

HIGH COURT OF CHHATTISGARH, BILASPUR

WP(227) No. 66 of 2015

Nijamunisha, W/o. Late Noor Mohammad, Aged About 55 Years, R/o. Village Bimda, P.S. Baghich, Revenue & Civil District Jahspur, Chhattisgarh (Proposed defendant)

---- Petitioner

Versus

1. Shahidunisha @ Shahidun Bibi, D/o. Late Rafiq Khan, W/o. Abdul Rajjak, Aged About 50 Years, Occupation House Wife, R/o. Village Batwahi, Post Raghunathpur, P.S. Ambikapur, Tahsil Lundra (Dhourpur), Revenue & Civil District Surguja, Chhattisgarh (Plaintiff)
2. Matwar, S/o. Late Rafiq, Aged About 48 Years, Occupation- Agriculturist, R/o. Village Kishunpur, Post Karabel, P.S. & Tahsil Samipur, Revenue & Civil District Surguja, Chhattisgarh (Defendant No.1)
3. Sharif, S/o. Late Rafiq, Aged About 42 Years, Occupation- Agriculturist, R/o. Village Kishunpur Post Karabel, P.S. & Tahsil Samipur, Revenue & Civil District Surguja, Chhattisgarh (Defendant No.2)
4. Amtulnila @ Amtul Bibi, D/o. Late Rafiq, W/o. Hamid Khan, Aged About 59 Years, Occupation House Wife, R/o. Village & Post Karabel, P.S. & Tahsil Seetapur, Revenue & Civil District Surguja, Chhattisgarh (Defendant No.3)
5. Ajmerunnisha @ Ajmerun Bibi, D/o. Late Rafiq Khan, W/o. Kaimuddin, Aged About 45 Years, Occupation House Wife, R/o. Village Bishunpur, Post Karabel, P.S. & Tahsil Seetapur, Revenue & Civil District Surguja, Chhattisgarh (Defendant No.4)
6. State Of Chhattisgarh, Through: Collector, Ambikapur, District Surguja, Chhattisgarh (Defendant No.5)

---- Respondents

For Petitioner	:	Mr. Sunil Tripathi, Advocate
For Respondents	:	Mr. A.K.Prasad, Advocate
No.1, 4 & 5		
For State	:	Mrs. Astha Shukla, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

13.02.2018

Heard

1. The present petition is against the dismissal of the application under Order 1 Rule 10 read with Order 6 Rule 17 of C.P.C. whereby the application to be impleaded as a party by the petitioner to the suit was dismissed.

2. Claim of the petitioner namely Nijamunisha is that she is daughter of Rafiq, apart from her, three sisters also exists meaning thereby four sisters are surviving. Apart from it, two sons Matwar & Sharif being brother also exist. The petitioner filed an application to be impleaded on the ground that she has also right and title in the suit property but the application was rejected on the ground that the said application was filed at belated stage and no reasons have been assigned as to why the documents have been filed to show them to be co-sharer of the property left by one Rafiq. Therefore, the relations were not *prima facie* established to join them as a party.
3. Learned counsel for the petitioner would submit that a suit was filed by Shahidunisha claiming herself to be daughter of Rafiq Khan against Matwar & Sharif being two sons (i.e. brothers) and two sisters namely Amtulnila & Ajmerunnisha. It is contended that the suit was filed claiming share in the property. He submits that when the fact came to the notice of the petitioner that she has been deliberately left out, the application under Order 1 Rule 10 read with Order 6 Rule 17 of C.P.C. was filed and counsel would submit that unless and until she is made a party, the presumption cannot be drawn that she is not related to Rafiq or daughter of Rafiq. It was contended that one document was placed on record in respect of other property wherein joint name of the petitioner was shown along-with other legal heirs of Rafiq, so the relation could have been presumed. It is contended that therefore, the petitioner may be allowed to contest the suit as otherwise her valuable right would stand defeated.
4. Learned counsel for the respondents vehemently opposes the argument and would submit that no document is on record to

show that the petitioner was anywhere was related to Rafiq. He submits that if the petitioner was so candid of the fact and she claims herself to be daughter of Rafiq, in such circumstances, at least some document should have been placed on record to show the relations. It was therefore stated that the order is well merited, which do not call for any interference.

5. Perused the order of the Court below and the documents. Perusal of the plaint would show that a suit was filed against Matwar & Sharif as defendant No.1 & 2 wherein they were shown to be son of late Rafiq and Amtulnila & Ajmerunnisha were arrayed as defendant No.3 & 4. Whereas in the geological tree Matwar & Sharif were shown to be son of Habib, therefore, serious discrepancy also exists in the plaint itself about relationship too. The order impugned would show that when the application under Order 1 Rule 10 read-with Order 6 Rule 17 of C.P.C. was filed, a copy of panchsala khasra B1 was also filed showing name wherein the petitioner claims herself to be co-sharer claiming the property through inheritance of Rafiq. The said document was admitted to records. The order rejecting the application under Order 1 Rule 10 read with Order 6 Rule 17 of C.P.C. is reasoned as the application is filed at belated stage and the heirs who are contesting the suit have accepted the geological tree as pleaded by the plaintiff.
6. In such circumstances if the issue is looked into from other angle, it will suggest if few of the legal heir in a suit for partition claiming share do not dispute the existence of other legal heir, that would be not be conclusive fact in respect of number of sharers. It can always be motivated with idea to inflate the portion of share that they may eventually get. So if one of the person claiming itself the

legal heir and file certain document namely mutation records then in such case the same cannot be thrown at threshold since necessarily it will need consideration and evidence.

7. Further perusal of the plaint and prayer however shows that the suit has been filed by Shahidunisha, she claimed her right in respect of the property which has been left by Rafiq and 1/3rd share have been claimed. Further the partition of the share has also been claimed and possession is also prayed for. Therefore, if certain portion of the property has been claimed and in case if the petitioner is able to establish that she is also the legal heirs of the deceased Rafiq then in such case the non-joinder of the petitioner in the suit will have a serious effect and it will lead to multiplicity of the proceedings. When the shares have been claimed, the same cannot be adjudicated only on the basis of the prayer made by plaintiff alone leaving any legal heirs.
8. It is also quite obvious that unless and until the petitioner is made a party, she will not be able to adduce evidence and it cannot be expected that she would sit in the fence and watch the proceeding, if she happened to be legal heirs. In the circumstances, the order dated 02.01.2015 is set aside, consequently the petition is allowed.
9. The petitioner Nijamunisha is directed to be arrayed as defendant in the case. The petitioner shall also be entitled to file its written statement, if so advised.

Sd/-
(Goutam Bhaduri)
Judge