

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.122 of 2014

Smt. Sushila Bai, Wd./o late Paras Ram Sahu, D/o late Paltu Ram, aged about 68 years, presently residing at Mairri Vila House No. Q-17, behind Chhattisgarh Angan, Adarsh Nagar, Durg, District Durg (though in the impugned order mentioned as "Amit Kirana Stores Borsi Raod, Vidyut Nagar, Durg, Tahsil & P.S. Durg, District Durg (CG).

---- Applicant

Versus

1. Smt. Meera Devi, Wd/o late Shyamsundar, Granddaughter-in-law of late Paltu Das, aged about 58 years, Occupation Housewife.
 2. Anand Sahu, S/o late Shyamsundar, aged about 37 years, Occupation Businessman;
- Both are residence of Chetan Chowk Pendra, Tahsil Pendra, District Bilaspur (CG).
3. Jaishree, D/o late Shyamsundar, aged about 41 years, Occupation Housewife, W/o Sonu Sahu, Nehru Nagar, Bilaspur, R/o C/o. S.R. Sahu, Geetanjali Construction Company, Bilaspur, Tahsil & District Bilaspur (CG).
 4. Jyoti, Wd/o late Shyamsundar, aged about 39 years, C/o Behind Panchsheel Club, near Shiv Mandir, Ward No.19 Mahasamund, Tahsil & District Mahasamund-493 445.
 5. Kirti, D/o late Shyamsundar, aged about 35 years, W/o Girish Sahu, S/o Shriram Sahu, R/o Manav Mandir, Rajnandgaon, Tahsil & District Rajnandgaon (CG).
 6. Priya, D/o late Shyamsundar, aged about 32 years, W/o Sanjiv Sahu, R/o Arti Fancy Stores, Main Road, Nehru Nagar, near Congress Bhawan, Mahasamund, Tahsil & District Mahasamund (CG).
 7. Priyanka Sahu, D/o late Shyamsundar, aged about 33 years, W/o Abhishek Gupta, S/o Madan Gupta, R/o Trimurti Enterprises & Tractor Parts Vikreta, Main Road Lakhanpur, Tahsil & District Surguja (CG).
 8. Smt. Kala Devi, W/o Kanhaiya Lal, aged about 71 years, D/o Paltu Das, R/o in front of Police Station near Hanuman Mandir, Pendra Road, Tahsil Pendra Road, District Bilaspur (CG).
 9. State of Chhattisgarh, through the Collector, Bilaspur, District Bilaspur (CG).

---- Non-applicants

For Applicant : Shri Ashish Surana, Advocate
For Non-applicants No.1 to 8 : Shri Ashok Kumar Soni, Advocate
For Non-applicant No.9 : Shri Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

13/07/2016

(1) Heard.

(2) The plaintiff/applicant herein filed a suit for declaration of share, partition and possession of the suit property and also filed an application under Section 35 of the Court Fees Act read with Section 151 of CPC for exemption/remission from payment of Court fees.

(3) The trial Court, by its impugned order dated 09.10.2014 rejected the application filed under Section 35 of the Court Fees Act.

(4) Against the aforesaid order, this revision has been preferred by the applicant/plaintiff.

(5) Learned counsel appearing for the applicant/plaintiff would submit that the application filed under Section 35 of the Court Fees Act requires income being less than Rs.25,000/- which would mean that the source of the applicant/plaintiff's income only and the applicant/plaintiff's son income cannot be included while computing the prescribed limit and, therefore, learned District Judge, Bilaspur is absolutely unjustified in rejecting the application relying upon the income certificate which includes the income of the plaintiff's son and therefore, the impugned order may be set aside.

(6) On the other hand, Shri Ashok Kumar Soni, counsel for Respondents No.1 to 8 and Shri Sameer Behar, Panel Lawyer for the State/Respondent No.9 would support the impugned order.

(7) Thus, Order 33 Rule1-A of the Code of Civil Procedure requires an inquiry into the means of an indigent person. Every inquiry into the question whether or not a person is an indigent person shall be made, in the first instance, by the chief ministerial officer of the Court, unless the Court otherwise directs, and the Court may adopt the report of such officer as its own finding or may itself make an inquiry into the question.

(8) The trial Court has relied upon the income certificate to reach to the conclusion that the income of the applicant/plaintiff is more than prescribed limit.

(9) The trial Court has simply considered the Patwari Report and came into such a conclusion whereas the trial Court ought to have passed reasoned order after taking into consideration the entire documentary and oral evidence available on record with regard to the indigency of the applicant/plaintiff.

(10) In a decision reported in the case of **Smt. Vimalabai Vs. State of M.P. and others**¹, it has been stated as under:-

“6. According to the Notification a person belonging to the particular class as mentioned in the Notification if is earning less than Rs.6,000/- per year then he would not be required to pay the Court-fees on the plaint. The material words payable on plaint by the following

¹ AIR 1997 Madhya Pradesh 134

categories of the persons whose annual income immediately preceding the date of presentation of plaint from all sources does not exceed rupees six thousand cannot be ignored. The words 'persons whose annual income in relation to the plaint and liability of the Court-fees would only mean the plaintiff who is party and would not include in its mischief any other person who is not party to the suit. The other key words 'from all sources' would not mean the income of any other person. The words 'from all sources means the sources of the person who has filed the suit as the plaintiff and not the sources of the other persons who are otherwise liable for maintaining the plaintiff. The arguments of the learned counsel for the State if is accepted it would lead to a situation where benefit of the Notification cannot be given to anybody. It is in the interest of those persons whose income is less than Rs.6,000/- per year. The person or persons would only mean the plaintiff and plaintiffs and nonelse. The approach of the learned trial Court that as the liability for maintaining the child was of husband also, therefore, his income has to be clubbed with the income of the wife, who is the plaintiff is patently erroneous, illegal and is contrary to law. In my opinion the plaintiff whose income is less than Rs.6,000/- per year would certainly be entitled to claim benefits under the Notification. The order passed by the learned trial Court suffers with material irregularities and non-exercise of the jurisdiction which is legally vested in it by law. The order deserves to and is hereby set aside. The revision is allowed. It is ordered that the plaintiff is entitled to be exempt from payment of the Court-fee payable on the plaint filed by her. The trial Court shall proceed with the suit in accordance with law as expeditiously as possible”.

(11) Applying the law laid down in above-stated judgment and from

the perusal of the record, it appears that no proper enquiry in accordance with law has been conducted by the trial Court to determine the indigency of plaintiff before considering the application under Section 35 of the Court Fees Act and only on the basis of patwari report which includes the income of the applicant/plaintiff's son, the trial Court has passed the order impugned, therefore, the impugned order deserves to be and is hereby set-aside.

(12) The trial Court is directed to consider the matter afresh after hearing learned counsel for the parties and after calling report from the Revenue Authority with regard to the income of the applicant/plaintiff and the said application would be decided within a period of ten weeks from the date of receipt of certified copy of this order.

(13) With the above-stated observation, the civil revision stands finally disposed off. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

L/-

