh, (Chhattisgarh).....(Defendant No.6)
6. State Of Chhattisgarh, Through The Collector, District Bastar, (Chhattisgarh)..... (Defendant No.7)

---- Respondents

For Petitioners.
For Respondent/State.

: Shri B. P. Sharma, Advocate.
: Ms. Sunita jain, Panel Lawyer.

Order On Board

29/09/2015

Heard.

1. This petition is directed against the order dated 03.09.2015 by which the petitioner's application under Section 151 CPC has been rejected by the Trial Court and the trial has proceeded in the matter.

2. Learned counsel for the petitioner submits that as the order of the trial Court directing return of plaint was acquiesced in by the plaintiff by taking back the plaint, therefore, the trial Court could not have proceeded further in the matter and therefore, the suit itself is without jurisdiction and trial vitiated.

3. The order directing return of the plaint passed by the trial Court on 03.10.2008 was assailed in appeal which was finally decided on 20.10.2010 by remanding the matter. This order of remand was challenged by the petitioner before this Court by filing a petition under Article 227 of the Constitution of India registered as WP(227) no. 7565/2010. That petition was disposed of vide order dated 27.01.2011 by this Court with the following direction:

“The preliminary issues shall be tried along with other issues as they are mixed question of law and fact and that the Trial Court, while delivering the judgment shall decide these issues first in point of time before proceeding to discuss and decide the other issue because if ultimately it is found that the suit is not within the jurisdiction of Civil Judge Class-II, the finding on other issues would be redundant.”

Grounds which are now being raised before this Court, were available for being raised in the earlier round of petition as one of the grounds to assail the order of remand by the lower appellate Court.

4. The submission of learned counsel for the petitioner is that at that point of time, when the petition was filed before this Court and disposed of, the fact that the plaintiff had taken back the plaint, as reflected from order dated 31.10.2008, was not within the knowledge of the petitioner.

4. The aforesaid grounds, if I may say so is not available in the subsequent petition. The order passed by this Court in a petition under Article 227 of the Constitution of India having attained finality in the matter of directing return of plaint by the trial Court and grounds was raised having not been raised in that petition, can not be allowed in the garb of subsequent application under Section 151 of CPC. Therefore, this petition is not maintainable and dismissed.

Sd/-

Manindra Mohan Shrivastava

Judge

amita