

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 113 of 2016

1. Smt. Mala Jona W/o Late Jaiprakash Rao Jona, Aged About 62 Years R/o Shanti Nagar Ward, Jagdalpur, District Bastar (Chhattisgarh) [The Aforesaid Petitioner Has Been Impleaded As Legal Heir Of Late Jaiprakash S/o Late P.S. Jona By The Impugned Order, Hence They Are Not Been Mentioned In The Impugned Order Dated 25.01.2016].
2. Smt. Priyadarshini John W/o Shri Vishal John, D/o Late Jaiprakash Rao Jona, Aged About 34 Years R/o Shanti Nagar Ward, Jagdalpur, District Bastar (Chhattisgarh) [The Aforesaid Petitioner Has Been Impleaded As Legal Heir Of Late Jaiprakash S/o Late P.S. Jona By The Impugned Order, Hence They Are Not Been Mentioned In The Impugned Order Dated 25.01.2016].
3. Abhishek Rao Jona, S/o Late Jaiprakash Rao Jona, Aged About 32 Years R/o Shanti Nagar Ward, Jagdalpur, District Bastar (Chhattisgarh) [The Aforesaid Petitioner Has Been Impleaded As Legal Heir Of Late Jaiprakash S/o Late P.S. Jona By The Impugned Order, Hence They Are Not Been Mentioned In The Impugned Order Dated 25.01.2016].
4. Smt. Shweta Das W/o Shri Vikky Das, D/o Late Jaiprakash Rao Jona, Aged About 28 Years R/o Shanti Nagar Ward, Jagdalpur, District Bastar (Chhattisgarh) [The Aforesaid Petitioner Has Been Impleaded As Legal Heir Of Late Jaiprakash S/o Late P.S. Jona By The Impugned Order, Hence They Are Not Been Mentioned In The Impugned Order Dated 25.01.2016].

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Versus

1. Smt. Shanti Devi Parakh (Since Deceased) Through Lrs **1. (a)** Pramod Parakh (Jain) Aged about 51 Years S/o Late Ranulal, R/o Naya Para, Jagdalpur, District Bastar (Chhattisgarh) [The Aforsaid Legal Representatives Have Been Substituted Vide Order Dated 17.10.2014 But Their Names Are Not Been Mentioned In The Impugned Order Dated 25.01.2016]. **1. (b)** Suresh Parakh (Jain) Aged about 49 Years S/o Late Ranulal, R/o Naya Para, Jagdalpur, District Bastar (Chhattisgarh) [The Aforsaid Legal Representatives Have Been Substituted Vide Order Dated 17.10.2014 But Their Names Are Not Been Mentioned In The Impugned Order Dated 25.01.2016].
2. T. Raja Vikram S/o T. Kondal Rao, Aged About 35 Years R/o Infront Of Sai Mandir, Chitrakote Road, Aghanpur, Jagdalpur, District Bastar (Chhattisgarh)
3. Rahul Kumar Jain, S/o Raj Kumar Jain, Aged About 26 Years R/o Palace Road, Infront Of Sanjay Market, Jagdalpur, District Bastar (Chhattisgarh)
4. State Of Chhattisgarh, Through : Collector Bastar, Jagdalpur, District Bastar (Chhattisgarh)

----- Respondents

For Petitioners : Shri Prafull N. Bharat and Shri Keshav Dewangan, Advocates
For Respondent No.4/ State : Shri S.C. Khakharia, Dy. Advocate General

Notice issued to respondent 1- a & b through registered mode returned unserved as they are out from the given address for a long time.

As per office report, notice has been issued to respondents 2 & 3 and service is complete under the provisions of Rule 167 (ii) of the Chhattisgarh High Court Rules, 2007.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

31/03/2016

1. At the out set, learned counsel for the petitioners submits that looking to the entire facts, the Writ Petition may be disposed of finally at the motion stage itself without making further attempt for service to respondent 1- a & b as the settled provisions of law are not complied with. The reply of deceased defendant was not considered in the impugned order dated 25.1.2016 and no show cause notice was given to the proposed legal representatives of the deceased defendant D1/petitioners prior to order on the application filed under Order 22 Rule 4 of the Code of Civil Procedure, 1908 (for short the CPC) by the plaintiff. As the impugned order itself is patently illegal on the face of the record, the procedural law is not complied with, hence, the matter may be disposed of accordingly.

2. On due consideration, the matter is heard finally at the motion stage itself without any formal notice to respondent 1 – a & b as they are out for a long time from their residential address and they could not be served as aforementioned.

3. The facts in brief required for the instant Writ Petition are that Civil Suit No.10A/2013 (Smt. Shanti Devi Parakh (since deceased) through Legal Representatives Vs. Jaiprakash Jona and Anr.) is pending before the Second Additional District Judge, Jagdalpur. On 22.8.2015 on behalf of the plaintiffs

an application under Order 22 Rule 4 of the CPC has been filed to implead the petitioner in place of deceased defendant D1. The counsel for the deceased defendant 1 filed a reply wherein it is submitted that without show cause notice to the legal representatives and due hearing, the reply of the application of the plaintiff for legal representatives is without any representation against the procedure and objectionable, hence, it is submitted that the said application may be disposed of after affording opportunity of hearing to the proposed legal representatives. The Court below vide impugned order dated 25.1.2016 not appreciated the said objection filed on behalf of the died defendant and appreciated the other facts and relevant in the matter, allowed the said application, I.A.No.3/2015 and directed the plaintiff to implead all the legal representatives of the deceased defendant D1. Also directed the counsel for the defendant to supply the information about all legal heirs of the deceased defendant D1 within 3 days and accordingly plaintiff shall make amendment of memo of parties within next 3 days. Further directed the plaintiff to deposit Talwana within that period itself so that summons be issued accordingly to implead the legal representatives. Against the said order, the petitioner had filed the instant Writ Petition (227) wherein it is submitted that without an opportunity to the proposed legal representatives of the defendant D1, the Court below has straightway allowed the I.A.No.3/2015 and directed for impleadment of the proposed legal representatives and also committed grave mistake by not appreciating the objections made in this behalf by the counsel for the died respondent. It shall be the duty of the Court to first give a show cause notice to the proposed legal representatives and after due hearing i.e. an opportunity to file written response, an inquiry if at all needed in the matter if required under Order 22 Rule 5 CPC then order on Order 22 Rule 4 CPC would have been passed. Hence, it is prayed that the impugned order dated 25.1.2016 be quashed and an opportunity be granted before passing any order on the interim application, I.A.No.3/2015 under Order 22 Rule 4 CPC

filed on behalf of the plaintiff/respondent 1- a & b.

4. Heard learned counsel for the petitioners, who entirely supported the grounds taken in the instant writ petition and submitted that as the order passed by the Court is patently illegal, interference is required. An opportunity for hearing be given and then only the trial Court be directed to pass an order on I.A.No.3/2015 under Order 22 Rule 4 CPC.

5. For the purposes of appreciation regarding the instant writ petition, perused the petition, impugned order dated 25.1.2016, the copy of interim application and the reply as aforementioned.

6. For the relevance of Order 22 Rule 4, sub-rule (1) CPC and Order 22 Rule 5 CPC is read as under :

“Order 22 Rule 4, sub-rule (1) **Procedure in case of death of one of several defendants or of sole defendant.-** (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased defendant to be made a party and shall proceed with the suit.

Order 22 Rule 5 **Determination of question as to legal representative-** Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:

(Provided that where such question arises before an Appellate Court, that Court may, before determining the question, direct any subordinate Court to try the question and to return the records together with evidence, if any recorded at such trial, its findings and reasons therefor, and the Appellate Court may take the same into consideration in determining the question.)”

7. From perusal of the aforementioned provisions and reply filed by

learned counsel for the deceased defendant D1 goes to show that it shall be required by the trial Court to first give show cause notice to the proposed legal representatives as to why they should not be impleaded as legal representatives of the deceased and after opportunity of hearing on the said application, the Court is required to pass the order for the prayer under Order 22 Rule 4 of the Code. As apparent, no notices were issued to the proposed legal representatives as to show cause that why they should not be made as party and substituted in place of deceased defendant. Also the trial Court has not considered the reply filed in this behalf dated 15.10.2015 by learned counsel for the deceased defendant D1. The court below has not complied with the mandatory provisions of law and also the interest of justice. Before impleadment of the legal representatives one should be given an opportunity to show cause why he should not be impleaded as a party passed the order which is on the face of the record is patently illegal and beyond jurisdiction, passed in haste and same requires interference.

8. On due consideration, the instant Writ Petition is hereby allowed. The impugned order dated 25.1.2016 is hereby quashed. The Court below is directed to first give an opportunity by show cause to the proposed legal representatives and after hearing as required under the law shall pass an order afresh for the interim application under Order 22 Rule 4 of the CPC.

9. The petitioner may file copy of the order before the Court below for compliance.

10. Registrar (Judicial) is further directed to send the copy of the order to the trial Court through usual and fax mode immediately.

11. The petition is allowed.

12. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)
Judge

sunita