

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (227) No. 471 of 2015**

Smt. Prasuti Bai, widow of Late Dashrathdar Diwan, aged about 86 years, resident of Village Ninwa, Post Office Manohara, Tehsil Tilda & Distt. Raipur (C.G.) ...Plaintiff No.1

---- Petitioner

Versus

1. Aditya Kumar Diwan, son of Late Durgadhar Diwan, aged about 69 years
2. Anil Kumar Diwan, son of Late Durgadhar Diwan, aged about 60 years
3. Harish Kumar Diwan, son of Late Durgadhar Diwan, aged about 54 years,

All are residents of Village Ninwa, post office Manohara, Tehsil Tilda and District Raipur (C.G.)

4. Kalyani Tiwari, D/o Late Durgadhar Diwan, resident of Lakhe Nagar Slope, Ashwini Nagar, Tehsil & District Raipur (C.G.)
5. Pramila Sharma, D/o Late Durgadhar Diwan, resident of Sector-1, Near Atak Office, Bhilai Nagar, District Durg (C.G.)
6. Smt. Meera Devi, Wd/o Late Bhangwandhar Diwan, aged about 65 years
7. Ashutosh Diwan, son of Late Bhangwandhar Diwan, aged about 45 years,
8. Shefali, D/o Late Bhagwandhar Diwan, aged about 42 years
9. Swati, D/o Late Bhangwandhar Diwan, aged about 39 years

Respondents No. 8 to 11 resident of Near Jain Mandir, Vidhyut Nagar, Durg (C.G.)

10. Ramkhilawan Yadav, son of Fattelal, aged about 55 years, resident of Lakshman Nagar, Ramkund Mohalla, Raipur (C.G.)
11. Shri Y. Mishra, sub-registrar, Tilda sub-registrar office through State of C.G., District Raipur (C.G.)
12. State of C.G., through the Collector, District Raipur (C.G.)

..... Defendants

13. Santoshdhar Diwan, son of Late Dashrathdhar Diwan, aged about 61 years, residents of Village Ninwa, Post Office Manohara, Tehsil Tilda & Distt. Raipur (C.G.)...Plaintiff No.2

---- Respondents

For Petitioner	: Mr. Ankur Agrawal, Advocate.
For Respondents No. 3, 4 & 5	: Mr. Ajay Mishra, Advocate
For Respondent No. 10	: Mr. Ashish Surana, Advocate
For Respondents No. 1 & 12	: Mr. Vivek Bhakta, Advocate.
For Respondent No. 13	: Mrs. Astha Shukla, PL

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****25/10/2016**

Heard on admission.

(1) Invoking jurisdiction of this Court under Article 227 of the Constitution of India, the plaintiff No.1/petitioner herein has filed this writ petition calling in question the legality, validity and correctness of the order dated 26.03.2015 by which application under Section 151 of the Code of Civil Procedure (for short 'CPC') has been rejected by trial Court.

(2) Shri Ankur Agrawal, learned counsel appearing for the petitioner would submit that the counter claim as framed and filed impleading seven new co-defendants and seeking relief against them is not maintainable *whereas* Mr. Ajay Mishra, learned counsel appearing for respondents No. 3, 4 & 5 would submit that the plaintiff No.1, petitioner herein has not challenged the maintainability of counter claim and, therefore, the trial Court is absolutely justified in dismissing the plaintiffs' application filed under Section 151 of the CPC.

(3) A careful perusal of the application filed under Section 151 CPC would show that plaintiffs have simply prayed that the defendants be directed to follow the provision contained in Order 1 Rule 10 of the Code of Civil Procedure. The plaintiffs have not questioned the legality, validity and impleadment of co-defendants in the suit, however, the trial Court has rejected the said application.

(4) After hearing learned counsel appearing for the parties, I do not find any illegality in the order impugned as if the counter claim is not maintainable against co-defendants and co-defendants have impleaded as party defendants by way of counter claim, the petitioner is at liberty to challenge the same by filing his written statement before the trial Court, and in turn, the trial Court framed issues on that averment and, thereafter decide the said issues along with other issues at the time of final hearing.

(5) I am shocked to find out from the records that the suit was filed on 20.12.1984 i.e. 30 years back and the same has not substantially progressed. The trial Court is directed to conclude the trial by hearing day to day and no adjournment shall be granted for more than three days unless in exceptional circumstances, and conclude the suit with a period of three months from the date of receipt of a copy of this order. Hearing of the suit be concluded on or before 17th February, 2017 and compliance of the order of this Court be informed to this Court by 28th February, 2017. Parties are directed to appear before the trial Court on 15-11-2016.

(6) It is made clear that the impugned order passed by the trial Court would not come in the way of plaintiff in making pleading against the counter claim.

(7) The writ petition is dismissed subject to observations made hereinabove.

Sd/-

(Sanjay K. Agrawal)
Judge

D/-

