

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 133 of 2016

1. Nimesh Chandra Shukla S/o Late Brijmohan Shukla, aged about 49 years, R/o Bramhapara, Ambikapur, P.S. & Post Ambikapur, Civil & Revenue District Surguja Chhattisgarh(Plaintiff)

---- Petitioner

Versus

1. Chadravati Devi W/o Vidya Prasad Tiwari, aged about 45 years, R/o Sattipara, Ambikapur, P.S. & P.O. Ambikapur, Civil & Revenue District Surguja Chhattisgarh (Defendant)

---- Respondent

For Petitioner – Ms. Priyanka Mehta, Advocate.
For Respondent – Mr. Rahul Mishra, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

12/04/2016

1. Heard on I.A.No.2/2016 for taking document on record.
2. On due consideration, the same is allowed and the document annexed along with the interim application is taken on record if otherwise admissible in the matter.
3. With the consent of the parties, the matter heard finally at the motion stage itself.
4. Facts in brief required for adjudication of the instant WP(227) are that Civil Suit No.38A/11 (Nimesh Chandra Shukla Vs. Chandravati Devi) is pending before the Court below. The matter was fixed for evidence on preliminary issues and also on the application under Section 14 of the Limitation Act, 1963 (in brevity 'the Act, 1963). The plaintiff/petitioner had filed an application to frame the issues and prayed that the preliminary issues were framed on application under Section 14 of the Act, 1963 and as they are required to record evidence, with this, they lose the status of preliminary issues, and till date the trial Court had not framed issues on the basis of the

entire pleadings of the parties, hence, it was prayed that the issues be framed on the basis of the entire pleadings submitted in the matter and to proceed further. The Court below vide order dated 23-01-2016 held that as the matter was pending for the evidence on preliminary issues and also evidence on the application under Section 14 of the Act, 1963, the application dated 11-05-2015 is filed belatedly and the same is not worth for consideration thereby rejected the said application. Against the said order the petitioner had filed the instant WP(227) invoking the jurisdiction of this Court under Article 227 of the Constitution of India and prayed that the trial Court be directed to frame issues on the basis of the entire pleadings in the matter and to proceed further.

5. On behalf of the respondent, the instant WP(227) is opposed.

6. Heard learned counsel for the petitioner and also the respondent in the matter. They supported their stand as above.

7. On perusal of the entire material, order sheet annexed along with the instant WP(227), as per settled law, whenever recording of evidence requires for adjudication of any issue, the same loses the status as preliminary issue. Preliminary issues are the issues who can only be disposed of after hearing arguments as they belong to question of law. If any issue belongs to mixed question of facts and law and it requires evidence, then the said issue cannot be termed as preliminary issue. The Court below arbitrarily without following procedural law passed the impugned order dated 23-01-2016. It is required from the trial Court to frame issues on the basis of the entire pleadings available in the said civil suit and then to appreciate which issue could be disposed of only after hearing arguments of the parties, if any such issue can be disposed of only after hearing of the arguments of the parties, the said issue be disposed of as preliminary issue. Other issue which requires recording of evidence is not a preliminary issue, and then as per procedural law the trial Court has to record evidence on all those issues which require evidence of the

parties and then to dispose of the same vide pronouncement of judgment and decree in the matter.

8. In the instant case, the matter is listed for the evidence on preliminary issues and also on application under Section 14 of the Act, 1963 and thereafter the court will formulate all other issues on the basis of the entire pleadings available. The said procedure is not permissible which is illegal and incorrect on the face of the record and the same requires interference of this Court.

9. Consequently, the order dated 23-01-2016 rejecting the interim application dated 11-05-2015 is hereby quashed. The Court below is directed to frame issues as required under the procedural law of Order 14 of the CPC and thereafter further directed to decide which issue can be disposed of only after hearing arguments as they belong to issue of law, if any such issue can be disposed of by hearing arguments of the parties, then only the trial Court is directed to dispose of those issues as preliminary issues and all other issues which require recording of evidence as they are mixed question of facts and law, the trial Court shall dispose of the same after recording evidence as per provision of law.

10. With these observations, the instant WP(227) is disposed of and allowed.

11. The parties may file copy of this order before the trial Court for compliance.

12. Registrar (Judicial) is also directed to send copy of the order to the trial Court through usual mode and fax mode immediately for compliance.

13. The petition disposed of.

14. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE