NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 774 of 2017

Basubandhu Deewan S/o Shri Jeevan Dhar Deewan, Aged about 60 years, by profession Government Teacher, R/o Ganjpara, Bemetara, P. S. and Tahsil Bemetara Distt. Bemetara Chhattisgarh

---- Petitioner

Versus

1. Dr. Naresh S/o Late Shriram Sanehi Tiwari, Aged about 57 years, by profession Agriculturist, R/o Village Balsamund, Near Old Bus Stand, Bemetara, P. S. and Tahsil Bemetara Distt. Durg (Now Bemetara) Chhattisgarh

2. Suresh Tiwari, S/o Late Shri Ram Sanehi Tiwari, Aged about 55 years, by profession Agriculturist, Village Balsamund, P. S. and Tahsil Bemetara Distt. Durg (Now Bemetara) Chhattisgarh R/o Mohanbhatta Road at his private house.

3. Avinsah Tiwari, S/o Shri Suresh Tiwari, Occupation Homeopathic Doctor, Resident with Defendent No. 2 Bemetara Distt. Bemetara Chhattisgarh

4. The State of Chhattisgarh, Through The Collector Durg (Now Bemetara) Chhattisgarh.

---- Respondents

For Petitioner : Mr. Malay Kumar Bhaduri, Advocate.
For Respondents/State : Mr. S. Majid Ali, Panel Lawyer.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

01/11/17

1. Learned counsel appearing on behalf of the petitioner would submit that the trial Court has illegally declined to decide the issue Nos. 09 and 10 as preliminary issues. As the two additional issues No. 09 and 10 go to the root of the matter therefore, the issues ought to have been decided as preliminary issue. Learned counsel for the petitioner has relied upon the decisions rendered by the M.P. High Court in the matters of **Champalal v.**

Kanakmal and others[1] ; **Archana Sarees, Chanderi, Dist. Ashok Nagar v. M.P. Handicraft and Handloom Development Corporation Ltd., Bhopal and others**[2] and **Ashok v. Dharamwati Devi**[3]. He also relied upon the judgment of the Supreme Court in the matter of **Foreshore Co-operative Housing Society Limited v. Praveen D. Desai (Dead) thr. LRs. and others**.[4]

2. I have heard learned counsel for the petitioner.

3. Undisputedly, the suit is pending since 16.12.2008 and the trial Court by the impugned order dated 15.09.2017 framed two additional issues and held that the two issues involves mixed question of law and fact and that cannot be decided as preliminary issues and cannot be disposed of along with other issues as one issue is with regard to the question of limitation that is undisputedly mixed question of law and fact and the other issue relating to the bar of the suit. As the suit is pending since 16.12.2008 and according to the trial Court no useful purpose will be served in deciding both the issues as preliminary issues looking to the long pendancy of the suit, I am of the considered opinion that the discretion exercised by the trial Court cannot be said to be contrary to law. I do not find any jurisdictional error in the impugned order.

4. The writ petition deserves to be and is accordingly dismissed. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

Priyanka

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1 1994 JLJ 628
2 2010 (2) M.P.L.J.
3 2012 (4) M.P.L.J.
4 2015 AIR SCW 2671