

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (227) No.743 of 2015**

1. Shriram Swaroop S/o Shri Balaram Suryavanshi, Aged About 55 Years R/o Gram Chakarbedha, Tahsil- Masturi, District Bilaspur (Chhattisgarh)
2. Shri Indarman S/o Shri Nathuram Suryanshi, Aged About 55 Years R/o Gram Chakarbedha, Tahsil- Masturi, District Bilaspur (Chhattisgarh)
3. Shri Indal S/o Shri Nathuram Suryanshi, Aged About 50 Years R/o Gram Chakarbedha, Tahsil- Masturi, District Bilaspur (Chhattisgarh)

---- Petitioners**Versus**

1. (A). Vijay Kumar S/o Late Uderam Aged About 36 Years Caste Suryavanshi R/o Gram Chakarbedha Tahsil Masturi District Bilaspur (Chhattisgarh)
1. (B) Pannalal Aged about 34 Years S/o Late Uderam Caste Suryavanshi R/o Gram Chakarbedha Tahsil Masturi District Bilaspur (Chhattisgarh)
1. (C) Naresh Kumar Aged about 32 Years S/o Late Uderam Caste Suryavanshi R/o Gram Chakarbedha Tahsil Masturi District Bilaspur (Chhattisgarh)
1. (D) Ramcharan Aged about 30 Years S/o Late Uderam Caste Suryavanshi R/o Gram Chakarbedha Tahsil Masturi District Bilaspur (Chhattisgarh)
1. (E) Ramgopal Aged about 28 Years S/o Late Uderam Caste Suryavanshi R/o Gram Chakarbedha Tahsil Masturi District Bilaspur (Chhattisgarh)
1. (F) Harprashad Aged about 24 Years S/o Late Uderam Caste Suryavanshi R/o Gram Chakarbedha Tahsil Masturi District Bilaspur (Chhattisgarh)
1. (G) Smt. Dhanbai Aged about 55 Years Wd/o Late Uderam Caste Suryavanshi R/o Gram Chakarbedha Tahsil Masturi District Bilaspur (Chhattisgarh)
1. (H) Smt. Shailkumari Aged about 39 Years W/o Ramsing, D/o Late Uderam Caste Suryavanshi R/o Gram Konar Tahsil Pamgadh District Janjgir Champa (Chhattisgarh)
2. Moti Ram S/o Shri Changoo Aged About 50 Years Caste Suryavanshi, R/o Gram Chakarbedha Tahsil- Masturi District Bilaspur (Chhattisgarh)
3. Dukhiram S/o Shri Changoo Aged About 45 Years Caste Suryavanshi, R/o Gram Chakarbedha Tahsil- Masturi District Bilaspur (Chhattisgarh)

---- Respondents

Shri Vijay Kumar Mishra, counsel for the petitioners.
Shri Somnath Verma, counsel for respondents 1(A), 1(B), 1(C),
1(D), 1(F), 1(H), 2 & 3.
None for respondents 1(E) & 1(G), though served.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order On Board

08.02.2016.

Heard on IA No.02, application for taking documents on record.

2. On due consideration, IA No.02 is allowed and the documents are taken on record, if permissible under the law.

3. Heard the matter finally at the motion stage itself.

4. Facts brief required for the instant writ petition is that in a Civil Suit No.214A/2014 pending before 6th Civil Judge Class-II, Bilaspur (CG) for permanent injunction and possession, on 05.11.2014, the Court below held that as the valuation of the suit is enhanced up to Rs.40,000/-, this court has no jurisdiction to entertain the suit thereby the Court directed the plaintiff/ respondent to specify the name of the court in which he proposed to present the plaint after its return. On 05.11.2014 itself the plaintiff/respondent had filed an application that as per valuation of the suit he intends to file the same before 4th Additional Judge to the Court of First Additional District Judge, Bilaspur (CG) and in by-parte hearing, the application was allowed. Both the parties were directed to remain present before the said Court on 25.11.2014. The Court below returned the plaint to the plaintiff for the presentation of the said before the said court and also directed that the entire order sheet and other matter

also be sent to the concerned court along with information regarding the appearance of the both the parties. The Court also endorsed the reason to return the plaint summarily over the plaint and thereby closed the proceedings. On 25.11.2014, on behalf of the plaintiffs an application was filed before the District Judge, Bilaspur regarding sending the matter to the competent court and it is informed that as directed, the plaintiffs had presented the plaint before the court of Fourth Additional Judge, to the Court of First Additional District Judge, Bilaspur on the ground that the presiding officer returned the plaint as the same is not as per jurisdiction. It is further prayed that as per the distribution memo, the matter is under the jurisdiction of Second Additional District Judge Bilaspur. It is further prayed that the plaint having valuation worth 1,21,700/- be sent to the court having competent jurisdiction. The District Judge as per memo dated 26.11.14, directed through court of superintendent to present the civil suit before the Second Additional District Judge, Bilaspur. Thereafter the plaintiffs filed the said civil suit before the Second Additional District judge Bilaspur on 26.11.14. The matter is taken up for further hearing and presently on transfer, the Seventh Additional District Judge, Bilaspur is hearing the matter. The petitioners/defendants had filed the instant petition wherein it is prayed in the relief clause that order passed by Seventh Additional District Judge dated 25.7.15 be quashed and as per order dated 05.11.14, the matter may be directed to be sent to the Fourth Additional Judge to the Court of First Additional District Judge, Bilaspur. It is further prayed that Seventh Additional District Judge

be restrained from hearing the said suit as he is not having the jurisdiction to hear the matter.

