

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 367 of 2020

1. Shailendra Kumar Shukla, S/o. Late Shivcharan Shukla, aged about 62 Years,
 2. Satyendra Kumar Shukla, S/o. Late Shivcharan Shukla, aged about 47 Years,
 3. Anurag Kumar Shukla, S/o. Late Shivcharan Shukla, aged about 39 Years
 4. Smt. Fulkumari, Wd/o. Late Shivcharan Shukla, aged about 77 Years,
- No.1 to 4 all are R/o Pratapganj Para, Jagdalpur, District Bastar Chhattisgarh.
5. Smt. Bharti Bajpai, W/o. Shri Anil Bajpai, aged about 47 years, At Present R/o Suncity, Jagdalpur, District Bastar Chhattisgarh.

---- Petitioners

Versus

1. Smt. Arti Bajpai, W/o. Rupnarayan Bajpai, aged about 52 years, R/o. Pratapganjpara, Jagdalpur, District Bastar Chhattisgarh. (Wrongly Described as unsound mind in plaint cause title)
2. State Of Chhattisgarh, Through : Collector, Bastar, District Collectorate, Jagdalpur Chhattisgarh.

----Respondents

For Petitioners	-	Shri Varun Sharma, Advocate.
For Respondent No.2/State	-	Shri Ravish Verma, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

19-06-2020

1. This petition has been brought challenging the order dated 21.01.2020, passed in Civil Suit No.05-A/2017, by the Third Additional District Judge, Bastar at Jagdalpur (C.G.), by which the application filed by the daughter of the plaintiff has been allowed and she has been permitted to represent the plaintiff in the civil suit.
2. It is submitted that the learned trial Court has erred in passing this order without holding any enquiry regarding mental incapacity of the plaintiff, who is respondent No.1 in this petition. Therefore, the order passed is unsustainable.

3. State counsel appearing for the respondent No.2 makes formal submission.
4. Considering on the submissions made and also perused the impugned order. Order 32 Rule 15 of C.P.C. provides that procedure prescribed under Order 32 of C.P.C. shall be applicable to person of unsound mind, who have been either adjudged earlier or such finding has been recorded during the pendency of the suit that such party to the suit is suffering from mental incapacity. This rule further provides that if a party is not adjudged earlier and the Court on enquiry finds that such person is incapable by reason of mental infirmity for protecting his interest in that case, suitable order can be passed under Order 32 of C.P.C.
5. On perusal of the impugned order, it is found that no such adjudication has been made regarding mental incapacity of the plaintiff and also the Court itself has also not made any enquiry regarding the mental incapacity as it is provided under Order 32 Rule 15 of C.P.C.. Therefore, the impugned order suffers from infirmity, therefore, without notice to the private respondent, this petition is disposed off at motion stage. The impugned order dated 21.01.2020 is set-aside. The learned trial Court is directed to reconsider on the application filed by the party on behalf of the respondent No.1 in the light of the observation made in this order here-in-above and after making an enquiry in that respect, order may be passed accordingly.

Sd/-
(Rajendra Chandra Singh Samant)
Judge