

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 115 of 2016**

- Mantvya Agrawal S/o Shri Satyam Agrawal, Aged About 2 Years Minor Through Natural Guardian Mother Smt. Priyanka Agrawal, Wife Of Shri Satyam Agrawal, R/o Tulja Niwas, Ahead Of Maharashtra Mandal, Dipak Nagar, Durg, Tahsil And District Durg, Chhattisgarh Proposed Legal Heir Of Original Plaintiff Kumari Anita Agrawal, Daughter Of Late Bahadur Singh Agrawal Civil And Revenue District Durg, Chhattisgarh

----Appellant**Versus**

1. Satyam Agrawal S/o Shri Rajeev Ratna Agrawal, Aged About 30 Years R/o Near Maharashtra Mandal, Dipak Nagar, Durg, Tahsil And District Durg, Chhattisgarh
 2. Smt. Saroj Agrawal Wd/o Late Rajeev Ratna Agrawal, Aged About 64 Years
 3. Kumari Aaradhana Agrawal D/o Late Rajeev Ratna Agrawal, Aged About 24 Years
- No.2 & 3 are Legal Heirs Of Deceased Rajeev Ratna Agrawal And R/o Sheetla Mandir Marg, Baigapara, Durg, Tahsil And District Durg, Chhattisgarh
4. Smt. Yachna Agrawal W/o Shri Prashant Agrawal, Advocate Aged About 30 Years R/o Behind Apsara Talkies, Gurudwara Road, Santrabadi, Durg, Tahsil And District Durg, Chhattisgarh
 5. Sandeep Agrawal S/o Shri Netram Agrawal, Aged About 30 Years R/o 67 Nehru Nagar East, Bhilai, Tahsil And District Durg, Chhattisgarh
 6. Meesa Finvest Private Limited, Beliyaghat, Kolkata, Director- Sandeep Agrawal, Son Of Shri Netram Agrawal, Aged About 30 Years, R/o 67 Nehru Nagar East Bhilai, Tahsil And District Durg, Chhattisgarh
 7. Netram Agrawal S/o Late M L Agrawal, Aged About 60 Years R/o 67, Nehru Nagar East, Bhilai, Tahsil And District Durg,
 8. Meesa Finvest Private Limited, Beliyaghat, Kolkata, Director- Sanjay Agrawal, Son Of Shri Netram Agrawal, Aged About 36 Years, R/o 67 Nehru Nagar East Bhilai, Tahsil And District Durg, Chhattisgarh
 9. State of Chhattisgarh, Through The Collector, Durg, Tahsil And District Durg, Chhattisgarh

---- Respondents

For Appellant	:	Shri BP Sharma, Advocate
For Respondent No.1	:	Shri Manish Upadhyay, Advocate
For Respondent No. 2 to 4	:	Shri Sanjay Kumar Agrawal, Advocate
For Respondents No.5 to 8	:	Shri Manoj Paranjpe, Advocate
For Respondent/State	:	Shri DR Minj, Dy. GA for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****29/08/2018**

1. Heard.
2. The present appeal is against the order dated 14.10.2016 passed in Civil Suit No.1A/11 by the 4th Additional District Judge, Durg, whereby an application moved by the appellant under Order 22 Rule 3 read with Rule 10 CPC was dismissed.
3. Facts of this case are that one Ku. Anita Agrawal had filed a suit claiming different reliefs against 7 defendants and the suit was filed in the year 2011. During the pendency of the suit, the sole plaintiff Ku. Anita Agrawal, who is said to be aged about 72 years died. Before her death, the written statement was filed by the defendant. On her death, the application under Order 22 Rule 3 & Rule 10 CPC was filed by the appellant herein claiming that the plaintiff Ku. Anita Agrawal has bequeathed all her property in favour of Mantavya Agrawal, who is a minor, by a WILL dated 16.12.2014. The reply to such application was filed, thereafter, the Court below adjudicated the application under Order 22 Rule 3 & Rule 10 CPC and held that the WILL was not duly proved,

consequently, in a result, the application filed by the appellant was dismissed. Therefore, this appeal.

4. Learned counsel for the appellant submits that the application was under Order 22 Rule 3 CPC besides Rule 10 CPC also. It is contended that even if the WILL has not been proved, the Court can not ignore the fact that application was under Rule 10 CPC too, therefore, as per Order 43 Rule 1 (I) CPC, the appeal would lie before this Court. He placed his reliance in the case of ***Jaladi Suguna (DECEASED) Through LRS. V. Satya Sai Central Trust and Others*** {(2008) 8 SCC 521} and would submit that the legal heirs for the purpose to continue a suit is only for limited purpose and if there is an assignment or creation or devolution of any interest as contemplated under Section 10 the refusal to the same will amenable to the appeal. It is submitted that even if allowing of the application under Order 22 Rule 5 CPC will not confer such person to be the legal representative, any right to the property which is the subject-matter of the suit, vis-a-vis to other rival claimants to the estate of the deceased. Therefore, to represent the estate of deceased, the application under Order 22 Rule 10 of CPC would survive.
5. Per contra, learned counsel for the respondents vehemently oppose the same and submit that the application under Order 22 Rule 3 read with Section 10 CPC though was captioned as Rule 3 & 10 but actually the adjudication was under Order 22 Rule 5 CPC to find out the LR's of the plaintiff. It is stated that the basis of the WILL the Court found that the WILL is not proved, consequently, the application under Order 22 Rule 3 CPC too was dismissed. It

is stated that the application under Order 22 Rule 3 CPC primarily having been dismissed, the miscellaneous appeal is not contemplated under Order 43 Rule 1 and Section 104 CPC, consequently, the appeal is not tenable.

6. Perused the documents filed along with the appeal. Perusal of the document would show that a suit was filed by Ku. Anita Agrawal against 7 defendants including the State claiming different reliefs. During the pendency of the suit, the sole plaintiff Ku. Anita Agrawal died on 22.01.2015, therefore, an application was filed by Mantavya Agrawal, minor, through his guardian that the entire property which is the subject matter of lis has been bequeathed in favour of the minor. So the minor through his guardian may be substituted as a plaintiff/legal heir in the suit. Reply was made to this application and the Court below thereafter proceeded to enquire into such right of the legal heirs as was empowered under Order 22 Rule 5 CPC.
7. Order 22 Rule 5 CPC allows the Court to determine the question of legal representative. Since the appellant herein claims to be a legal representative on the basis of the WILL, as such during the course of enquiry under Order 22 Rule 5 CPC, the witnesses were examined qua to prove the WILL. Learned Court below after evaluating the evidence came to the conclusion that the WILL was not at all executed as such in a consequence thereof the application under Order 22 Rule 3 CPC was dismissed.
8. After passing of such order on the same date on 14.10.2016, the Court recorded that the suit against the plaintiff has been abated. Since the counter

claim was existing, as such, proceeded to record the evidence of the defendant. This Court at this stage is not inclined to go into such issue and primarily the question revolves around to the maintainability of the appeal under Order 43 Rule 1 CPC.

9. The reading of the impugned order dated 14.10.2016 it would show that the WILL on which the appellant claimed to be the legal heir has been negated. Primarily, the Court thereafter came to a finding that there is no legal heir exists. Order 22 Rule 4 A CPC also deals with such situation. It purports that if it appears to the Court that after death of the party, he has no legal representative, the Court may on the application of any party to the suit, proceed in the absence of a person representing the estate of the deceased person, or may by order appoint the Administrator General or an officer of the Court or such other person as it thinks fit to represent. The ratio laid down in the case of ***Jaladi Suguna (supra)*** is not at all in confrontation to the ratio that the legal representatives are brought only for the limited purpose in a case. Here in the instant case, the plaintiff was claiming his right on the basis of a WILL executed in his favour. The WILL having been denied, the locus of the appellant itself has been negated. It is not a case that an application has been filed under Order 22 Rule 4 A CPC before the Court below so as to get the benefit of ratio laid down in the case of ***Jaladi Suguna (supra)*** that any application was filed to represent the estate of the deceased.
10. Order 22 Rule 10 CPC deals with the procedure in case of assignment before final order in the suit.

Order 22 Rule 10 CPC reads as under:-

“Order 22 Rule 10 CPC:- Procedure in case of assignment before final order in suit. - (1) In other cases of an assignment, creation or devolution of any interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against the person to or upon whom such interest has come or devolved.

(2) The attachment of a decree pending an appeal therefrom shall be deemed to be an interest entitling the person who procured such attachment to the benefit of sub-rule (1)”

Reading of Order 22 Rule 10 CPC would show that the suit may be continued with the leave of the Court against the person in case of assignment, creation or devolution of any interest is made.

11. The Court by its judicial order has given a wording that devolution of any interest or creation cannot be held in favour of the appellant as the WILL on the basis of which the right was claimed has been negated. It would be a different situation to be adjudicated if any application is filed during the course of trial to represent the estate of the deceased. The Court in such case may deal with the application accordingly as per merit and procedure, however, in this case as on today no such application exists.

12. The application and the order whereby the right of the appellant was negated primarily appears that the entire claim was based on the basis of the WILL claiming to be the legal representative and prima facie it shows that there is no trapping of Rule 10 in the order. In such case principles as laid down in the case of ***Mangluram Dewangan Vs. Surendra Singh & others* {(2011) 12 SCC 773}** shall govern the situation, wherein the Court has held thus in para 16 & 19

which are reproduced hereunder:-

“16. We may first consider the fourth requirement. No appeal is provided against an order under Order 22 Rule 3 and 5 of the Code, either under [section 104](#) or Order 43 Rule 1 of the Code. Clause (k) of Rule 1 of Order 43 of the Code however provides that an appeal shall lie under Section 104 of the Code, from an order under Rule 9 of Order 22 refusing to set aside the abatement or dismissal of a suit.

19. It therefore follows that an order under Order 22 Rule 3 and 5 is not appealable under [section 104](#) or Order 43 Rule 1 of the Code.”

13. Following the aforesaid prepositions since it has been held that the order under challenge is enveloped under Order 22 Rule 3 CPC, miscellaneous appeal before this Court would not be maintainable. At this stage learned counsel for the appellant prays to return the certified copy of the order so as to take the appropriate remedy as available to him under the law.

14. Accordingly, the Registry is directed to return the certified copy of the order after retaining photocopy of the same.

15. Accordingly, the appeal is dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu