

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 333 of 2019

- Ganga Bai Sahu, W/o Shri Purshottam Sahu, Aged About 55 Years, R/o Village-Ghivera Post Kosrangi Police-Station-Kharora, District-Raipur Presently At Daldal Seoni, Mova, Raipur District-Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State of MP Now State of Chhattisgarh, Raipur, Chhattisgarh.
2. Poshan Sahu, S/o Shyamlal Sahu, Aged About 42 Years, R/o Shitla Mandir Ke Pass Daldal Seoni, Raipur, Chhattisgarh.
3. Kumbh Lal Sahu, Aged About 35 Years, R/o Rawa Bhata, Post Beergaon Police-Station-Khamtarai Tehsil and District-Raipur, Chhattisgarh.
4. Bhupat Lal Sahu, S/o Shri Jagdish Ram Sahu, Aged About 40 Years, R/o Rawa Bhata, Post-Beergaon, Police-Station-Khamtarai Tehsil and District-Raipur, Chhattisgarh.

---- Respondents

For petitioner	:	Mr. B.S. Rajput, Advocate.
For respondent/State	:	Mr. Avinash K. Mishra, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

23/01/2020

Heard.

1. This petition under Article 227 of the Constitution of India has been brought feeling aggrieved by the order dated 20.2.2019 passed by the learned 2nd Additional Judge to the Court of learned 1st Additional District, Raipur, by which the application filed by the petitioner under Order 22 Rule 4 of CPC for substitution of legal heirs of deceased defendant No.1 has been rejected.

2. It is submitted that since defendant No.1 did not appear before the Court below, the petitioner could not come to know about his death and no sooner the petitioner came to know about her death, she lost no time in filing application for substitution of legal heirs of defendant No.1. However, the learned trial Court rejected the said application vide impugned order only on the ground of non-filing of separate application under Order 22 Rule 9 of CPC for setting aside abatement. It is submitted by the learned counsel for the petitioner that the trial Court should have given opportunity to the petitioner to file appropriate application in that regard. Similarly, the learned appellate Court has also not appreciated these facts and dismissed miscellaneous appeal filed by the petitioner against the order rejecting application filed under Order 22 Rule 4 of CPC.
3. It is submitted that petitioner being laywoman is unaware about the intricacies of law and as such, she is depended on the counsel engaged by her and it was the duty of the said counsel to apprise her about the fact of abatement and filing of appropriate applications in that regard. It is submitted that on account of mistake on the part of the counsel engaged by her, the petitioner cannot be made made to suffer, therefore, it is prayed that this petition be allowed and appropriate order be passed.
4. Learned State counsel appearing for respondent No.1 makes formal objection.
5. Heard learned counsel for the parties and perused the impugned orders and documents filed along with petition.
6. On due consideration of the submissions of learned counsel for the parties and the reasons assigned by the trial Court in the order rejecting the application, I am of this view that the petitioner should have been given an opportunity to file application under Order 22 Rule 9 of CPC before passing any order on the application under Order 22 Rule 4 of CPC. Accordingly, this petition is allowed at the motion stage and both the orders impugned passed by both the Courts below are hereby set aside. Application of the petitioner filed under Order 22 Rule 4 CPC and also civil suit are restored. The petitioner is also

granted liberty to file application under Order 22 Rule 9 CPC before the trial Court and on filing such application, the trial Court shall consider and decide the same in accordance with law along with other applications.

7. The petitioner shall appear before the trial Court on 18th February, 2020.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nisha