

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 398 of 2014

- Amit Avadhiya S/o Late Narendra Avadhiya, Aged About 30 Years R/o Parasnagar, Fafadih, P.S. Ganjthana, Civil & Revenue Distt. Raipur C.G.

---- Petitioner

Versus

1. Panju Avadhiya S/o Late Sukharam Avadhiya, Aged About 55 Years R/o House No. 39/20/21, Avadhiyapara Beside Of Satyanarayan Mandir Ward Brahman Para Avadhiyapara, Tahsil & Distt Raipur C.G.
2. Ashwani Avadhiya S/o Late Sukhram Avadhiya Aged About 50 Years
3. Smt. Vimla Avadhiya Wd/o Late Narendra Avadhiya Aged About 48 Years
4. Abhijit Avadhiya S/o Late Narendra Avadhiya, Aged About 28 Years
5. Aniket Avadhiya S/o Late Narendra Avadhiya, Aged About 26 Years
6. Anju Avadhiya D/o Late Narrendra Avadhiya Aged About 24 Years
7. Smt. Aditi Soni W/o Dhiraj Soni
8. Ku Juhi Avadhiya D/o Late Narendra Avadhiya
9. Ku. Sindhu Avadhiya D/o Late Sukhram Avadhiya Aged About 53 Years
- 10.Smt. Sangita Soni D/o Late Sukhram Avadhiya Aged About 48 Years
No. 2 to 10 are R/o Near Satyanarayan Mandir Ward Avadhiyapara, Tahsil and District Raipur (CG)
- 11.Smt. Manju Avadhiya W/o Shri Rahaslal Avadhiya R/o Avadhiyapara Raipur C.G.
- 12.Dharam Avadhiya S/o Rahaslal Avadhiya R/o Avadhiyapara Raipur C.G.
- 13.Dhiraj Avadhiya S/o Rahaslal Avadhiya R/o Avadhiyapara Raipur C.G.

---- Respondent

For Petitioner	:	Shri PP Sahu, Advocate.
For Respondent No.1	:	Shri AK Prasad, Advocate.
For Respondents No.2 to 13	:	None.

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

07/02/2017

With the consent of the parties, the matter is heard finally.

02. Challenge in the present petition filed under Article 227 of the Constitution of India is to the order dated 5.2.2014 (Annexure P/1)

passed by 7th Additional District Judge, Raipur in Civil Suit No.24-A/2012 allowing the application as filed by the plaintiff under Order I Rule 10(2) read with Section 151 of CPC.

03. In a suit filed by the plaintiff for declaration, separate partition, possession and permanent injunction, on 26.8.2013 the plaintiff filed an application under Order I Rule 10(2) read with Section 151 of CPC, *inter alia*, pleading that as objection has been raised by the defendants for not impleading Smt. Indu Avadhiya as defendant, she has filed this application for impleading the LRs of Smt. Indua Avadhiya (dead) as defendant in the present suit. It has been mentioned in the application by the plaintiff that this impleadment is being made on account of objection raised by the defendants for non-impleadment of Smt. Indua Avadhiya.

04. The trial Court vide impugned order has granted the said application holding that LRs of Smt. Indu Avadhiya being necessary party are required to be joined as defendants for doing complete justice to the parties. It is this order which has been assailed by defendant No.2 in this petition.

05. Learned counsel for the petitioner submits that the application under Order I Rule 10(2) of CPC has been filed at the belated stage when the matter was about to be heard finally. He submits that the only intention of the plaintiff appears to be delaying the proceedings and as such, the Court below ought not to have allowed the application. Lastly he submits that consequence of allowing the said application is permitting the plaintiff to amend the cause title, restoring the suit to its

initial stage, which would cause delay in conclusion of the trial.

06. Supporting the impugned order, it has been argued by Shri Prasad that it was the petitioner who had raised objection for not impleading Smt. Indu Avadhiya as defendant and considering this aspect of the case, an application was filed under Order I Rule 10(2) of CPC for impleading LRs of Smt. Indu Avadhiya. He submits that there has been no intention on the part of the plaintiff to prolong the proceedings. He further submits that on account of interim order passed by this Court in favour of the petitioner, the proceedings of the suit have been stayed for the last about three years and in fact, it is the petitioner who does not want early disposal of the suit.

07. Heard counsel for the parties and perused the material available on record.

08. From the documents on record, it is apparent that on objection being raised by the defendants with regard to non-impleadment of Smt. Indu Avadhiya as defendant, the plaintiff filed an application under Order I Rule 10(2) read with Section 151 of CPC for arraying the LRs of Smt. Indu Avadhiya (dead) as defendants. The trial Court considering the fact that the proposed defendants being the LRs of Smt. Indu Avadhiya, who was real sister of the plaintiff, are necessary party as the suit is for declaration and partition of ancestral property and further considering that primary duty of the Court is to do complete justice to the parties, has allowed the application so filed by the plaintiff. This Court finds no illegality or perversity in the findings recorded by the Court below warranting interference by this Court in

exercise of jurisdiction under Article 227 of the Constitution of India. Such power is to be exercised sparingly and only in appropriate cases where the judicial conscience of the Court dictates it to act lest a gross failure of justice or grave injustice should occasion. However, in the present case no prejudice is going to be caused to the petitioner or miscarriage of justice would be caused by allowing impleadment of LR's of Smt. Indu Avadhiya. Rather considering the nature of the suit and the status of these LR's, such impleadment appears to be just and proper to do complete justice to the parties.

09. In the result, the petition being bereft of any substance is liable to be dismissed and is, accordingly, dismissed. No order as to costs.

However, considering the fact that the suit is of the year 2012 and by virtue of interim order passed by this Court in favour of the petitioner, the proceedings are stayed for the last more than two years, the trial Court is directed to decide the suit expeditiously.

Sd/

(Pritinker Diwaker)

Judge