5. On behalf of the petitioners, it is submitted that as per the pecuniary distribution, Sixth Civil Judge Class-II is not having jurisdiction to hear the matter, instead as per the distribution memo, First Civil Judge Class-I is having jurisdiction to hear the matter. The District Judge, Bilaspur vide order dated 26.11.2014 directed that the matter be filed before Second Additional District Judge Bilaspur. On perusal of the memo itself goes to show that order communicated by the Court of Superintendent is not an order passed by the Court itself. It is further prayed that District Judge, Bilaspur acted beyond authority under the provision of Section 15 of the Chhattisgarh Civil Court Act, 1958 (for short 'the Act of 1958') despite the scope of original jurisdiction of Civil Court as defined under Section 6 of the Act 1958. It is further submitted that provisions of Section 6(1)(c) has to be read with Sections 6(1)(a) & 6(1)(b) also and thereby the District Judge including the Additional District Judge has no jurisdiction to hear the matter valued worth Rs.40,000/-. It is submitted on behalf of the petitioners that the District Judge cannot hear the matter under the suit value of Rs.50,000/-. It is further submitted that though the Sixth Civil Judge Class-II passed an order for the return of the plaint but they were not given opportunity for reply of the said application showing the proposed court as Fourth Additional District Judge, Bilaspur to the Court of First Additional District Judge, Bilaspur though the petitioners had also not filed any objection of their own. The respondents wrongly mentioned the suit value as Rs.1,21,700/- in the application dated 25.11.14. If they

would have been mentioned the correct value i.e. 40,000/- the District Judge ought to have directed the plaintiffs to go to the Second Additional District Judge, thereby for giving wrong information by way of fraud by the plaintiff, they objected the order not as per requirement of law. It is further argued that the order dated 05.11.14 by Sixth Civil Judge Class – II, Bilaspur attains its finality so long it is cancelled or reversed no other order is legally possible. Learned counsel for the petitioner further submits that provisions given as per Order 7 Rule 10A (3)(4) , the matter can only be presented before a specified Court and the same cannot filed before any other Court. As per the directions, the plaintiffs have filed the civil suit on 25.11.2014 and by non filing before the specified court as per order dated 05.11.14, the suit was a dismissed suit and with this the District Judge directed for the presentation of the said suit before any other court as the parties committed fraud and thereby obtained an order not under the authority of law. Hence, the mater be sent to the Fourth Additional Judge to the Court of First Additional District Judge as per the relevant provisions of Order 7 Rule 10 A of the Code. It is further submitted that as the petition is before the Constitutional court, this Court upon consideration of the entire facts, be allowed the prayer as made under the instant petition and to direct to send the plaint to the Court of Fourth Additional Judge to the Court First Additional Judge Bilaspur and order dated 25.7.15 be quashed and the matter be sent as per Order dated 05.11.14 by the Sixth Civil Judge Class-II Bilaspur.

6. For the consideration of the entire facts as mentioned in the instant petition, the arguments as advanced and the records are perused.

7. For the purpose of appreciation, Section 6, 15 of the Chhattisgarh Civil Court Act 1958 are relevant which read as under:

“6. Original jurisdiction of Civil Courts.- (1) Subject to the provisions of any law for the time being in force,-

(a) the Court of the (civil Judge Class II) shall have jurisdiction to hear and determine any suit or original proceedings of a value not exceeding [Rs.25,000];

(b) the Court of the [Civil Judge Class I] shall have jurisdiction to hear and determine any suit or original proceeding of a value not exceeding [Rs.50,000];

(c) the Court of the District judge [xxx] shall have jurisdiction to hear and determine any suit or original proceeding without restriction as regards value.

(2) The local limits of the jurisdiction of the Courts specified in clauses (a) and (b) of sub-section (1) shall be such as the State Government may, by notification, define.

[(3) Nothing in clauses (a), (b) and (c) of sub-section (1) shall affect any suit or original proceedings instituted before 26th January, 1979.]

