

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 591 of 2016**

1. Manjeet Sabarwal W/o Dr. S.S. Sabarwal (D/o Late Munsi Ram Saluja) Aged About 68 Years R/o Near Niharika Talkies Korba, Tehsil And District Korba (Chhattisgarh)
2. Amarjeet Chhabda W/o Shri H.C. Chhabda (D/o Late Munshiram Saluja) Aged About 66 Years R/o Dayalbandh Bilaspur (Chhattisgarh)

---- Petitioner**Versus**

1. Charan Singh Saluja S/o Late Shri Munshiram Saluja, Aged About 70 Years R/o Itwari Bazaar, Raigarh, Tehsil & District Raigarh (Chhattisgarh)
2. (A) Jalbai W/o Late Lalaram Chandra, Aged About 60 Years
2. (B) Durbati Bai W/o Late Lalaram Chandra, Aged About 42 Years
2. (C) Santosh Kumar S/o Late Lalaram Chandra, Aged About 24 Years
2. (D) Ishwari Bai D/o Late Lalaram Charndra, Aged About 21 Years
2. (E) Tej Kumar, S/o Late Lalaram Chandra, Aged About 15 Years
2. (F) Ram Bai, D/o Late Lalaram Chandra, Aged About 16 Years
2. (G) Rameshwar @ Nankidau, S/o Late Lalaramram Chandra, Aged About 10 Years On Behalf Of Mother Durpati Bai,

R/o respondents No.2 (a) to (d) Singhra and 2 (e)- Village Sakra and 2 (f) to (g) village Singhra, Police Station

Malakhraoda, Tehsil Sakti, District Bilaspur
(Chhattisgarh)

3. State Of Chhattisgarh, Through Collector, Raigarh
(Chhattisgarh)

4. Saiyad Mohammad Yasin, S/o Mohebbul Hasan, Caste
Muslim, R/o Pathanpara, Kharsia, Tehsil Kharsia, District
Raigarh (Chhattisgarh)

---- Respondent

For Petitioners	Shri Rajeev Shrivastava & Shri Malay Shrivastava, Advocates
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For Respondent/State	Shri Shashank Thakur, Govt. Advocate
For Respondent No.4	Shri M.A. Latif Rahman, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

03/10/2016

1. In a suit for specific performance of agreement filed by one Munshiram Saluja on 04.01.1990 i.e. about 27 years back the trial Court has passed the impugned order dismissing the petitioners' application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 ('the CPC' in short) for their impleadment as defendants on the ground that they are also the legal heirs of original plaintiff Munshiram Saluja, therefore, they have interest in the outcome of the litigation.

2. It appears, the original plaintiff Munshiram Saluja died on 11.10.2008. One Charan Singh Saluja, S/o Munshiram Saluja moved an application for his substitution allegedly concealing the fact that there are other legal heirs. Charan Singh Saluja did this presumably on the ground that there is a Will in his favour executed by Munshiram Saluja for the subject property, however, the property being yet to become property of Munshiram Saluja or any of his legal heirs, it was not available for bequeath. Such right would accrue in favour of any of the legal heirs of Munshiram Saluja as and when the suit is decreed and eventually executed by execution of sale deed in favour of the plaintiff.
3. In the above view of the matter, the trial Court has rejected the application on the ground that the present being a suit for specific performance of agreement and one of the legal heir already representing the deceased plaintiff, non-impleadment of other legal heirs would not cause hindrance to the progress in the suit. Thus, according to the trial Court, the petitioners are neither necessary nor proper party to the suit.
4. At this stage, Shri Rajeev Shrivastava, learned counsel appearing with Shri Malay Shrivastava, learned counsel for

the petitioners, would submit that on the one hand the defendant No.3/respondent No.4 is objecting to the petitioners' impleadment and on the other hand he has raised an objection to the maintainability of the suit for non-impleadment of legal heirs of Munshiram Saluja, therefore, the respondent No.4 is blowing hot and cold.

5. In response to the submission, Shri Rahman, learned counsel appearing for the respondent No.4, would submit that since the suit is pending from 1990 and there are other legal heirs of the original plaintiff Munshiram Saluja, impleadment of one legal heir would pave the way for impleadment of other legal heirs as and when they move application under Order 1 Rule 10 of the CPC, therefore, to facilitate early disposal of the suit, he would undertake not to contest the issue regarding non-maintainability of the suit for want of impleadment of all the legal heirs of the original plaintiff Munshiram Saluja.
6. For the foregoing, this Court would not interfere with the impugned order, however, as and when the present suit succeeds on being prosecuted by only one of the legal heirs of Munshiram Saluja, the other legal heirs can also claim their right over the property and such right of theirs would not be

defeated only on the ground that they were not party in the present suit. Similarly, if the suit is dismissed, the present petitioners would have a right to prefer an appeal after seeking leave of the appellate Court.

7. Accordingly, the writ petition stands disposed of as stated *supra*. No order as to costs.

Sd/-

JUDGE

PRASHANT KUMAR MISHRA

Gowri