

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 311 of 2016**

Smt. Krishna Veni W/o Shri Maliyappan, Aged About 70 Years R/o Trimurti
Kirana Stores, Hospital Sector, Bhilai, Tah. And District Durg Chhattigarh

---- Petitioner**Versus**

1. Ratan Lal Daruka S/o Shri Mahaveer Prasad Daruka, Aged About 53 Years
R/o 02B, Rajvaibhav, Apartment, Aavi Athava Lines Surat Gujrat,
2. Ratan Lal Daruka (Nakali), S/o Shri Mahaveer Prasad Daruka, Aged About
40 Years R/o Borasi, Durg, Tah, And District Durg Chhattisgarh
3. State Of Chhattisgarh Through The Collector, Durg, Collectorate Premises
Durg, Chhattisgarh

---- Respondents

For Petitioner	:	Mr. Vipin Tiwari, Adv.
For Respondent No. 3/State	:	Mr. S.C. Khakhariya, Dy. A.G..

Order On Board**06/05/2016**

1. Heard on admission.
2. Facts in brief necessary for adjudication of instant writ petition are that Civil Suit No. 6-A/2012 (Ratanlal Daruka -v- Smt. Krishna Veni and 2 others) are pending before 6th Civil Judge Class-II, Durg for declaration and permanent injunction. Present petitioner is the defendant No. 1 in the suit. Defendant No. 1/petitioner filed an application before the trial Court under Order 7 Rule 1(c) / Order 1 Rule 9 of the Code of Civil Procedure, 1908 (in brevity 'Code') and prayed that as the plaintiff has not given correct particulars of defendant No. 2 and also there is non-joinder of necessary party hence the suit be dismissed. The court below vide order dated 16-2-2016 held that prima facie it appears as per pleadings and other facts that the petitioner appears to be necessary party and so far as particulars regarding defendant No. 2 is concerned, the same may be adjudicated only after evidence hence dismissed the said interim application against which instant petition has been filed under Article 227 of the Constitution of India wherein it is submitted that as the plaintiff has not given description as required under Order 7 Rule 1(c) of the Code and also suit suffers with the non-joinder of necessary party hence the petition may be allowed and the impugned order dated 16-2-2016 may be quashed.
3. Heard learned counsel for the petitioner.

4. Learned counsel for the petitioner supported entire grounds taken in the writ petition and submitted that on the basis of the grounds taken, the petition may be allowed and the impugned order may be quashed.
5. To appreciate the arguments advanced, instant writ petition, the impugned order passed by the court below dated 126-2-2016 and the interim application filed on behalf of the petitioner are perused.
6. Perusal of the impugned order goes to show that there is prima facie appreciation of the interim application that the petitioner appears to be necessary party, for later part of the prayer, learned trial Court held that only after recording of evidence, the same may be appreciated.
7. On due consideration, the matter is to be disposed of under the relevant procedural laws and the petitioner has right to file written statement and to take all issues. The court may after formulation of issues hear those issues either as preliminary issue or otherwise as the case may be and may dispose of the matter in accordance with law inter alia the court may also decide any application under the relevant provisions of Order 7 Rule 11 of the Code for the prayer of rejection of the plaint.
8. From perusal of the entire order, I do not see any illegality, impropriety or incorrectness in the impugned order. The writ petition is dismissed at motion stage itself as not maintainable.
9. No order as to costs.

Sd/-
(Chandra Bhushan Bajpai)
Judge