

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 607 of 2017

Fagoo Ram S/o Late Meghnath Karsh, Aged About 74 Years R/o Gandhi Chowk, Purani Basti, Ward No. 6, Supela, Bhilai, District Durg, Chhattisgarh.

---- Petitioner

Versus

1. Kartik Ram (Dead) Through Lrs

1. (a) Salik Ram Nirmalkar Aged about 53 Years S/o Late Kartik Ram

1. (b) Somnath Nirmalkar Aged about 50 Years S/o Late Kartik Ram R/o Gandhi Chowk, Purani Basti, Supela, Bhilai, District- Durg, Chhattisgarh

Both are succeed to the respondent No.01 estate.

2. Katha Ram S/o Shanker Dhobi Aged About 45 Years R/o Gandhi Chowk, Purani Basti, Supela, Bhilai, District- Durg, Chhattisgarh

---- Respondents

For petitioner – Shri J.N. Nande, Advocate.

For respondents- Shri T.K. Jha, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

08/01/2018

Heard.

1. Learned counsel for the petitioner submits that in the execution proceeding an application was filed under Order 21 Rule 97 CPC and the same having been dismissed, MA has been filed. Alongwith the MA an application under Section 5 of the Limitation Act was preferred which was dismissed and therefore this court in exercise of power under Article 227 of Constitution of India can correct the illegality.

2. Learned counsel for the respondents vehemently opposes the same and refers to the memo of appeal and submits that an appeal under Section 96 read with Order 41 Rule 1 CPC was preferred, therefore any order passed in this appeal for dismissal or otherwise second appeal is required to be filed.

3. Having perused the memo of appeal which is filed by the respondents as Annexure R-1 wherein it is stated that appeal is filed under Section 96 Order 41 Rule 1 CPC. Having asked the counsel how petition is tenable, counsel submits that MA has been filed since order reflects that it was treated as MA. Perusal of the Order 43 Rule 1 CPC do not take into sweep the provisions, wherein, in such cases Miscellaneous Appeal is to be filed. Further more, reading of the order and petition shows that initially civil suit is of bearing number 51-A/1988 wherein the decree was passed on 14/03/1990. It appears that efforts have been made to protract proceeding so that the fruits of the decree to be deferred. The petitioner is unable to convince this court as to under which provision MA was tenable if it was First Appeal and the application u/s 5 of Limitation Act was dismissed refusing to condone the delay, in such case the petitioner may seek appropriate remedy available to him under the law as advised.

4. Petition is misconceived and it is dismissed summarily.

Sd/-

(Goutam Bhaduri)

JUDGE