

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (227) No.624 of 2017

George Mathew, S/o late P.V. Mathew, aged about 64 years, R/o J/14-A, Shriram Nagar, Phase-I, Shankar Nagar, Raipur, Police Station Mowa, District Raipur (CG).

---- Petitioner

Versus

Shri Ramchandra Swami Alias Bhagirathi Mandir Trust, Golbazar Raipur, through Chief Trustee & Sarvarakar, Arun Kumar Dubey, aged about 28 years, S/o late Ravishanker Dubey, Bhagirathi Dubey, Mandir, Nayapara, Golbazar, Raipur, Tahsil & District Raipur (CG).

--- Respondents

For Petitioner : Mr. Chandresh Shrivastava, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order On Board

01/09/2017

(1) The respondent/plaintiff herein filed a suit against the petitioner/defendant for possession before the trial Court on 12.02.1997. During the pendency of the suit, on 05.12.2014 the petitioner/defendant herein has filed an application under sub-rule (2)(b) of Rule 2 of Order 14 of CPC that the suit may be dismissed for want of non-joinder of necessary party. The trial Court by its impugned order dated 17.07.2017 has rejected the application as unsustainable and bad-in-law.

(2) Feeling aggrieved against the impugned order passed by the trial Court, this writ petition under Article 227 of the Constitution of India has been filed by the petitioner.

(3) Learned counsel appearing for the petitioner/defendant would submit that the suit is liable to be rejected as per provision contained in Order 1 Rule 9 of CPC.

(4) I have heard learned counsel for the petitioner and perused the impugned order.

(5) Order 14 Rule 2 of CPC provides as under:-

“2. Court to pronounce judgment on all issues (1)

Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule(2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

(6) In view of the aforesaid provision, the issue of non-joinder of the necessary party cannot be tried as preliminary issue and it can be considered at the time of final hearing of the suit, therefore, the trial court is absolutely justified in dismissing the application under subrule (2) of Rule 2 of Order 14 of CPC in which I do not find any jurisdictional error in the impugned order. I am of the considered opinion that the application was filed only to delay the trial of the suit, which is pending since 12.02.1997.

(7) Consequently the writ petition deserves to be and is accordingly dismissed subject to payment of cost of Rs.5000/- to the District Legal Aid Committee by the defendant within a period of 15 days from today.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-