

AFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****WP227 No.62 of 2018**

Jwala Prasad Gupta S/o Late Sukhichand Sao, aged about 63 years, R/o Sitapur, Tahsil-Sitapur, District-Surguja (CG)

**---- Petitioner****Versus**

1. Smt. Gayatri Devi W/o Late Ashok Kumar Gupta, aged about 38 yers,
2. Vishal Gupta S/o Late Ashok Kumar Gupta,
3. Rishabh Gupta S/o Late Ashok Kumar Gupta, aged about 12 years, through Natural Guardian mother Smt. Gayatri Devi W/o Late Ashok Kumar Gupta,
4. Jawahar Prasad Gupta S/o Late Sukhichand Sao, aged about 55 years,

All are R/o Village – Pratapgarh, P.S. & Tahsil – Sitapur, Distt. Surguja (CG)

5. State of Chhattisgarh, through Collector, Distt. Surguja (CG)

**---- Respondents**


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| For Petitioner            | : | Mr.Vivek Tripathi, Advocate                       |
| For Respondents No.1 to 4 | : | Mr.Manoj Paranjape and Mr.Anurag Singh, Advocates |
| For Respondent No.5       | : | Mr.A.N.Bhakta, Dy.A.G.                            |

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**Hon'ble Shri Justice Sanjay K. Agrawal****Order on Board****11.01.2019**

1. The plaintiffs/respondents No.1 to 4 filed a suit for declaration of title, partition and possession, in which preliminary issue was framed as to “whether the Court has pecuniary jurisdiction to hear the suit”. On such preliminary issue, the parties were heard and ultimately the trial Court by its order dated 16.5.2017 directed for return of the plaint in exercise of power conferred under Order 7 Rule 10 of the CPC to the plaintiffs and also issued notices under Order 7 Rule 10A of the CPC for return

of the plaint. The plaintiffs did not take any action pursuant to the order of return of plaint and notice issued by the trial Court under Order 7 Rule 10A of the CPC and ultimately, the trial Court on 22.6.2017 *suo motu* referred the matter to the District Judge and directed the parties to appear before the District Judge, preferably under Section 15(3) of the Chhattisgarh Civil Courts Act, 1958 (hereinafter called as “the Act of 1958”). Thereafter, learned District Judge on 8.8.2017 transferred the same to the First Additional District Judge, Ambikapur for hearing and disposal in accordance with law exercising the power conferred under Section 15(3) of the Act of 1958. Questioning that order, this writ petition has been filed.

2. Mr.Vivek Tripathi, learned counsel for the petitioners, would submit that once the order returning the plaint was passed on 16.5.2017 the suit was no longer pending before the trial Court and therefore, the Court had become *functus officio* and therefore, the matter could not have been referred to learned District Judge and learned District Judge had no jurisdiction under Section 15 (3) of the Act of 1958 to pass an appropriate order transferring the record to the proper Court as per distribution memo to the Court of competent jurisdiction.
3. Mr.Manoj Paranjape, learned counsel for respondents No.1 to 4, would support the impugned order and submit that the order passed by learned District Judge is strictly in accordance with law.
4. I have heard learned counsel for the parties and considered their rival submissions made hereinabove and also went through the records with utmost circumspection.

5. It is not in dispute that the trial Court exercised the powers under Order 7 Rule 10A of the CPC on 16.5.2017 and directed for return of the plaint. In order to actually return the plaint under Order 7 Rule 10A of the CPC, notices were also issued to the plaintiffs, but the plaintiffs did not take any action to take back the plaint and to file to the proper court having jurisdiction to hear the suit.
6. The question for consideration would be whether learned District Judge is justified in exercising the power under Section 15 (3) of the Act of 1958 after order of return of plaint under Order 7 Rule 10 of the CPC is passed by the trial Court ?
7. Section 15 of the Act of 1958 states as under:-

**“15. Power to distribute business.-** (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (V of 1908), or the law relating to Courts of Small Causes, for the time being in force, or in any other provisions contained in this Act, the District Judge may, by order in writing, direct that any civil business cognizable by his Court or by other civil Courts established under section 5, in his civil district, shall be distributed amongst himself and Additional Judges, if any, of his Court, as also amongst other Courts under his control and amongst Additional Judges of such other 'interse' in such manner, as he deems fit:

Provided that, except in so far as it may affect the exclusive jurisdiction of a Court of Small Causes, or of a Court invested with jurisdiction of a Court of Small Causes, a direction given under this section shall not empower any Court to exercise powers or deal with business beyond the limits of its pecuniary and notified territorial jurisdiction.

(2) Any judicial act in any suit, appeal or proceeding, instituted in a Court of competent jurisdiction, shall not be invalid only by reason of the fact that such institution was not in accordance with the order of distribution of business referred to in sub-section (1).

