

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 844 of 2013**

Sachchidanand Chandrakar S/o Mahesh Chandrakar Aged About 36 Years R/o Village Pendrikala, PS & Tahsil Khamhariya, Civil & Revenue Distt Bemetara, Chhattisgarh.

---- Petitioner**Versus**

1. Lalaram S/o Raghuvar Gond Aged About 44 Years R/o Village Pendrikala, PS & Tah Khamhariya, Civil & Revenue Distt Bemetara, Chhattisgarh.
2. Smt. Dashari Bai Wd/o Lt Motiram Aged About 62 Years R/o Village Pendrikala, PS & Tah Khamhariya, Civil & Revenue Distt Bemetara, Chhattisgarh. (Now Dead)
3. Gajadhar S/o Amol Singh Gond Aged About 48 Years R/o Vilalge Litipur, Tah & PS Kawardha, Civil & Revenue Distt Kabirdham, Chhattisgarh.
4. State Of C.G. Through The Collector, Durg, Civil & Revenue Distt Durg, Chhattisgarh.

---- Respondents

For the Petitioner	:	Shri P.P. Sahu, Advocate.
For Respondent No.1	:	Shri Anil Gulati, Advocate.
For Respondent No.2	:	Dead.
For Respondent No.3	:	None present though served.
For Respondent No.4	:	Ms. M. Asha, Panel Lawyer for the State.

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order on Board****02/05/2016**

1. At the outset, learned counsel for the Petitioner submits that the Petitioner is the legal representative of Deceased – Smt. Dashari Bai, but he is not the sole legal heir of the said deceased Defendant No.1/ Respondent No.2 – Smt. Dashari Bai and by *bonafide* mistake, he mentioned the word as “sole legal heir”. He be permitted to file a fresh application before the Court below under Order I Rule 10 read with Order XXII Rule 4/ Order XXII Rule 5

of the Code of Civil Procedure, 1908 (for short 'the Code') and the Court below may be directed to dispose of the same on its own merits without being influenced by the earlier order dated 12.11.2013 in light of the settled law. Nothing was submitted on behalf of Respondent No.1 against the submission.

2. On due consideration and after perusal of the application given on behalf of the Petitioner before the Court below, the affidavit and the annexed documents and after perusal of the impugned order dated 12.11.2013, it reveals that the entire prayer was that the Petitioner is the sole legal heir of the deceased – Defendant No.1/ Respondent No.2, whereas the Petitioner before this Court is praying that he be permitted to file a fresh application claiming that he is the legal representative of the said deceased.

3. In the considered opinion of this Court, a reasonable opportunity is required to be granted to the Petitioner for his submission and the Court below shall dispose of the same on its own merits without being influenced by the earlier order dated 12.11.2013.

4. Consequently, the instant W.P.(227) is disposed of at the motion stage itself. The order dated 12.11.2013 passed by the Court below is hereby quashed. The Petitioner is directed to file a fresh application under Order I Rule 10 read with Order XXII Rule 4 and Order XXII Rule 5 of the Code before final hearing of the said appeal before the Appellate Court and the Court below is directed to dispose of the same after hearing all the parties concerned as per provisions of law purely on its own merits without being influenced by the observation in order dated 12.11.2013. The Petitioner is directed to file a fresh application on 4.5.2016, i.e., before hearing in the Court below. If the Petitioner fails to file an application as directed, the order dated 12.11.2013 shall remain effective and operational.

5. Certified copy of the order today.
6. Registrar (Judicial) is directed to transmit a copy of this order to the Court below through usual and fax modes immediately.
7. The W.P. (227) is disposed of.
8. No order as to costs.

Sd/-

Chandra Bhushan Bajpai
Judge