

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP(227) No. 3 of 2017**

Bhagirathi Pandey S/o Late Ramlala Pandey, Aged About 62 Years R/o Sheetla Ward, Nagar Ambikapur, Police Station & Tahsil Ambikapur, District Surguja (Chhattisgarh).

---- Petitioner**Versus**

1. Ramesh Pandey S/o Late Ramlata Pandey, Aged About 65 Years R/o Sheetla Ward, Nagar Ambikapur, Police Station & Tahsil Ambikapur, District Surguja (Chhattisgarh)
2. Balmukund Pandey S/o Late Kailash Ram Pandey, Aged About 75 Years R/o Sheetla Ward, Nagar Ambikapur, Police Station & Tahsil Ambikapur, District Surguja (Chhattisgarh).
3. State Of Chhattisgarh, Through The Collector, Surguja, Ambikapur (Chhattisgarh).

---- Respondents

For Petitioner	Shri Ajay Kumar Pandey, Advocate.
For Respondent/State	Shri OP Sahu, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy**Order On Board****05/01/2017**

1. The present petition under Article 227 of the Constitution of India has been filed against the order dated 17.11.2016 passed by the Second Civil Judge, Class-II, Ambikapur, in Civil Suit No.67-A/2014 whereby the court below has rejected the petitioner's application filed under Order 14 Rule 5 CPC for framing additional issues.
2. Counsel for the petitioner submits that it is a case where the respondent No.1/plaintiff in the present petition has filed a suit for declaration over the suit property in the year, 2014 which was registered as Civil Suit No.67-A/2014. After notices were served, the present petitioner who was defendant No.1 before the court below had submitted his detailed written . In the written statement he has

categorically denied the claim of the plaintiff and have also made an averment in respect of plaintiff having relinquished his right in the ancestral property way-back about 25 years ago after accepting as full and final settlement of Rs.30,000/-from the father of the petitioner-defendant No.1 and also a share of 13 decimal in his father's property. Thus, he does not have any right to claim in the property which is now in the possession of defendants.

3. The court below initially had framed four major issues. The petitioner-defendant No.1 has now moved an application under Order 14 Rule 5 CPC seeking for framing of certain additional issues which would be germane for the appropriate adjudication of the suit. However, the court below has rejected the same on the ground that the said application has been filed with an intention of delaying the proceedings.
4. The petitioner submits that he had no intention for delaying of the proceeding by filing said application. It is also submitted that even before the evidence could begin it was realized that certain additional issues were also required to be framed and thus necessitated moving of the said application under Order 14 Rule 5 CPC. He further submits that in case these issues are not framed by the court below, the same shall be detrimental to determine the claim and right of the present petitioner. Once when the court below has framed an issue as to whether the plaintiff is entitled to a share in his ancestral property, the court would also be required to decide the issue as to whether the plaintiff in the instant case has already received his share in the ancestral property or not. Therefore, framing of such additional

issues would be necessary for proper adjudication of the case.

5. Having heard the counsel for the petitioner and on perusal of records what is reflected is the fact that the plaintiff in the instant case i.e. respondent No.1 had filed a suit for declaration of title and in the written submission the stand of the present petitioner-defendant No.1 was very emphatic in respect of plaintiff's getting his share in the ancestral property by way of lump sum amount of Rs.30,000/- which was paid to him some 25 years ago and had also received his share in the property of his father i.e. 13 decimal out of total 39 decimal of land which stood in the name of his father. Therefore, this court is of the opinion that two issues is required to be decided by the court below as to whether the plaintiff by way of partition in the ancestral property had already received his share of 13 decimal of land, and whether the father of the petitioner as a part of the partition of the property has already paid Rs.30,000/- as his share against the ancestral property to the plaintiff during his life time or not. What also cannot be brushed aside is the application was moved even before the evidence of the plaintiff was recorded, therefore, it cannot be said that it was for lingering the matter.
6. Let the court below shall frame the issues as proposed at B & C in the application of the petitioner filed under Order 14 Rule 5 as additional issues No. 4 & 5 and thereafter to proceed further with the case for proper adjudication.
7. It is made clear that there shall be no deviation from the proceeding which has already been drawn and the court below shall try to decide the suit as expeditiously as possible. It is also made clear that on the

next date of hearing if the case is fixed for evidence, the evidence shall be recorded with the cooperation of the parties as framing of additional evidence does not require much consideration or time.

8. With the aforesaid observations, the petition is allowed and disposed off.

Sd/-
(P.Sam Koshy)
Judge

inder