

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P.(227) No. 126 of 2018**Judgment reserved on : 20.02.2018Judgment delivered on : 28.02.2018

Mohan Agrawal, S/o. Late Raghunath Agrawal, Aged About 55 Years, R/o. Ramniwas Talkies Road Raigarh, Police Station Chakradhar Nagar, Tahsil Civil & Revenue District Raigarh (Chhattisgarh)

---- Petitioner**Versus**

Dipesh Agrawal, S/o. Ramesh Agrawal, Aged About 24 Years, R/o. Ramniwas Talkies Road Raigarh, Police Station Chakradhar Nagar, Tahsil, Civil & Revenue District Raigarh (Chhattisgarh)

-- Respondent

For petitioner – Shri Ratnesh Kumar Agrawal, Advocate.

Hon'ble Shri Justice Goutam Bhaduri**CAV Order****28/02/2018**

1. Instant petition is against the order dated 15/01/2018 whereby an application under Order 22 Rule 3 read with section 151 of CPC was decided and allowed in favour of the respondent Dipesh Agrawal and he was substituted on the basis of the registered Will.

2. Brief facts of this case is that one Santara Devi had filed a civil suit for ejectment against Mohanlal petitioner herein. During pendency of the suit, Santara Devi breathed her last on 14/11/2014 and thereafter an application was filed under Order 22 Rule 3 read with Section 151 of CPC that the property in question has been bequeathed in favour of the respondent by way of a registered Will, therefore he may be substituted as plaintiff in the suit. The court below allowed the application under Order 22 Rule 3 read with Section 151 of CPC and directed for substitution of the legal heirs on the basis of the Will. The said order is under challenge.

3. Learned counsel for the petitioner would submit that the dispute is inter se in between the family members and ejectment is not been sought on the ground that it is landlord tenancy suit. It is further contended that other legal heirs of the Santara Devi have instituted a suit wherein alleged WILL is in question. He further submits that the substitution of the respondent was objected on the ground that Will in question is void, therefore if such substitution is made on the basis of the Will, ipso facto it will have the effect of decision in the subsequent civil suit, therefore enquiry should have been conducted for the authenticity of the Will or in alternate the petitioner be allowed to be made a party in the suit to safeguard any adverse finding against him.

4. Perused the document attached with this petition. One suit wherein application under Order 22 Rule 3 of C.P.C. was allowed and Dipesh Agrawal was allowed to be arrayed as plaintiff was instituted by Santara Devi against Mohan Lal. In such suit, ejectment has been sought for alongwith damages. The pleading of such suit would show that deceased Santara Devi has sought for possession on the ground of inheritance and declaration to the right to property is claimed. In other word the ejectment was not sought on the basis of relation of landlord & tenant. In such suit after death of Santara Devi, an application having been filed under Order 22 Rule 3 of C.P.C. that Dipesh Agrawal has been directed to be impleaded by the impugned order.

5. Perusal of the record would show that other relatives i.e. Rahul Agrawal and Ashok Agrawal have also filed another suit wherein in the pleading and relief would show that averments are made that the Will dated 14.11.2014 executed in favour of Dipesh Agrawal be declared as illegal and void, which is the basis to allow the application under Order 22 Rule 3 of C.P.C. in the impugned order.

6. Reading of Order 22 Rule 3 of C.P.C. would show that it talks about brining of the “legal representative” and not the “legal heir” and it do not take into sweep the legal heir. Therefore, by allowing the application under Order 22 Rule 3 of C.P.C. it will not operate as *res judicata* for any finding in respect of the Will dated 14.11.2014, which is in question. The character really occupied by Dipesh Agrawal cannot be conclusively drawn on the basis of fact he has been directed to be substituted as legal representative by such order under Order 22 Rule 3 of C.P.C. The legal representative cannot be said to be legal heir. However, considering the fact another suit is pending in between parties in respect of same Will the submission made by the petitioner that he may be also joined as a party so that any finding may not be recorded in respect of the Will or in case any finding is recorded he can agitate as his right has a considerable substance specially looking to the rights of the parties.

7. As has been settled in case of **Suresh Kumar Bansal v. Krishna Bansal & Another** reported in **(2010) 2 SCC 162** that determination of question as to who is legal representative of the deceased plaintiff or defendant under Order 22 Rule 5 of C.P.C. is only for the purpose of bringing legal representative on record for conducting of those legal proceedings only and does not operate as *res judicata* and the *inter se* dispute between the rival legal representative has to be individually tried and decided. Here in this case, as would appear that another civil suit is already pending, therefore that rival claim of the parties are already pending before the Court.

8. Further, following the principles laid down in (2010) 2 SCC 162 in order to shorten the litigation and to consider the rival claim of the parties and also considering the future prospect of the parties about the litigation and the fact the Will dated 14.11.2014 is in question, the petitioner herein

is directed to be arrayed as a party in the civil suit No.453/2018 and he may be arrayed as defendant in the civil suit. The petitioner is allowed to participate in the proceeding so that he may defend any finding touching the Will and may place on records the principles laid down by the Supreme Court with respect to the character of a substituted legal representative to avoid the multiplicity of proceedings in future.

9. Accordingly, the petition is allowed with the aforesaid observations.

**Sd/-
(Goutam Bhaduri)
JUDGE**

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