

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.590 of 2017**

1. Smt. Meera Devi W/o Late Shyam Sundar, Aged About 57 Years (Grand Daughter In Law Of Late Paltudas) R/o Chetan Chowk, Pendra, Tahsil Pendra, District Bilaspur, Chhattisgarh.
2. Anand Sahu S/o Late Shyam Sundar, Aged About 36 Years Occupation Businessman, R/o Chetan Chowk, Pendra, Tahsil Pendra, District Bilaspur, Chhattisgarh.
3. Jaishree, D/o Late Shyam Sundar, Aged About 40 Years Occupation Housewife, W/o Shri Sonu Sahu, R/o Nehru Nagar Bilaspur, C/o S.R. Sahu, Gitanjali Construction Company Bilaspur, Tahsil Bilaspur, District Bilaspur, Chhattisgarh.
4. Jyoti D/o Late Shyam Sundar, Aged About 38 Years R/o Behind Panchshil Club, Near Shiv Mandir, Ward No. 19, Mahasamund, Tahsil & District Mahasamund, Chhattisgarh. Pin No. 493445
5. Kirti D/o Late Shyam Sundar, Aged About 34 Years W/o Girish Sahu, Shriram Sahu, Manav Mandir Rajnandgaon, Tahsil Rajnandgaon, District Rajnandgaon, Chhattisgarh (Wrongly Mentioned As Tehsil & District Mahasamund In The Cause Title)
6. Priya D/o Late Shyam Sundar, Aged About 33 Years (Wrongly Mentioned As 3 Year In The Cause Title) W/o Sanjiv Sahu, R/o Aarti Fancy Stores, Main Road, Nehru Nagar, Near Congress Bhawan, Mahasamund, Tahsil & District Mahasamund, Chhattisgarh.
7. Priyanka, D/o Late Shyam Sundar, Aged About 32 Years W/o Abhishek Gupta, S/o Madan Gupta, R/o Trimurti Enterprises & Tractor Parts Seller, Main Road, Lakhanpur, Tahsil & District Surguja, Chhattisgarh.
8. Smt. Kala Devi W/o Late Kanhaiyya Lal, Aged About 70 Years D/o Late Shri Paltudas, R/o In Front Of Police Station, Near Hanuman Mandir, Pendra Road, Tahsil & District Bilaspur, Chhattisgarh.

----Petitioners

Versus

1. Smt. Sushila Bai W/o Late Parasram Sahu, Aged About 67 Years D/o Late Palturam, R/o Amit Kirana Stores, Borsi Road, Vidhyut Nagar, Durg, Tehsil & District Durg, Chhattisgarh.
2. State Of Chhattisgarh, Through The Collector, Bilaspur, District Bilaspur, Chhattisgarh. (Defendant)

---- Respondents

For Petitioners	:	Mr.Ashok Soni, Advocate
For Respondent No.2	:	Mr.Arun Sao, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board**

1/9/2017

- 1.** Respondent No.1/plaintiff instituted a suit on 10.4.2013 for declaration of her share, partition and possession in the Court of District Judge, Bilaspur having the jurisdiction over the matter and valued the suit at ₹ 3,20,97,533/-. Learned District Judge exercising the power conferred under the Chhattisgarh Civil Courts Act, 1958 (hereinafter called as “Act of 1958”) and as per distribution memo dated 4.1.2017 transferred the case to the court of Additional District Judge, Bilaspur by order dated 21.11.2016 for disposal in accordance with law. When the matter stood thus before the Additional District Judge, Bilaspur, question of jurisdiction was raised by the petitioners/defendants that in the light of Section 16 of the Code of Civil Procedure, that suit ought to have been instituted in the Court of Additional District Judge, Pendra Road. The Additional District Judge, Bilaspur has held that since the matter has been transferred by learned District Judge under the Act of 1958 and as per distribution memo, therefore, he has jurisdiction to hear the suit. Questioning that order, this writ petition under Article 227 of the Constitution of India has been filed by the petitioners/defendants herein.
- 2.** Mr.Ashok Soni, learned counsel appearing for the petitioners/defendants, would submit that order passed by the Additional District Judge, Bilaspur is contrary to the fact and law and contrary to Section 16 of the CPC, therefore, it deserves to be set aside.

3. On the other hand, Mr. Arun Sao, learned Deputy Advocate General appearing for respondent No.2, would submit that learned Additional District Judge, Pendra Road has the jurisdiction to hear and decide the suit having the valuation to the extent of ₹ 40 lacs only and as Civil and Revenue District of Tahsil Pendra Road is Bilaspur, the Additional District Judge, Pendra Road has no jurisdiction to hear the suit as valuation of the suit is ₹ 3,20,97,533/- i.e. more than ₹ 40 lacs. He would further submit that the suit has been instituted in the Court of District Judge, Bilaspur and by virtue of Section 7 (2) of the Act of 1958 read with distribution memo the suit has rightly been transferred in the Court of Additional District Judge, Bilaspur having the jurisdiction to entertain and try the same, therefore, the writ petition deserves to be dismissed.

4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

5. For the sake of convenience, it would be appropriate to notice Section 16 of the CPC which reads as under:-

“16. Suits to be instituted where subject matter situate.- Subject to the pecuniary or other limitations prescribed by any law, suits—

(a) for the recovery of immovable property with or without rent or profits,

(b) for the partition of immovable property,

(c) for foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property,

(d) for the determination of any other right to or interest in immovable property,

(e) for compensation for wrong to immovable property,

(f) for the recovery of movable property actually under distraint or attachment,

shall be instituted in the Court within the local limits of whose jurisdiction the property is situate:

Provided that a suit to obtain relief respecting, or compensation for wrong to, immovable property held by or on behalf of the defendant may, where the relief sought can be entirely obtained through his personal obedience, be instituted either in the Court within the local limits of whose jurisdiction the property is situate, or in the court within the local limits of whose jurisdiction the defendant actually and voluntarily resides, or carries on business, or personally works for gain.

Explanation: In this section "property" means property situate in India."

6. It would further appropriate to notice Section 7 and 8 of the Act of 1958 which reads as under:-

"7. Principal Civil Courts of Original jurisdictions.-(1) The Court of the District Judge shall be the Principal Civil Court of original jurisdiction in the civil district.

(2) An Additional District Judge shall discharge any of the functions of a District Judge, including the functions of Principal Civil Court of original jurisdiction which the District Judge may, by general or special order, assign to him and in the discharge of such functions he shall exercise the same powers as the District Judge."

8. Appointment of additional Judge.-(1) An additional Judge or Judges to the Court of District Judge, Additional District Judge, Civil Judge Class I or Civil Judge Class II may, whenever it appears necessary or expedient, be appointed to the Court of District Judge or Additional District Judge or Civil Judge Class I or Civil Judge Class II, as the case may be, and such Additional Judge shall exercise the

jurisdiction of the Court to which he is appointed and the powers of the Judge thereof, subject to any general or special orders of the authority by which he is appointed as to the Class or Value of the suit which he may try, hear or determine.

(2) An officer may be appointed an Additional Judge of one or more Courts and an Officer who is a Judge of one Court may be appointed an Additional Judge of another Court or of other Courts."

7. In the matter of **Harshad Simal Lal Modi Vs. DLF Universal**

Limited and another¹ the Supreme Court has held as

under:-

"16. Section 16 thus recognizes a well-established principle that actions against res or property should be brought in the forum where such res is situate. A court within whose territorial jurisdiction the property is not situate has no power to deal with and decide the rights or interests in such property. In other words, a court has no jurisdiction over a dispute in which it cannot give an effective judgment. Proviso to Section 16, no doubt, states that though the court cannot, in case of immovable property situate beyond jurisdiction, grant a relief *in rem* still it can entertain a suit where relief sought can be obtained through the personal obedience of the defendant. The proviso is based on well known maxim "*equity acts in personam*", recognized by Chancery Courts in England. Equity Courts had jurisdiction to entertain certain suits respecting immovable properties situated abroad through personal obedience of the defendant. The principle on which the maxim was based was that courts could grant relief in suits respecting immovable property situate abroad by enforcing their judgments by process *in personam*, i.e. by arrest of defendant or by attachment of his property. "

8. Section 7(2) of the Act of 1958 came up for consideration before Full Bench of the High Court of Madhya Pradesh in the matter of **Babulal Vs. Dattatraya and others**² in which Full

¹ (2005) 7 SCC 791

² 1971 M.P.L.J. 765

Bench of High Court of Madhya Pradesh held as under:-

“7. Thus there is no doubt that the District Judge, Mandleshwar could have heard and decided the election petition which is the subject matter of the present revision petition. But he has not done so. Instead he, by his order dated 25-3-1965 pursuant to his powers under section 6 of the Madhya Pradesh Civil Courts Act, transferred the petition for its being heard by the Additional District Judge Mandeshwar. The said Judge heard the petition on merits and declared the election of the petitioner Babulal void. He has now preferred this revision petition under section 26(2) of the Madhya Pradesh Municipalities Act.”

