

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 610 of 2016

1. Miss Kunika D/o Kailash Chandrakar Aged About 9 Years R/o Village & Post Matwari, Tahsil & District Durg, Chhattisgarh, Through Natural Gardian Mother Smt. Damyanti Chandrakar W/o Kailash Chandrakar, Aged About 36 Years, R/o Village & Post Matwari, Tahsil & District Durg, Chhattisgarh

**---- Petitioner
Plaintiff**

Versus

1. Kailash Chandrakar S/o Late Rekhuram Chandrakar Aged About 37 Years Profession- Transporter & Farmer, R/o Ward No.1, Shankar Nagar, Old Raipur Naka, Behind Rajendra Farsee Udyog, Mahasamund, Police Stn. Mahasamund, Tah. & Dist. Mahasamund, Chhattisgarh
2. State Of Chhattisgarh, Through- Collector, Tah. & Dist- Mahasamund, Chhattisgarh
3. Smt. Seema Laddha W/o Mool Chand Laddha (Maheshwari) R/o Ward No. 10, Tumgaon Raod, Tahsil & District- Mahasamund, Chhattisgarh
4. Birjha Bai W/o Jai Singh Yadav Aged About 54 Years R/o Munagaser, Po- Munagaser, Tah- Bagbahara, Dist- Mahasamund, Chhattisgarh
5. Nemichand Chandrakar S/o Salik Ram Chandrakar Aged About 41 Years R/o Munagaser, Po- Munagaser, Ps & Tah- Bagbahara, Dist- Mahasamund, Chhattisgarh
6. Dwarika Prasad Patel S/o Jethuram Patel Aged About 60 Years R/o Mandi Hasaud, Tah- Arang, Dist- Raipur, Chhattisgarh
7. Rajkumar Patel S/o Jethuram Patel Aged About 60 Years R/o Mandi Hasaud, Tah- Arang, Dist- Raipur, Chhattisgarh

---- Respondents

For Petitioner:

Shri R.K. Singh, Advocate.

For Respondent No.2:

Shri Adhiraj Surana, Dy. Govt. Advocate

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

24/10/2016

1. Challenge in this petition is to the order dated 14.9.2016 passed by the 1st Additional District Judge, Mahasamund in Civil Suit No.H15A/2014 dismissing the applications filed by the petitioner herein under Order 6 Rule 17 and Order 1 Rule 10 of the Code of Civil Procedure, 1908 (for short 'CPC').
2. From the facts it appears that in the year 2001 the plaintiff/petitioner filed a suit against the defendants/respondents seeking partition and possession over the ancestral properties. On 25.7.2016 the plaintiff/petitioner filed an application under Order 6 Rule 17 CPC stating therein that during the pendency of civil suit the plaintiff/petitioner came to know about the registration of sale deed in favour of one Smt. Lata Yadav on 7.10.2008 and mutation of her name in the land records vide order dated 16.3.2011. By way of this amendment application, the plaintiff has also prayed for amendment in the relief clause to the effect that sale deed dated 7.10.2008 be declared null and void. Along with this application, the plaintiff/petitioner has also moved an application under Order 1 Rule 10 CPC seeking addition of said Smt. Lata Yadav as defendant in the civil suit. However, the trial Court dismissed both the aforesaid applications vide order impugned and it is this order which has been challenged by the plaintiff/petitioner in this petition.
3. Learned counsel for the petitioner submits that the order impugned rejecting the petitioner's applications is bad in law. He further submits that the limitation for challenging any sale deed will begin to run from the date of knowledge of the same and having coming to know about the execution & registration of sale deed dated 7.10.2008 on 5.12.2015, the petitioner

has immediately moved application for amendment in the plaint and impleadment of necessary party, which ought to have been allowed by the trial Court.

4. On the other hand, supporting the impugned order it has been argued by counsel for the respondent that the order impugned is in accordance with law.
5. I have heard learned counsel for the parties and perused the impugned order and other documents.
6. Admittedly, on 31.3.2011 the plaintiff/petitioner had approached the Court below seeking a decree for partition against her defendant-father and there was no whisper about the execution and registration of sale deed dated 7.10.2008 in favour of said Smt. Lata Yadav. After about three years of filing of plaint, the plaintiff preferred an application seeking amendment in the plaint including in prayer clause to the effect that the sale deed dated 7.10.2008 executed in favour of said Smt. Lata Yadav be declared null and void. Along with this application, the plaintiff has also filed an application under Order 1 Rule 10 CPC seeking addition of said Smt. Lata Yadav as defendant. It is not in dispute that both the parties are closely related to each other. The trial Court dismissed the amendment application and application filed under Order 1 Rule 10 CPC on the ground that the plaintiff/petitioner failed to show that the amendment which she seeks to incorporate could not be incorporated at the time of submission of pleadings despite due diligence. It has been further held that relief of declaration of sale deed dated 7.10.2008 as null & void cannot be permitted to be added as the same is barred by limitation on the date of application. It is settled rule of practice that no amendment should be allowed which would prejudice the right of the opposite party accrued under the law of limitation.

7. Having thus considered, this Court does not perceive any legal error by the trial Court in passing the impugned order as would warrant an interference.

8. In the result, the petition fails and is dismissed.

Sd/-

(Pritinker Diwaker)
Judge

roshan