

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) NO. 6770 OF 2007

1. Umashankar Jha, S/o Udayakant Jha, aged about 32 years, R/o Dalpat Sagar Ward, Jagdalpur, District Bastar (C.G.)
2. Dayashankar Jha, S/o Udaykant Jha, aged about 28 years, R/o Dalpat Sagar Ward, Jagdalpur, District Bastar (C.G.)

... Petitioners

Versus

1. Shashi Shekhar Rath, S/o Late Abhimanyu, aged about 45 years.
2. Shitanshu Shekhar Rath, S/o Late Abhimanyu, aged about 41 years.
Both are R/o Bhairam Dev Ward, Jagdalpur, District Bastar (C.G.)

... Respondents

For Petitioners	:	Mr. Sourabh Sharma, Advocate.
For Respondents	:	Mr. J.N. Nande, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21/08/2017

1. The present writ petition has been filed by the petitioners challenging the order dated 17.9.2007 and it has also been sought for restraining the Court below from further proceeding with the civil suit i.e. Civil Suit No. 24A/2001 which was renumbered as Civil Suit No. 36A/2005.
2. Brief facts of the case are that a civil suit was filed by respondents no. 1 and 2, i.e., Civil Suit No. 24A/2001 (renumbered as Civil Suit No. 36A/2005) seeking for declaration of title, quashment of the mutation order in favour of one Smt. Durga Devi Joshi, the original petitioner no.1, and also for declaring the sale deed dated 3.11.1997 executed in favour of petitioners no. 2 and 3 by the original petitioner no.1 to be declared as null and void. The issues in the instant case were initially framed on 13.7.2001. Subsequently, three additional issues were also framed vide order dated 9.11.2001 as preliminary issues. All the three preliminary issues were decided in favour of the plaintiffs. The order dated 19.11.2001 was subjected to challenge in a revision petition before the High Court vide Civil

Revision No. 894 of 2001. Initially, this Court in the said civil revision had stayed the further proceedings before the Court below vide its order dated 12.2.2002. Subsequently, in the light of the amendments which were brought into force in the Code of Civil Procedure, the civil revision was finally withdrawn on 13.5.2005 with a liberty to challenge the order dated 19.11.2001 by way of a fresh writ petition. Immediately, a fresh writ petition i.e. Writ Petition No. 2751 of 2006 was filed before the High Court and again the High Court granted stay of the proceedings before the Court below, vide its order dated 20.6.2006. Though the further proceedings before the Court below were stayed by the High Court vide its order dated 20.6.2006 passed in Writ Petition No. 2751 of 2006, but for reasons best known the Court below continued proceeding with the suit and went on deciding a couple of applications. One such application being decided was on 17.9.2007 which is under challenge in the present writ petition.

3. The main grievance of the petitioners in the present writ petition is that when this Court has already stayed the further proceedings of the Court below, any proceedings initiated subsequently by the Court below is bad in law and any order passed by the Court below also would be null and void.

4. The present writ petition was filed on 25.10.2007 and it is 10 years now the writ petition is still pending so also the civil suit before the Court below stands stayed.

5. Learned counsel appearing for the respondents (the original plaintiffs) however does not dispute the fact that admittedly in Writ Petition No. 2751 of 2006 there was an interim order granted by this Court on 20.6.2006 where further proceedings before the Court below were already stayed.

6. This being the admitted factual position, this Court has no hesitation in reaching to the conclusion that the further initiation of the proceedings by the Court below beyond 20.6.2006, whereby this Court had stayed the proceedings, was without authority and any order so passed by the Court below was totally uncalled for and was without jurisdiction. Thus, the order so passed by the Court below on 17.9.2007 also deserves to be and is hereby set aside/quashed.

7. Though this Court has quashed the order dated 17.9.2007 in the present writ petition but it is left open to the petitioners to reagitate the issues so raised in those applications, if they so desire, afresh before the Court below after the disposal of Writ Petition No. 2751 of 2006.

8. The writ petition thus is allowed and disposed of holding that all the subsequent proceedings from the date of the stay order passed by this Court on 20.6.2006 in Writ Petition No. 2751 of 2006 till the proceedings were ultimately stayed by the Court below itself to be without authority and any applications decided in between would also stand to be declared as without authority, leaving open the petitioner the liberty to reagitate those issues by moving afresh application before the Court below, if they so desire.

9. The Civil Court concerned shall proceed with the matter from the stage that it was fixed for immediately before 20.6.2006 i.e. the date when this Court had stayed the further proceeding.

10. Considering the case to be old the concerned Court is expected to decide the suit at the earliest.

11. The writ petition thus stands allowed and disposed of.

Sd/-
(P. Sam Koshy)
Judge