9. Judgment of the Full Bench of High Court of Madhya Pradesh in Babulal (supra) has been followed with approval in the matter of **Rajendra Prasad Vs. Mahendra Singh Bargahi**³ in which it has been held as under:-

“15. On a reading of the aforesaid paragraph it is quite apparent that the learned Single Judge has ruled that an election petition under the Municipalities Act can be instituted in the Court of the District Judge and for the purpose of its trial and decision the District Judge is duty bound to transfer it to the Court having a permanent seat at the place where the election or nomination took place. The aforesaid view runs contrary to the view expressed in the case of Anup Pyarelal (supra). We reiterate that if the District Judge lacks inherent jurisdiction he cannot entertain an election petition and hence, the question of taking aid of M.P. Civil Courts Act does not arise. We hereby clarify that as far as the first part of Section 20 is concerned, the District Judge has the jurisdiction to entertain the election petition and, therefore, in exercise of statutory powers conferred on him under M.P. Civil Courts Act he can assign the Additional District Judge to entertain and try the election petition. That would be in consonance with the provisions of the Act. Hence we conclude and hold that opinion expressed by the learned Judge in Malik Singh Chawla (supra) to the extent it runs contrary to Anup Pyarelal (supra) is not correct.”

³ 2001(2) M.P.L.J. 82

10. In the matter of **Vinod Kumar Jajodia and others Vs.**

Brij Bhushan Agrawal⁴ the High Court of Madhya Pradesh

has observed as under:-

“3. With formation of the Higher Judicial Service in the State of Madhya Pradesh, persons belonging to this class of service are appointed either District Judges or Additional Judges to the Court of District Judges. According to Sub-section (2) of Section 7 of the Act, they are competent to discharge any of the functions of a District Judge including the functions of Principal Civil Court of original jurisdiction which the District Judge may by general or special order, assign to them and in the discharge of such functions they shall exercise the same powers as the District Judge. The provisions of Sub-section (2) of Section 7, when read with Section 8, and particularly the clause "... such Additional Judge shall exercise the jurisdiction of the Court to which he is appointed and the powers of the Judge thereof," as appearing in Section 8, make it clear that when a person is appointed an Additional Judge to the Court of District Judge, he exercises the jurisdiction of that Court, namely, the Court of District Judge, and is also entitled to exercise the same powers, subject of course, to any general or special orders of the authority by which he is appointed as to the class or the value of the suit which he may try, hear or determine. Thus, an Additional Judge to the Court of District Judge appointed in any district has the same powers as the District Judge has, and is entitled to exercise jurisdiction of the Court of District Judge. He also is entitled to exercise functions of Principal Civil Court jurisdiction like the District Judge himself. That being the present position after the substitution of Sub-section (2) of Section 7 and Section 8 of the Madhya Pradesh Civil Courts Act, 1958 by M.P. Act No. 7 of 1980, there is no substance in the argument that a suit of the value of more than Rs. 20,000/- cannot be originally instituted in the Court of Additional Judge to the Court of District Judge.”

11. Reverting back to the facts of the case, it is quite apparent that the Additional District Judge, Pendra Road does not have the jurisdiction to entertain the present suit which is

4 1993 M.P.L.J. 603

valued more than ₹ 40 lacs. The suit has been instituted in the Court of District Judge, Bilaspur having the jurisdiction to hear the suit, valuation of which exceeds ₹ 40 lacs and in exercise of powers conferred and distribution memo prepared under the Act of 1958 same has been transferred to learned Additional District Judge, Bilaspur which he is entitled to entertain and try in view of the provisions contained in Section 7(2) of the Act of 1958 as the Additional District Judge is empowered to discharge any of the functions of the District Judge.

- 12.** As a fallout and consequence of the aforesaid discussion, the writ petition deserves to be and is hereby dismissed as the Additional District Judge having been transferred the suit by the District Judge has the jurisdiction to entertain and try the same.

Sd/-

(Sanjay K. Agrawal)

Judge

B/-