

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 923 of 2017

Bansilal Dubey (Dead) Through Lrs.

1. Ramashankar, Son Of Late Shri Bansilal Dubey, Aged About 55 Years,
2. Vijay Kumar S/o Late Bansilal Dubey, Aged About 51 Years,
3. Santosh Kumar S/o Late Bansilal Dubey, Aged About 45 Years, Petitioner Nos. 1 to 3 are R/o Village Pendra, Tehsil Takhatpur, District Bilaspur Chhattisgarh.
4. Gokaran Dubey S/o Hariram Dubey Aged About 58 Years Caste - Brahman, Resident Of Village Mendra, Tehsil Takhatpur, District Bilaspur Chhattisgarh.

Kumari Bai Dead Through Lrs.

5. Smt. Chandrakanta Diwedi, Aged About 55 Years, Wife Of Rajkumar Diwedi, Resident Of Mahant Amora, Tehsil Nawagarh, District Janjgir Champa, Chhattisgarh.
6. Ashutosh Diwedi, S/o Late Dharmanand Diwedi, Aged About 47 Years R/o Bhogha Para, Shivrinarayan, District Janjgir Champa, Chhattisgarh.
7. Smt. Chandrarekha Tripathi W/o Ramesh Tripathi Aged About 42 Years R/o Civil Line Janjgir District Janjgir Champa, Chhattisgarh.
8. Kalindri Bai W/o Late Shri Girdhari Lal Aged About 57 Years Caste Brahman, R/o Village Kunwa, Tehsil Takhatpur, District Bilaspur, Chhattisgarh.

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Versus

1. Sahodra Bai W/o Aatmaram, Aged About 60 Years Caste Brahman, R/o Village Pendra, Tehsil Takhatpur, District Bilaspur, Chhattisgarh.
2. Bhupendra Kumar Sharma @ Bablu, S/o Aatmaram, Aged About 41 Years Caste - Brahman, R/o Village Pendra, Tehsil Takhatpur, District Bilaspur, Chhattisgarh.
3. Rukhmin Bai W/o Mohanlal Tiwari, Aged About 70 Years Caste - Brahman, R/o Village Ghutarkudi, Tehsil Pandariya, District Kawardha, Chhattisgarh.
4. Narayan Dubey S/o Late Shri Hariram Dubey, Aged About 65 Years Caste - Brahman, R/o Mendra, Tehsil Takhatpur, District Bilaspur, Chhattisgarh At Present Resident Of Kundudand, Near Water Tank, Bilaspur, Tehsil And District Bilaspur Chhattisgarh.
5. The State Of Chhattisgarh Through Collector Bilaspur, District Bilaspur, Chhattisgarh.

-- Respondents

For petitioners – Shri Anshuman Shrivastava, Advocate.
For State- Smt. Astha Shukla, PL.

Hon'ble Shri Justice Goutam Bhaduri**Order****8/02/2018**

Heard.

1. Instant petition is against the order dated 11/07/2017 wherein Bhupendra Kumar Sharma @ Bablu who is son of the plaintiff has been directed to be added as defendant No.9 in the suit on the ground that in respect of the suit property which has been claimed by Sahodra Bai which is in respect of one property of Ayodhya Prasad a WILL exist in his favour. Learned court on that basis had directed addition of the defendant under Order 1 Rule 10 r/w section 151 of the CPC.
2. Learned counsel for the petitioners would submit that the suit was filed in the year 2010 and at fag end in the year 2017 an application was filed by son of the plaintiff Sahodra Bai claiming his right under the WILL in respect of the property comprised in the suit. It is stated that the trial court has directed him to be added in the suit and in such event the valuable right of defendants would be defeated as defendants are contesting suit on the ground that Sahodra Bai is third party is not related to the defendants or Ayodhya Prasad whose property is under dispute and is suit property.
3. Perused the order. It appears that the property in question has been claimed under a WILL dated 4/04/91 wherein Bhupendra Kumar Sharma @ Bablu has claimed to be the beneficiary. Pursuant to such devolution he has been directed to be added as defendant. In any case, as the property in question for which suit was filed by the Sohadra Bai is with respect to Khasra Nos.77, 146, 80 situated at Pendri, Tahsil Takhatpur, District Bilaspur and for the same property the beneficiary under WILL has been added as a party and is claiming right under the WILL, therefore presence of the person in whose favour alleged WILL has been made i.e. Bhupendra Kumar Sharma @ Bablu appears to be

necessary party. As he has been added as defendant certainly so there would be limitation of the pleading with respect to the defence raised by the defendant for placing evidence in rebuttal as the claim of property is one and same i.e. by mother and son. Considering the facts of this case, it is directed that Bhupendra Kumar Sharma @ Bablu may be transposed as plaintiff in the suit since he is claiming right in respect of the same property alongwith his mother Sahodra Bai who is earlier plaintiff. It is further made clear that defendants shall be at liberty to raise all their grounds in defence in case plaint is suitably amended and would be at liberty to raise the point of limitation too.

4. With such observation, petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE