

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 395 of 2018

Nirmalchandkothari S/o Shri Umedchand Kothari, Aged About 50
Years R/o Kamthi Line, Rajnandgaon Chhattisgarh.

---- Petitioner

Versus

1. Inderchand Kothari, Aged About 66 Years,
 2. Shashikant Kothari, Aged About 68 Years, through Power Of Attorney Holder Inderchand Kothari.
 3. Santosh Kumar Kothari, Aged About 57 Years,
- All (respondent no.1 to respondent no.3- & power of attorney holder of respondent No.2) S/o Late Ponamchandji Kothari and All are R/o Khamthi Line, Rajnandgaon (Chhattisgarh)
4. Govt. Of Chhattisgarh, Through Collector, District Rajnandgaon Chhattisgarh.

---- Respondents

For petitioner - Shri Anurag Verma, Advocate.
For State- Smt. Astha Shukla, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

3/05/2018

Heard.

1. Instant petition is against the order dated 28/03/2018 whereby two applications one filed under Order 6 Rule 17 read with section 151 of CPC was dismissed and another application which was filed to place document to show that an earlier enquiry was conducted by the police in respect of the alleged WILL on a complaint made by the complainant was sought to be filed was rejected. It is stated that the complaint so made was found to be forged.
2. Learned counsel for the petitioner would submit that suit was filed by respondents Inderchand Kothari, Shashikant Kothari and Santosh Kumar Kothari against petitioner/defendant by claiming their right in a suit for declaration and permanent injunction. In such suit it was pleaded that

the plaintiffs are owner in possession by virtue of WILL dated 26/07/1995. As against this in written statement defendant claimed that subsequent to the WILL dated 26/07/1995 another WILL was executed on 28/01/2003 in favour of defendant whereby earlier WILL was cancelled. In written statement counter claim was made that WILL dated 26/07/1995 be declared invalid and having been cancelled the defendant is the owner by virtue of the subsequent WILL dated 28/01/2003. Learned counsel submits that subsequently an amendment application under Order 6 Rule 17 CPC was filed whereby only averment was made that plaintiffs have forcefully taken over part of the land i.e. suit property and are in possession and they do not have any right to hold the same. It is stated that said amendment was wrongly dismissed and certain documents were sought to be filed to show that enquiry was conducted by the police in respect of the subsequent WILL on a complaint made by plaintiff but was found to be frivolous and the same was dismissed. He submits that both the application i.e. amendment is necessary as also the document which is sought to be filed is necessary to decide the case on merits. Learned counsel relies in a case law in between **State of Bihar & Ors. Vs. Modern Tent House & Anr.** reported in **(2017) 8 SCC 567** and would submit that amendment was sought only to elaborate and amplify defence already taken, therefore amendment application should have been allowed.

3. Perusal of the record would show that defendant/petitioner herein on a suit filed by the plaintiffs/respondents claimed their right under the WILL dated 26/07/1995. In written statement counter claim was filed wherein defendant/petitioner have claimed their right on the basis of subsequent WILL dated 28/01/2003. Amendment is perused. In amendment application it is stated that after death of the testator

Rajkunwar Bai Kothari plaintiffs have forcefully taken over possession of certain part of the land and are using the same and also got their name mutated in the revenue record and they do not have any right or possession over the same and the property has been shown as schedule A and B. Said amendment was dismissed. Perusal of the amendment qua the defence made by the plaintiffs as also on perusal of counter claim, in the opinion of this court it do not change the nature of the suit as a result and it appears only to elaborate the facts already existing in the written statement. In the result, order whereby the amendment application was dismissed is set aside. Amendment application is allowed. Necessary amendment be carried out in the written statement within a period of two weeks after filing of the order before the court below.

4. With respect to the document which is sought to be filed by the defendant perusal of the order sheet shows that cross examination of the parties have not yet begun though statement by way of affidavit has been filed. Since subsequent WILL dated 28/01/2003 is under question by the plaintiffs and defendant relies on their subsequent WILL which is stated to be verified on a police report, if they are in hold of such document same can always be confronted with the plaintiffs witness as provided under Order 13 Rule 3 of CPC. In the result, no interference is required in the order whereby document which is sought to be filed i.e. police report has been denied.

5. With such observation, the petition stands disposed of.

Sd/-

(Goutam Bhaduri)

JUDGE