

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 814 of 2019

- Ramlal S/o Shri Birjhu Aged About 35 Years R/o Village Chilmakala Tahsil And Police Station - Balrampur, District - Balrampur Chhattisgarh. (Defendant No. 2).

---- Petitioner

Versus

1. Chahken D/o Late Bholi Aged About 45 Years R/o Village Chilmakala Tahsil And Police Station - Balrampur, District - Balrampur Chhattisgarh.
2. Lahango D/o Late Bholi Aged About 40 Years R/o Village Chilmakala Tahsil And Police Station - Balrampur, District - Balrampur Chhattisgarh. (Plaintiffs).
3. State Of Chhattisgarh Through The Collector, Balrampur, District - Balrampur Chhattisgarh. (Defendant No. 3).

---- Respondents

For petitioners	:	Mr. Bhupendra Singh, Advocate.
For respondent/State	:	Mr. Devendra Pratap Singh, Dy. Adv. General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order On Board

18/11/2019

Heard.

1. The petitioner feeling aggrieved by the order dated 20.8.2019 passed by the Civil Judge Class-II, Raipur, District-Balrampur, Chhattisgarh by which application filed by the petitioner under Order 16 Rule 1 of CPC has been rejected, has preferred this writ petition.
2. It is submitted that the petitioner had earlier failed to prove on record that the case of petitioner/defendant is based on the Will executed by defendant No.1, who is now deceased. Therefore, prayer so made to examine the witnesses of the said Will, has been arbitrarily rejected by the trial Court.

3. Learned State counsel appearing for respondent No.3 has made formal objection.
4. On perusal of the copy of written statement filed along with the petition, it is found that there is no pleading made regarding the Will on the basis of which application under Order 16 Rule 1 of CPC was filed before the trial Court. Therefore, under this circumstance, firstly it is the requirement on the part of the petitioner to amend the pleadings which may be based on the Will on the basis of which he is claiming to defend himself and thereafter he shall be at liberty to file repeat application under Order 16 Rule 1 of CPC, which shall be considered and decided by the trial Court on its own merit in accordance with law.
5. With the above observations, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge