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HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.21 of 2016

1. Ramkumar Rajput S/o Late Khushiram, Aged About 88 Years R/o Village Dhavalpur, Tehsil Bindranawagarh, District Gariyanbandh, Gairyabandh (Chhattisgarh)
2. Shiv Kumar Rajput S/o Late Khushiram, Aged About 77 Years R/o Tatibandh, District Raipur (Chhattisgarh)
3. Basant Kumar Rajput, S/o Late Khushiram, Aged About 68 Years R/o Village Pirda, District Raipur (Chhattisgarh)
4. Madan Gopal Rajput S/o Late Khushiram, Aged About 65 Years R/o House No. M-22, Sector 1, Avantivihar Colony, Post Ravigram, District Raipur (Chhattisgarh)
5. Smt. Kamla Devi Wd/o Late Ramesh Kumar, Aged About 62 Years R/o Ramsagar Para, Jawahar Nagar, Infront Of Dhillon Complex, Raipur (Chhattisgarh)
6. Raghuvir Singh S/o Late Durgadas, Aged About 62 Years R/o Rajdhani Electricals, Infront Of Dhillon Complex, Jawahar Nagar Raipur (Chhattisgarh)
7. Jaswant Singh S/o Late Durgadas, Aged About 59 Years R/o House No. S/42, Avanti Vihar Colony, Post Ravigram, Raipur (Chhattisgarh)

--Applicants

Versus

1. Smt. Leeladevi Rajput D/o Late Khushiram, W/o Shri Dharam Singh Rajput, Aged About 72 Years R/O Near Devendra General Store, Ganesh Nagar, Mahadev Ghat Road, Raipur (Chhattisgarh)
2. Smt. Prakashdevi D/o Late Durgadas, W/o Shri Balwant Singh, Aged About 72 Years R/o House No. M-21, Infront Of Chhattisgarh State Ware Housing Corporation Sector -1, Avanti Vihar Colony, Raipur (Chhattisgarh)
3. Mukesh Kumar Rajput, S/o Late Ramswaroop, Aged About 38 Years R/o Village Pirda, Post Office Sakari, District Raipur (Chhattisgarh)
4. Manoj Rajput S/o Late Ramswaroop, Aged About 38 Years R/o Village Pirda, Post Office Sakari, District Raipur (Chhattisgarh)
5. Mahesh Rajput S/o Late Rana Pratap, Aged About 44 Years R/o Village Pirda, Post Office Sakari, District Raipur (Chhattisgarh)
6. Pramod Rajput S/o Late Rana Pratap, Aged About 42 Years R/o Village Pirda, Post Office Sakari, District Raipur (Chhattisgarh)
7. Sub-Divisional Officer / Land Acquisition Officer (Revenue) Raipur (Chhattisgarh)
8. General Public

--Non-Applicants

For Applicants : Shri ML Sakat, Advocate
For Non-applicants 1 : Shri HB Agrawal, Senior
and 2 Advocate with Ms Itu Rani
Mukherjee, Advocate

For Non-applicants 3 to : None appears
6 and 8

For Non-applicant
7/ State : Shri Neeraj Jain, GA

Hon'ble Shri Justice Sanjay K. Agrawal

ORDER ON BOARD

22.06.2016

- 1) In an application filed by Ramkumar Rajput and others / applicants herein, the Succession Court in exercise of powers conferred under Section 373 of the Indian Succession Act, 1925 (hereafter, the Act, 1925), granted succession certificate by order dated 30.04.2013.
- 2) Non-applicants 1 and 2 have filed an application under Section 383 of the Act, 1925 for revocation of the succession certificate, *inter alia* on the ground that the succession certificate was obtained by concealing material facts from the Court without impleading them, therefore, the said certificate is liable to be revoked.
- 3) Upon service of notice, present applicants filed an application under Order 7 Rule 11 of the Code of Civil

Procedure stating that the certificate granted by learned Succession Court on 30.04.2013 is not liable to be revoked and further pleaded that the said certificate has already been used and the amount therein has already been obtained by them. It was further pleaded that the question of title raised in the application cannot be decided under Section 383 of the Act, 1925, therefore, the application filed on behalf of non-applicants 1 and 2 be rejected being not maintainable under law.

- 4) The application filed by the applicants under Order 7 Rule 11 of the CPC was replied by non-applicants 1 and 2/plaintiffs stating *inter alia* that the applicants/defendants have obtained the certificate by suppressing material facts and it can be revoked under Section 383 of the Act, 1925. It was further pleaded that non-applicants 1 and 2 were deliberately not made party in the application for succession certificate and as such, application under Order 7 Rule 11 of the CPC deserves to be rejected.
- 5) Learned Succession Court vide its impugned order dated 27.10.2015 rejected the application finding *inter alia* that such an application would require recording of evidence and therefore, the application cannot be entertained.

- 6) Shri ML Sakat, appearing for the applicants submits that the order passed by learned Succession Court is contrary to law as such the said Court has committed judicial error in rejecting their application.
- 7) Shri HB Agrawal, Senior Advocate appearing for non-applicants 1 and 2 submits that the order passed by learned succession Court is strictly in accordance with law and no interference is warranted in exercise of jurisdiction vested in this Court under Section 115 of the CPC.
- 8) I have heard learned counsel for the parties and also considered their submissions.
- 9) It is not disputed that non-applicants 1 and 2/plaintiffs who have filed application for revocation of succession certificate under Section 383 of the Act, 1925 are daughters of Kushiram Rajput who was brother of deceased Gangaram. The dispute relates to land belongs to Gangaram, who died issue less. It is also not in dispute that in Succession Case No.10/13 which was decided on 30.04.2013, non-applicants 1 and 2 /plaintiffs were not made party and the case was decided in their absence. They have filed an application under Section 383 (b) and (e) of the Act, 1925.

- 10) Present applicants/defendants' objections are that the revocation of Succession Certificate is not maintainable under the law and deserves to be rejected. Since non-applicants 1 and 2 have filed an application under Section 383 of the Act, 1925 for revocation of Succession Certificate on permissible grounds, enumerated in Clauses (a) to (e) of the Act, 1925, it cannot be held to be non-maintainable. Next objection raised is that the application is not maintainable and it is beyond the scope of Section 383 of the Act, 1925 and regular Civil Suit is maintainable.
- 11) On perusal of Section 383 of the Act, 1925, earlier, certificate was granted without impleading non-applicants 1 and 2 (plaintiffs) and it is their case that concealing material facts from the Court and thereby the succession certificate has been obtained in their favour, as such, it cannot be held that their application for revocation is not maintainable.
- 12) For the aforesaid reasons, I do not find any jurisdictional error in the impugned order and thereby, it is dismissed leaving the parties to bear their own costs.

However, Succession Court is directed to expedite the trial of said application.

Sd/-
(Sanjay K Agrawal)
Judge

padma