

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 65 of 2016

1. Gulabchand S/o Late Arjun, aged about 59 years, Caste Satnami, R/o Village Sukhari, Tahsil Gunderdehi, District Balod (Chhattisgarh)..... (Defendant No.1)
2. Kamla Bai W/o Gulabchand, aged about 51 years, Caste Satnami, R/o Village Sukhari, Tahsil Gunderdehi, District Balod (Chhattisgarh)..... (Defendant No.2)
3. Sanad Kumar S/o Gulabchand, aged about 30 years, Caste Satnami, R/o Village Sukhari, Tahsil Gunderdehi, District Balod (Chhattisgarh).....(Defendant No.3)
4. Kamlesh S/o Gulabchand, aged about 26 years, Caste Satnami, R/o Village Sukhari, Tahsil Gunderdehi, District Balod (Chhattisgarh)..... (Defendant No.4)

---- Petitioners

Versus

1. Narottam S/o Gulabchand, aged about 36 years, Caste Satnami, R/o Village Sukhari, Tahsil Gunderdehi, District Balod (Chhattisgarh).....(Plaintiff)
2. Amira Bai W/o Gulabchand, aged about 54 years, Caste Satnami, R/o Village Sukhari, Tahsil Gunderdehi, District Balod (Chhattisgarh)..... (Plaintiff).
3. State of Chhattisgarh, through the Collector, Balod, District Balod (Chhattisgarh).....(Defendant No.5).

---- Respondents

For Petitioners – Mr. T.K.Jha, Advocate.

For Respondent No.1 – Mr. Mayank Chandrakar, Advocate.

For Respondent No.2 – None, respondent No.2 died, as per office note.

For Respondent No.3 – Ms. M.Asha, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

12/05/2016

1. On behalf of the petitioners it is submitted that from perusal of the order sheet dated 09-01-2014 it appears that at the time of presentation of the plaint the plaintiffs had filed the plaint in duplicate as required under the law whereas vide order dated 14-12-2015 the Court observed that it appears that the plaintiffs had filed second copy of the plaint and as per settled law, if the said

error committed on behalf of the plaintiffs, the Court ought to grant an opportunity to correct the same and thereafter the Court below rejected the interim application filed under Order 7 Rule 11(e) of the Code of Civil Procedure, 1908 (in brevity 'the Code'), though as per requirement of law, the plaint already filed in duplicate. With this, no illegality or impropriety committed by the trial Court in the impugned order dated 14-12-2015, but the Court below have not gone through the earlier order sheet regarding filing of the plaint in duplicate at the time of presentation of the plaint. Therefore, the instant WP(227) be disposed of and the Court below be directed to state the correct fact as in the matter.

2. Perused the impugned order sheet and the documents annexed. When the plaint in duplicate filed at the time of presentation of the plaint and thereby no any illegality or impropriety committed by the respondents 1 and 2/plaintiffs, but the Court below not appreciated the said fact that the plaint already filed in duplicate before the Court at the time of presentation of the plaint, inter alia, without going to the existence of the said fact, on a statement made by learned counsel for the plaintiffs/respondents 1 and 2 that the second copy of the plaint filed subsequently and thereby they have corrected the wrong, the Court observed after perusal of the case that second copy of the plaint has been filed and if any wrong committed by the plaintiffs the Court ought to award one opportunity to correct the same.

3. In the considered view of this Court, the trial Court was not alert as required to verify the fact that the plaint already filed in duplicate at the time of presentation of the plaint. With this, as the plaintiffs/respondents 1 and 2 complied with the provision of law to file the plaint in duplicate, the Court below was not correct to appreciate the fact which was not on the record that second copy of the plaint had filed subsequently, though by rejecting the said

application filed under Order 7 Rule 11(e) of the Code the Court below not committed any error of law, but he failed to appreciate the fact as aforementioned. It would be appropriate to direct the trial Court, the concerned presiding officer to remain cautious in future while observing and putting any fact in the order sheet which is not correct.

4. With these observations, the instant WP(227) is disposed of.

5. Registrar General is directed to send copy of this order to the concerned judicial officer wherever he is posted for not to commit such mistakes in rest of his career.

6. Registrar (Judicial) is directed to send the copy of the order to the Court below for information and future guidance.

7. The petition disposed of.

8. No order as to cost.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE