

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.25 of 2021

- Luli Bai (Since Deceased) Dileshwar S/o Late Mukut Ram Satnami, Aged About 60 Years R/o Village Khapri, Tahsil Pathariya, District-Mungeli, Chhattisgarh

---- Petitioner

Versus

- Son Bai (Since Deceased) Babulal Tandan S/o Late Shivprasad Tandan, Aged About 45 Years R/o Village Khapri, Post - Chhinbhog Tahsil And District- Mungeli, Chhattisgarh

--- Respondent

For Petitioner

– Mr. Prafull N. Bharat, Advocate.

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

19-01-2021

Heard.

1. The present petition has been brought under Article 227 Constitution of India being aggrieved by the order dated 27.11.2020, passed by the Court of 1st Civil Judge, Class-I, Mungeli, C.G., in Civil Suit No. S-103A/1997.
2. In Second Appeal No.417 of 2004, an application was moved for substitution of LRs of appellant under Order 22 Rule 4 of C.P.C., in which the petitioner had claimed to be the legal heir of the deceased appellant- Luli Bai. A similar application was filed by the respondent and others claiming to be legal heirs of deceased respondent Son Bai on the basis of the will in their favour. The learned appellate Court passed order dated 05.04.2016, directing the Court of Civil Judge, Class-I, Mungeli to determine the issue under Order 22 Rule 5 of C.P.C. with respect to the legal representatives of the parties and send back the

matter along with the report and findings to the Registry.

3. It was on the basis of this order, the proceeding was drawn by the Court of Civil Judge Class-I, Mungeli. It has been held in the impugned order that the petitioner and respondent both have failed to prove that they are the legal heirs of the deceased parties in the Civil Suits/appeal.
4. It is submitted by the learned counsel for the petitioner that the only question that was present before the Civil Judge, Class-I, Mungeli to determine whether the petitioner and respondent, who are claiming to be legal representatives of the respective parties hold such status or not. There was no question for determining the legal heirs of the appellant and the respondent.
5. Reliance has been placed on the judgment of the Supreme Court in the case of **Jaladi Suguna (Deceased) through Lrs. Vs. Satya Sai Central Trust and others** reported in (2008) 8 SCC 521, in which it was held that "The determination as to who is the legal representative under Order 22 Rule 5 will of course be for the limited purpose of representation of the estate of the deceased, for adjudication of that case. Such determination of such limited purpose will not confer on the person held to be the legal representative, any right to the property which is the subject-matter of the suit, vis-a-vis other rival claimants to the estate of the deceased."
6. It is submitted that in view of this principle laid down by the Supreme Court, the learned Civil Judge- Class-I has traveled in a wrong direction seeking proof of will executed in favour of the parties, regarding which there was no challenge given by any other person interested, hence, the impugned order is erroneous and unsustainable.

7. The respondent is yet to be noticed.
8. Considered on the submissions, Order 22 Rule 3 of C.P.C. provides for the substitution of legal representative of a deceased plaintiff. Order 22 Rule 4 of C.P.C. provides for substitution of legal representative of deceased defendant. Order 22 Rule 5 provides that when any question arises as to whether any person is or is not a legal representative of a deceased plaintiff/defendant, such question shall be determined by the Court. Legal representative has been defined in Section 2 (11) of C.P.C. according to which "legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued.
9. The definition of legal representative has been given in a wide sense and that makes it clear that the legal representative may not be a legal heir of the deceased party. He can be a person who represents the estate of a deceased person or who intermeddles with the estate of the deceased person.
10. The Supreme Court has held in paragraph No.15 and 16 of the Judgment in Jaladi Sugna (Supra) as follows:-

15. Filing an application to bring the legal representatives on record, does not amount to bringing the legal representatives on record. When an LR application is filed, the court should consider it and decide whether the persons named therein as the legal representatives, should be brought on record to represent the estate of the deceased. Until such decision by the court, the persons claiming to be the legal representatives have no right to represent the estate of the deceased, nor prosecute or defend the case. If there is a dispute as to who is the legal

representative, a decision should be rendered on such dispute. Only when the question of legal representative is determined by the court and such legal representative is brought on record, can it be said that the estate of the deceased is represented. The determination as to who is the legal representative under Order 22 Rule 5 will of course be for the limited purpose of representation of the estate of the deceased, for adjudication of that case. Such determination for such limited purpose will not confer on the person held to be the legal representative, any right to the property which is the subject matter of the suit, vis-a-vis other rival claimants to the estate of the deceased.

16. The provisions of Rules 4 and 5 of Order 22 are mandatory. When a respondent in an appeal dies, the Court cannot simply say that it will hear all rival claimants to the estate of the deceased respondent and proceed to dispose of the appeal. Nor can it implead all persons claiming to be legal representatives, as parties to the appeal without deciding who will represent the estate of the deceased, and proceed to hear the appeal on merits. The court cannot also postpone the decision as to who is the legal representative of the deceased respondent, for being decided along with the appeal on merits. The Code clearly provides that where a question arises as to whether any person is or is not the legal representative of a deceased respondent, such question shall be determined by the court. The Code also provides that where one of the respondents dies and the right to sue does not survive against the surviving respondents, the court shall, on an application made in that behalf, cause the legal representatives of the deceased respondent to be made parties, and then proceed with the case. Though Rule 5 does not specifically provide that determination of legal representative should precede the hearing of the appeal on merits, Rule 4 read with Rule 11 make it clear that the appeal can be heard only after the legal representatives are brought on record.

Hence, on this basis of the discussions made hereinabove and the ratio laid down by the Supreme Court in the case

of **Jaladi Suguna** (Supra), I am of this view that the learned Civil Judge, