

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 227 of 2017

- Purushottam Rao Bhosle S/o Narayan Rao, Aged About 82 Years, Near Sant Gyaneshwar School, Priyadarshini Nagar Raipur, P. O. Thana Tahsil And District Raipur (Chhattisgarh).

---- Petitioner

Versus

1. Smt. Shanti Bai Bhosle W/d Chakradhar Rao, Aged About 61 Years
2. Ravindra Rao Bhosle, S/o Chakradhar Rao, Aged About 40 Years,

Both R/o Quarter No. P/188, Ultratech Cement Township Hirmi, P/o Hirmi, Thana And Tehsil Simga, District Balanda Bazar Bhatapara (Chhattisgarh).
3. Ranveer Rao Bhonsle, S/o Chakradhar Rao, Aged About 38 Years, R/o Sector - 1, Shivanand Nagar Khamtarai Raipur, P. O. Thana Tahsil And District Raipur (Chhattisgarh).
4. Bhaiya Saheb Shinde, S/o Appaji Rao, Aged About 92 Years, R/o Village Sagarpali, P.O. Thana Sagarpali, Tahsil Saraipali, District Mahasamund (Chhattisgarh).
5. Smt. Naline W/o Manohar Rao, Aged About 57 Years,
6. Kishor Rao Wahile, S/o Ganpat Rao Wahile, Aged About 55 Years
7. Rakesh Rao Wahile, S/o Ganpat Rao Wahile, Aged About 52 Years All R/o Burha Para Raipur, P. O. Thana Tahsil And District Raipur (Chhattisgarh).
8. Chhattisgarh State, Through Collector Raipur, P. O. Thana Tahsil And District Raipur (Chhattisgarh).
9. Smt. Ramola W/o Pradeep Bhosle, Aged About 32 Years, R/o Village Chhure (Korba), P. O. Thana Tahsil And District Korba (Chhattisgarh).

---- Respondents

For Petitioner	:	Shri Hemant Kumar Mishra, Advocate
For State	:	Shri Chandresh Shrivastava, P.L.

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

21/03/2017

1. This petition under Article 227 of the Constitution of India is preferred

by which petitioner's application for framing additional issues, though partly allowed, the trial Court has not allowed prayer for framing of issues other than those allowed by the impugned order.

2. Plaintiffs have filed suit seeking a decree of declaration of title of the plaintiffs on the basis of Will deed dated 22/10/1978; decree of permanent injunction to restrain defendants from interfering from title and willful possession of the plaintiff; recovery of possession; declaration that Will deed dated 18/02/1989 is forged and inoperative; declaration that the orders dated 21/07/1980, 30/03/1982 and 12/04/1983 and order dated 21/06/2000 be declared illegal and inoperative in law.

The plaintiffs case is based substantially on the pleadings that by virtue of Will deed dated 22/10/1978 executed by late Saibai, in favour of Chakradhar Rao Bhosle, Chakradhar Rao Bhosle succeeded to the property in dispute and after his death, the plaintiffs, who are widow and sons of Chakradhar Rao Bhosle. The other part of pleading is that so called Will deed dated 18/02/1989 alleged to be executed by Smt. Dadibai is a forged document because Dadibai had no title in that part of property, which had already devolved upon Chakradhar Rao Bhosle by virtue of Will deed dated 22/10/1978. According to the plaintiffs one Appaji Rao had two wives namely Pilibai and Saibai. Pilibai died on 1956 and Saibai died on 1979. it is a case of the plaintiffs that Dadibai died on 1989. Further, the plaintiffs case is that after death of Appaji Rao, a partition had taken place between Pilibai and Saibai in the year 1930. the property in dispute belong to Saibai to which Chakradhar Rao Bhosle succeeded Will by virtue of Will deed dated 22/10/1978 and therefore, the daughter of Pilibai, namely Dadibai, had no title and, in fact, no Will was executed by Dadibai on 18/02/1989.

According to the defendants, sale-deed dated 22/10/1978 is forged

and fabricated and no title devolved by virtue of that Will deed as Saibai did not dispute various orders which were passed by revenue authorities from time to time, the plaintiffs had no right to challenge the legality and validity of Will deed dated 18/02/1989.

3. Learned trial Court on the basis of the aforesaid pleadings of the parties has framed as many as 13 issues on 05/01/2017. Two additional issues were framed by partly allowing defendants application, on 09/02/2017.
4. Learned counsel for the petitioner argued that for just and fair decision of the suit, it was necessary to frame proposed issues other than those allowed. According to learned counsel for the petitioner, present issue No. 3 should be substituted by proposed issue as to whether Will deed dated 22/10/1978 is false, forged and therefore void. On this aspect it is found that the learned trial Court has already framed issue No. 3 as to whether Saibai had executed the Will deed dated 22/10/1978.

The other proposed issue as to whether plaintiffs are legally entitled to challenge the Will of Dadibai, specifically issue No. 9 has been framed as to whether plaintiffs entitled to seek declaration that Will deed dated 18/02/1989 issued by Dadibai is void. This issue is comprehensive in nature and the issue whether they are estopped from claiming the disputed property and whether the Court is included in the aforesaid issue.

5. The plaintiffs have filed suit on 02/08/2000 and the cause of action started in the plaint is order passed by the Revenue Authority relating to mutation on 21/06/2000 and order passed on 13/01/2000 and dismissal of the complaint of Bhaiya Sahab Shinde against Chakradhar Rao Bhosle alleging the commission of offence under Section 420, 471 of IPC on the allegation that Will deed dated 22/10/1978 is forged.

Therefore, considering that the declaration is decree of permanent injunction on the basis of Will deed dated 22/10/1978 issue of limitation was rightly not framed by learned trial Court because the entire case revolves around the two Will deed, one on the basis of which title is claimed by the plaintiffs and other by virtue of which title is claimed by the defendants.

6. On the issue of non-joinder and misjoinder of parties, the learned trial Court has framed issue whether the suit is liable to be dismissed on the ground of non-joinder of parties. The objection to impleadment of Bhaiya Sahab Shinde as one of the defendant and prayer for framing an issue that the suit also suffers from misjoinder of parties does not merit because it is stated that Bhaiya Sahab Shinde, claiming himself to be the adopted son of late Appaji Rao, objected to mutation in favour of the plaintiffs and filed an appeal also and later on, Bhaiya Sahab Shinde filed a criminal complaint against Chakradhar Rao Bhosle alleging that Chakradhar Rao Bhosle prepared a forged Will deed on 22/10/1978, therefore, the learned trial Court has not committed any jurisdictional error in not framing the issue in that regard.

No jurisdictional error is committed by the learned trial Court as the trial Court had already framed issue as many as 13 issues and on petitioner's application, two additional issues have been framed which taken together comprehensive by cover all the disputes arising for decision in this regard. The petition is dismissed.

Sd/-
(Manindra Mohan Shrivastava)
Judge