15.Power to distribute business- [(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (V of 1908), or the law relating to Courts of Small Causes, for the time being in force in any area, or in any provisions contained in this Act, the District Judge may, by order in writing, direct that any civil business cognizable by his court or by other civil courts established under section 5, in his civil district, shall be distributed amongst himself and Additional Judges, if any, of his court, as also amongst other courts under his control and amongst additional Judges of such other court's 'inter se' in such manner as he deems fit:

Provided that, except in so far as it may affect the exclusive jurisdiction of a Court of Small Causes, or of a court invested with the jurisdiction of a Court of Small Causes, a direction given under this section shall not empower any court to exercise powers or deal with business beyond the limits of its pecuniary and notified territorial jurisdiction]

(2) Any judicial act in any suit, appeal or proceedings, instituted in a Court of competent jurisdiction, shall not be invalid only by reason of the fact that such institution was not in accordance with the order of distribution of business referred to in sub-section (1).

(3) Whenever it appears to any Court, as is referred to sub-section (2) that institution of any suit, appeal or proceeding, pending before it, was not in conformity with the order of distribution of business made under sub-section (1), it shall submit the record of such suit, appeal or proceeding, as the case may be, to the District Judge for appropriate orders, and the District Judge in relation thereto may pass orders either transferring the concerned record to proper court as per order of distribution of business or otherwise to any other Court of competent jurisdiction.

(4) In distribution of civil business under sub-section (1), the District Judge shall be guided by such principles as the High Court may, by rules, prescribe.

8. Also for the purpose of appreciation relevant provisions of

Order VII Rule 10A of the Code 1908 is as under:

Order VII Rule 10A. Power of Court to fix a date of appearance in the Court where plaint is to be filed after its return. - (1) Where, in any suit, after the defendant has appeared, the Court is of opinion that the plaint should be returned, it shall, before doing so, intimate its decision to the plaintiff.

(2) Where an intimation is given to the plaintiff under sub-rule(1), the plaintiff may make an application to the Court-

- (a) specifying the Court in which he proposes to present the plaint after its return,
- (b) praying that the Court may fix a date for the appearance of the parties in the said Court, and
- (c) requesting that the notice of the date so fixed may be given to him and to the defendant.

(3) Where an application is made by the plaintiff under sub-rule (2), the Court shall, before returning the plaint and notwithstanding that the order of return of plaint was made by it on the ground that it has no jurisdiction to try the suit,-

- (a) fix a date for the appearance of the parties in the Court in which the plaint is proposed to be presented, and
- (b) give to the plaintiff and to be defendant notice of such date of appearance.

(4) Where the notice of the date for appearance is given under sub-rule (3), -

- (a) it shall not be necessary for the Court in which the plaint is presented after its return, to serve the defendant with a summons for appearance in the suit, unless that Court, for reasons to be recorded, otherwise directs, and
- (b) the said notice shall be deemed to be a summons for the appearance of the defendant in the Court in which the plaint is presented on the date so fixed by the Court by which the plaint was returned.

- (5) Where the application made by the plaintiff under sub-rule (2) is allowed by the Court, the plaintiff shall not be entitled to appeal against the order returning the plaint.

9. On perusal of the Sections 6 & 15 of the Act 1958, this Court is of the view that the arguments advanced in this behalf that as defined under Section 3(1)(1), 3(1)(4) and Section 6 of the Act, 1958, the District Judge (also includes Additional District Judge) cannot hear the suit of original jurisdiction below the value of Rs.50,000/- is not proper and acceptable. Virtually as per provisions of Sections 6(c) of the Act 1958, the Court of District Judge shall have jurisdiction to hear and determine any suit or original proceedings without restriction as regards valuation. Further while attracting the powers of distribution of business amongst Judges subordinate to him, as per settled law, distribution memo and any other order shall be the order under the authority of Civil Court Act, 1958 and the same is judicial order under the authority of law, may be from his chambers. It is also well settled that it is the court superintendent who carry out the orders passed by the District Judge by distribution memo and also by separate order the District Judge can direct regarding presentation of suit as ordered. In the present matter order dated 26.11.2014 by the District Judge cannot be treated as order without authority. If the suit is as such the pecuniary jurisdiction not covered by the distribution memo even then by the provision of Section 6(1)(c) any District Judge including Additional District Judge shall have jurisdiction to hear and determine any suit or original proceedings without restriction as regards valuation. After the order 26.11.2014 passed by the District Judge, the presentation

of the said suit before the Second Additional District Judge, Bilaspur cannot be held as illegal or improper or otherwise. So far as obtaining the said order by wrong mentioning of the facts that valuation of plaint is worth of Rs.1,21,700/- and on the other hand, the same was merely 40,000/-, parties are at liberty to pray before the District Judge under various provisions of law i.e. under Section 24 of the Code for transfer and under Section 15 of the Act, 1958 to send the matter before appropriate Court.

10. On due consideration, after considering the entire facts and legal provisions, this Court denies to invoke the jurisdiction under Section 227 of the Constitution of India and held that the District Judge concerned acted as per legal authority vested in it under Sections 6 and 15 of the Act 1958. With this as the instant petition has not substance, the same is dismissed.

**Sd/-
(Chandra Bhushan Bajpai)
JUDGE**