

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 217 of 2016

1. Smt. Rajani Bai Katela W/o Shri Basant Lal Katela, Aged About 68 Years
R/o Civil Lines Raipur Pin 492001 Police Station Civil Lines Revenue,
Tahsil And District Raipur Chhattisgarh

---- Petitioner

Versus

1. Smt. Kamaladevi Jain W/o Late Shri Parasmal Jain, Aged About 63 Years
R/o Shankar Nagar, Near Water Tank Raipur, Pin 492001 Police Station
Civil Lines Revenue Tahsil And District Raipur Chhattisgarh
2. Shri Subhashish Jain, S/o Late Shri Parasmal Jain, Aged About 43 Years
R/o Shankar Nagar Near Water Tank Raipur Pin 492001 Police Station
Civil Lines Revenue, Tahsil And District Raipur Chhattisgarh

---- Respondents

For Petitioner : Shri V.G. Tamaskar, Advocate
Respondents not noticed.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

30/03/2016

1. At the outset, it is submitted on behalf of the petitioner that vide order dated 21.6.1993, the proposed amendment was allowed and the said amendment was incorporated in the plaint on 22.6.1993. In the light of the above allowed and incorporated amendment in the plaint, the Court below be directed to dispose of the application filed on behalf of the petitioner/plaintiff afresh filed under Order 14 Rule 5 read with Section 151 of the Code of Civil Procedure, 1908 (for short 'the Code'), hence, for this the respondents are not required to be heard and the matter may be disposed of finally.

2. On due consideration, the instant Writ Petition (227) is heard finally at the motion stage itself in the light of submission advanced on behalf of the petitioner.

3. Perused the impugned order dated 27.2.2016. The Court below has dismissed both the interim applications under Order 6 Rule 17 of the Code dated

17.2.2016 and application under Order 14 Rule 5 read with Section 151 of the Code dated 26.2.2016. It is submitted on behalf of the petitioner that the application filed dated 17.2.2016 under Order 6 Rule 17 of the Code was merely a repetition and on the other hand, the Court had already allowed the application for amendment for the same proposed pleadings on 21.6.1993. The said proposed amendment was incorporated by the plaintiff in compliance of Court's order on 22.6.1993. If so, this fact was not examined by the trial Court and with this, the application filed under Order 14 Rule 5 read with Section 151 of the Code was also dismissed in continuance of dismissal of application for amendment dated 17.2.2016. If the trial Court could have gone through the above submission then appreciation on the said interim application under Order 14 Rule 5 read with Section 151 of the Code would have been considered in the light of amendment already allowed dated 21.6.1993 and incorporated on 22.6.1993.

4. With the above facts, it goes to show that the order of dismissal of application under Order 14 Rule 5 read with Section 151 of the Code was passed without proper application of mind and facts and the same cannot be remain as it is. Consequently, the instant Writ Petition (227) filed on behalf of the petitioner is allowed in part. The part of impugned order dated 27.2.2016 for rejection of interim application under Order 14 Rule 5 read with Section 151 of the Code is hereby quashed. The trial Court is directed to rehear the said application in the light of amendment already allowed vide order dated 21.6.1993 and amendment of pleadings incorporated vide order dated 22.6.1993 afresh without being influenced with the appreciation of the trial Court for the said part of order dated 27.2.2016 as early as possible after affording opportunity to hear both the parties. The petitioner may file a copy of this order before the trial Court for compliance.

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

6. From perusal of the impugned order dated 27.2.2016 it appears that though

the matter is a Civil Suit pending before the Second Civil Judge Class -I, Raipur (CG) but twice below the signature and name of the said presiding officer, designation of the Court is written as Judicial Magistrate First Class Raipur (CG), goes to show that the presiding officer is not taking due care at the time of signing the order as to what designation is mentioned. Registrar (Judicial) is directed to direct the concerned presiding officer to mention appropriate designation while signing the matters in near future and not to repeat the said grave mistake regarding non-mentioning of the correct designation.

7. Registrar General is also directed to issue a circular again after taking appropriate permission from the authorities to all judicial officers of the State so that all sub-ordinate Judges of the State should not commit mistake like this and shall mention their correct designation.

8. The petition is disposed of.

9. No order as to cost.

10. Certified copy today.

Sd/

(Chandra Bhushan Bajpai)
Judge