

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 1 of 2018**

Sanatan son of Laxman Choudhari, Aged About 77 Years, (now aged about 91 years, Caste Aghariya, Occupation Cultivator, R/o Village Pata, Tahsil Gharghoda, District Raigarh, Chhattisgarh.

---- **Petitioner**

Versus

1. Lalkumar son of Neelkanth Aghariya, Aged About 36 Years Occupation Cultivator, R/o Village Gorbahri, Tahsil Gharghoda, District Raigarh, Chhattisgarh.
2. Badrinath, son of Neelkanth Aghariya, Aged About 34 Years Occupation Cultivator, R/o Village Gorbahri, Tahsil Gharghoda, District Raigarh, Chhattisgarh. At Present Address Electricity Engineer, Through Urmila Verma, Apsara Die- Cleaners, Karbala Turning, Old High Court Road, Bilaspur, Chhattisgarh.
3. Tirthanand, son of Sanatan Choudhari, Aged About 62 Years Occupation Service And Cultivator, R/o Village Pata, Tahsil Gharghoda, District Raigarh, Chhattisgarh.
4. Purnanand, son of Sanatan Choudhari, Aged About 56 Years Occupation Service And Cultivator, R/o Village Pata, Tahsil Gharghoda, District Raigarh, Chhattisgarh.
5. State Of Chhattisgarh, through the Collector, Raigarh, Chhattisgarh.

---- **Respondents**

For petitioner - Shri H.S. Patel, Advocate.
For Respondent/State –Shri Bhaskar Payashi, PL.

Hon'ble Shri Justice Goutam Bhaduri

Order

04/01/2018

Heard.

1. Instant petition is against the order dated 24/11/2017 whereby three applications which were preferred one is under Order 7 Rule 14 (3) CPC for taking document on record was dismissed. Another application which was filed under Order 1 Rule 10 CPC to transpose the defendants No.3 and 4 as plaintiffs was dismissed and third application under Order 6 Rule 17 read with section 151 CPC to amend the plaint was dismissed.
2. Learned counsel for the petitioner would submit that the

petitioner/plaintiff has filed a suit for declaration that sale deed dated 3/03/1980 as null and void and consequently on the basis of the sale deed mutation made by the SDO Gharghoda dated 5/10/2005 is also null and void. He further submits that defendants No.3 and 4 namely Tirthanand and Purnanand are the son of the plaintiff namely Sanatan Choudhari who want to join them as plaintiff in the suit, therefore the application filed under Order 1 Rule 10 CPC to transpose the defendants as plaintiff should have been allowed and mutation which was carried out on the basis of the sale deed dated 3/03/1980 also mutation proceeding are to be set aside for which necessary documents under Order 7 Rule 14 (3) CPC were filed are the revenue records of mutation i.e. B-1, Sansodhan Panji, order passed in appeal etc.

3. The application under Order 1 Rule 10 CPC as also application under Order 6 Rule 17 read with section 151 CPC is perused. Order 1 Rule 10 CPC application purports that plaintiff has prayed for transposing defendants No.3 and 4 as plaintiff. Perusal of the plaint would show that suit was filed by Sanatan Choudhari wherein defendants No.3 and 4 namely Tirthanand and Purnanand have been arrayed as defendants. Therefore, under the circumstances when the parties are already on record defendants cannot be without their wish and will can be transposed as plaintiffs. Consequences, if any shall follow and any order would be binding on defendants No.3 and 4 since they are already on record who are sons of the plaintiff. Therefore, finding of the court below while rejecting application under Order 1 Rule 10 CPC and application under Order 6 Rule 17 CPC read with Section 151 CPC cannot be faulted.

4. Now with respect to the filing of the documents under Order 7 Rule 14(3) CPC respective list of documents proposed to be filed is perused. One document purports to sale dated 12/09/1979 whereas other documents from serial No.2 to 10 are with respect to the mutation

proceeding i.e. notice, order passed in the mutation by the revenue authority, copy of the B-1 etc. Perusal of the plaint would show that prayer is made that sale deed dated 3/03/1980 is null and void and consequent to it mutation made by the SDO Gharghoda dated 5/10/2005 is also null and void. It is settled preposition that mutation in the khasra entry or revenue record do not decide ownership. It is only for the purpose of paying land revenue as held in case of **Municipal Corporation, Gwalior Vs. Puran Singh alias Puran Chand and others** reported in **AIR 2014 SC 2665**. Therefore khasra entry and revenue records do not decide the title. Consequently, if sale deed dated 3/03/1980 is set aside and the prayer is allowed in favour of the plaintiff, in such result consequence will follow and subsequent mutation made on revenue records on the basis of the sale deed would automatically stand cancelled. Therefore, documents are not required to be admitted at the belated stage and reasons are also assigned to file the same at the belated stage hence the order passed by the court below do not require any interference.

5. Now reverting back to the application under Order 6 Rule 17 CPC the same is perused. In such amendment proposed it is stated that subject suit land is the ancestral property of the defendants No.3 and 4 wherein right and title of the defendants No.3 and 4 are also included and the ostensible sale was made on 3/03/1980, therefore defendants No.1 and 2 do not acquire any right over the property. Whereas other proposed amendment is about mutation proceeding and repetition has been made that order passed by the SDO Gharghoda dated 5/10/2005 is nullity. Prayer in respect of the second proposed amendment is already been made in the plaint. Case would show that plaintiff has already been examined in this case and also has been cross-examined in detail. With respect to the amendment proposed, only para 5-A appears to be relevant which only explains further fact about ownership of the plaintiff

qua defendants No.3 and 4 with respect to the suit property which was subject of sale dated 3/03/1980. Therefore, it appears that on such amendment being incorporated no further evidence would be required to be adduced. In view of this, proposed amendment para 5-A is allowed. Necessary amendment be carried out on the next date of hearing. With respect to the para 7-A of the amendment proposed same appears to be repetition and do not have any effect on the merit as the prayer has already been made, considering the same, it is disallowed.

6. In the result, petition is partly allowed as proposed amendment in para 5-A is allowed to be incorporated by the plaintiff on the next date of hearing. With respect to the other finding in respect of the application under Order 1 Rule 10 CPC read with application under Order 6 Rule 17 read with section 151 CPC and the finding of the trial court in respect of the application under Order 7 Rule 14(3) CPC do not require to be interfered. Consequently, prayer for the same is dismissed.

Sd/-

(Goutam Bhaduri)

JUDGE