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HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 515 of 2019

1. Sanjay Kumar Gupta S/o Late Shyam Mohanji Gupta Aged About 53 Years R/o Banjari Road, Raipur, Tahsil And District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Rajkumar Gupta S/o Late Shri Shyam Mohanji Gupta Aged About 47 Years R/o Banjari Road, Raipur, Tahsil And District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. Suraj Kumar Gupta S/o Late Shri Shyam Mohanji Gupta Aged About 41 Years R/o Banjari Road, Raipur, Tahsil And District- Raipur, Chhattisgarh.....(petitioners), District : Raipur, Chhattisgarh.

---- Petitioners

Versus

1. Smt. Pinki Gupta W/o Shri Sudhir Gupta R/o Tarbahar Naka Chowk, Bilaspur, P.S.- Tarbahar, Tahsil And District- Bilaspur, Chhattisgarh.....(Plaintiff), District : Bilaspur, Chhattisgarh
2. Chandra Gupta @ Chiku Gupta S/o Shri Gulab Gupta R/o Banjari Road, Sadar Bazar Ward No. 39, P.S.-Gole Bazar, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
3. Gulab Gupta S/o Late Fulchand Gupta R/o Banjari Road, Sadar Bazar Ward No. 39, Police Station-Gole Bazar, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
4. State Of Chhattisgarh Through The Collector, Raipur, Chhattisgarh.....(Defendants), District : Raipur, Chhattisgarh

---- Respondents

For Petitioners	: Shri G.D. Waswani, Advocate.
For Respondent No.1	: Shri Anup Majumdar, Advocate with Shri Gyan Prakash Shukla, Advocate.
For Respondent No.4/ State	: Shri Jitendra Shukla, P.L.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

21-11-2019

1. Heard.
2. This petition has been brought aggrieved by the order dated 1.5.2019 passed by the learned trial Court in Civil Suit No. 105A of 2015 dismissing the application of the petitioners under Order I Rule 10(2) of the Code of Civil Procedure.

3. Learned counsel appearing for the petitioners submits that the suit has been filed by respondent No.1 against respondents No.2 and 3 claiming relief of declaration, partition and possession. The petitioners are also persons from the same family tree, therefore, they have interest in the suit property and have right to claim for their share. On this basis, the application was filed for impleading them as party which has been dismissed by the trial Court erroneously and arbitrarily against the provisions of law whereas the petitioners are necessary party. Hence, it is prayed that the impugned order be set aside and the petitioners be ordered to be impleaded as party in the civil suit.
4. Learned counsel for respondent No.1 submits that one Bhuribai was ancestor of the plaintiff and her sisters and other two sons. Bhuribai had willed her share in the property to her three daughters. One of her daughters died issue-less and intestate, whereas, other daughter is the mother of the plaintiff who is respondent No.1 and another daughter is mother of the defendants who are respondents No.2 and 3, therefore, the issue in the civil suit is only with regard to the property which is willed by Bhuribai to her daughters in which the petitioners who are infact grand sons of one of the sons of Bhuribai, have no claim. The petitioners have entitlement to file a separate suit, therefore, there is no error in the order passed by the trial Court, therefore, the petition be dismissed.
5. In reply, it is submitted by counsel for the petitioners that the petitioners are not claiming any right in the property willed in favour of the daughters of Bhuribai. The right of the petitioners have accrued after the death of one of the daughters of Bhuribai, namely, Urmila who has died issue-less and intestate. According to the provisions under Section 15 of Hindu Succession Act, 1956 (for short 'the Act, 1956'), the

petitioners have acquired entitlement to a share in the property left by Urmila, therefore, order may be passed in their favour.

6. I have heard learned counsel for both the parties and perused the documents on record.
7. A Civil Court has the power to strike out or add parties at any stage of proceeding either upon or without the application of either party, and on such terms as may appear to the Court. Therefore, it is not necessary that any of the parties to the suit are required to make an application for addition or deletion of any party. Any party interested can file an application to bring it to the notice of the Court regarding the necessity of impleading of other necessary party and the Court if finds it just and proper in that case the impleading of the party can be ordered accordingly.
8. In this particular case, the petitioners are not parties in the suit. Their application has not been challenged on the ground that they do not have entitlement to file any application. On the other hand, the claim of the petitioners that they are members of the same family tree has not been specifically denied by the respondents' side.
9. On the basis of the arguments made, it appears that the petitioners have claimed that they are the sons of Shyam Mohan who was one of the sons of Bhuribai. This is mentioned in the application filed under Order I Rule 10(2) of the CPC before the trial Court which has not been specifically denied in the reply given by respondent No.1 as she is the only party who has opposed the application filed. Therefore, on the basis of no specific denial made by respondent No.1 regarding the claim of the petitioners, it is found established that they are the members of the same family. Further, the fact is also undisputed that Bhuribai had willed her property in favour of her three daughters. One of the

daughters, namely, Urmila Bai had died intestate and issue-less. The claim of respondent No.1 that the will executed by Bhuribai has made the suit property exclusive and restricted to daughters only and it cannot devolved in any other branch of the same family tree is an erroneous submission. The purpose of will executed by Bhuribai has terminated when the property has devolved upon her daughters after her death and the daughters have inherited the properties accordingly. Therefore, the statement and will made by Bhuribai is not a statement restricting the property to be devolved and inherited by the successors of her daughters only.

10. Section 14 of the Hindu Succession Act, 1956 makes the property of a female Hindu absolute which she has received by inheritance etc after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.
11. According to the statement and pleading in plaint, the will executed by Bhuribai came into operation after her death on 17.10.1993 which shows that her daughters acquired right of property after the Act, 1956. It is also not disputed that Urmila has died issue-less and intestate, therefore, in these circumstances the devolution of the property of Urmila could be either by any will executed by her or in accordance with the provisions of the Act, 1956. As there is no will, therefore, the provision of Hindu Succession Act, 1956 become applicable in this case.
12. Section 15 of the Act, 1956 provides when a Hindu female dies intestate, her property shall devolve firstly, to her sons and daughters and the husband, which are not there. Secondly, upon the heirs of the husband, regarding which there is no pleading and no fact known. Thirdly, upon the mother and father who did not appear to be alive. Fourthly, upon the heirs of the father, and lastly, upon the heirs of the

mother, therefore, the heirs of mother i.e. Bhuribai have an entitlement according to this provision. It is also undisputed that Bhuribai had two other sons and the petitioners are claiming through one of her sons which shows that the petitioners have a claim in the property limited only to the share of Urmila, which shall be subject to decision of the trial Court. Therefore, I am of the opinion that an error has been committed by the trial Court in dismissing the application of the petitioners by ignoring the claim of interest of the petitioners on the suit property on the basis of the law applicable. Hence, this petition is allowed and the impugned order is set aside.

13. The trial Court which is the Court of Learned Second Additional District Judge is directed to allow the impleadment of the petitioners as parties in the civil suit and afford them an opportunity for hearing in accordance with law.

14. Accordingly, the petition is disposed of.

Sd/-
(Rajendra Chandra Singh Samant)
Judge