

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No.144 of 2017**

1. Smt. Sudha Upadhyay widow of late Suresh Kumar Upadhyay, aged about 28 years, resident of Uttari Ring Road, Kedarpur, Ambikapur, District Surguja (CG)
2. Minor Ku. Arya daughter of late Suresh Kumar Upadhyay, aged about 04 years, minor, represented through mother Smt.Sudha Upadhyay, resident of Uttari Ring Road, Kedarpur, Ambikapur, District Surguja (CG)

---- Petitioners

Versus

1. Karamchand Upadhyay son of late Rupnarayan Upadhyay, aged about 53 years,
2. Smt.Girja Devi Upadhyay wife of Karamchand Upadhyay, aged about 48 years,
Both are resident of in front of Jut Mill Street, Raigarh, Tahsil & District Raigarh (CG)
3. Commanding Officer, 26 R.R./C.O.-56, A.P.O. Kumau, Headquarter Thathri, District Udhampur (Jammu-Kashmir)
4. The Accountant General (A.G.S. Branch), Army Group Insurance, A.G.I. Building, Basant Vihar, Post-New Delhi-110057
5. Incharge Officer, Record Office, M.I.R. Mechanize Infrenties Regiment Ahmadnagar (MS) 414001
6. Public At Large

---Respondents

For petitioners	:	Mr.Rahul Mishra, Advocate
For Res.No.1 and 2	:	Mr.Sanjay Agrawal, Advocate
For Res.No.3 to 5	:	Mr.Ramakant Pandey, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board**24/04/2017

Heard.

- 1.** The petitioners have filed this writ petition under Article 227 of the Constitution of India against the order dated 6.2.2017, whereby the Appellate Court has rejected the application filed by the petitioners under Order 41 Rule 27 of the CPC.
- 2.** Learned counsel for the petitioners would submit that the petitioners application under Order 41 Rule 27 of the CPC directing respondents No.3 to 5 to produce copy of Will has been illegally rejected by the Appellate Court.
- 3.** Learned counsel appearing for respondents No.3 to 5 would submit that the Appellate Court has rightly rejected the application filed by the petitioners under Order 41 Rule 27 of the CPC. He would further submit that the defendants have not got the Will exhibited during the course of the trial, therefore, application under Order 41 Rule 27 of the CPC is not maintainable.
- 4.** I have heard learned counsel appearing for the parties and perused the impugned order.
- 5.** Succession certificate was granted by the trial Court, against which, the present petitioners filed an appeal. The appeal was fixed for judgment on 29.1.2017, on that day, application under Order 41 Rule 27 of the CPC was filed by the petitioners for directing official respondents No.3 to 5 to produce copy of the Will. The Appellate Court rejected the application.
- 6.** From perusal of the impugned order, it appears that application itself was produced on the date of judgment and copy of the Will has already been produced by the Department on 11.8.2015 before the trial Court. The Appellate Court has already been held that application filed under Order 41 Rule 27 of the CPC was not an application for filing additional document, but an application for directing the official respondents to produce the document which has

already been filed.

- 7.** In view of the aforesaid finding, I do not find any jurisdictional error in the impugned order warranting interference by this Court. Consequently, the writ petition is liable to be and is hereby dismissed. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-