(3) Whenever, it appears to any Court, as is referred to in sub-section (2) that institution of any suit, appeal or proceeding, pending before it, was not in conformity with the order of distribution of business made under sub-section (1), it shall submit the record of such suit, appeal or proceeding, as the case may be, to the District Judge for appropriate

orders, and the District Judge in relation thereto may pass orders either transferring the concerned record to proper court as per order of distribution of business or otherwise to any other Court of competent jurisdiction.

(4) In distribution of civil business under sub-section (1) the District Judge shall be guided by such principles as the High Court may, by rules, prescribe.”

8. Section 15 of the Act of 1958 gives power to the District Judge to direct that any civil business cognizable by his Court or by other civil Courts established under section 5, in his civil district, shall be distributed amongst himself and Additional Judges, if any, of his Court, as also amongst other Courts under his control and amongst Additional Judges of such other 'interse' in such manner, as he deems fit. Sub-section (3) of Section 15 of the Act of 1958 confers power to the Court in which suit, appeal or proceeding, pending before it, which is not in conformity with the order of distribution of business made under sub-section (1), it shall submit the record of such suit, appeal or proceeding, as the case may be, to the District Judge for appropriate orders, and the District Judge in relation thereto may pass orders either transferring the concerned record to proper court as per order of distribution of business or otherwise to any other Court of competent jurisdiction.
9. In Section 15(3) of the Act of 1958, the word “suit, appeal or proceeding pending before it” is of the great importance. In order to exercise the power conferred under Section 15(3) of the Act of 1958 to the trial Court, it is imperative that suit, appeal or proceeding must be pending before it. If the suit, appeal or proceeding is not pending, the trial Court has no jurisdiction to refer the matter to the District Judge

under Section 15(3) of the Act of 1958 and consequently, the District Judge shall have no jurisdiction to transfer the case to the proper Court as per distribution memo to the Court of competent jurisdiction.

- 10.** In the matter of Ramesh Chand Bhardwaja v. Ram Parkash Sharma<sup>1</sup> the Delhi High Court while considering the power of transfer and withdrawal of suit under Section 24 of the Code of Civil Procedure has been conferred upon the High Court and the District Judge only in respect of the proceedings pending in any court subordinate to it has held that since in that case the plaint was returned by the trial Court for presentation before the competent jurisdiction and there is no plaint or suit pending, therefore, such case cannot be transferred under Section 24 of the Code of Civil Procedure. It was observed as under:-

“7.....The general power of transfer and withdrawal of suit under S. 24 has been conferred upon the High Court and the District Judge only in respect of the proceedings pending in any court subordinate to it. In the present case, the trial court has already returned the plaint for presentation before the court of competent jurisdiction and, therefore, at present no proceedings are pending in any court sub-ordinate to the High Court. It is no doubt true that the appeal is a continuation of the hearing of the suit but the continuation of the hearing of the suit is only possible in case the proceedings are pending in a court sub-ordinate to the High Court. Since, admittedly the plaint has been returned under the orders of the trial court and there is no plaint or suit pending in a court subordinate to High Court, the case cannot be transferred under section 24 of the Code of Civil Procedure.”

- 11.** Reverting to the facts of the present case, it is quite vivid that learned trial Court before referring the matter to the District Judge for exercising the power under Section 15(3) of the Act of 1958 has already directed for return of the plaint for presentation to the proper

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<sup>1</sup> AIR 1991 Delhi 280

Court under Order 7 Rule 10 of the CPC and issued notices under Order 7 Rule 10A of the CPC and upon passing that order of return of plaint, on the date of reference to the District Judge i.e. 22.6.2017, there was no suit pending before him, therefore, the said Court has no jurisdiction to refer the matter to the District Judge under Section 15(3) of the Act of 1958 and learned District Judge was not having jurisdiction under Section 15(3) of the Act of 1958 to pass the orders in relation thereto transferring the concerned record to the Court of First Additional District Judge, Ambikapur for hearing and disposal in accordance with law as per distribution memo in absence of suit being pending before the trial Court, as such, learned District Judge legally erred in exercising the jurisdiction under Section 15(3) of the Act of 1958 in absence of pending suit between the parties.

12. In view of above, the impugned order dated 8.8.2017 passed by the District Judge, Surguja Ambikapur deserves to be and is hereby set aside. However, it will not bear the plaintiffs to proceed in accordance with law.
13. The writ petition is allowed to the extent indicated hereinabove. A copy of this order be sent to the District Judge, Surguja Ambikapur and concerned trial Court. No cost(s).

Sd/-

(Sanjay K.Agrawal)  
Judge

B/-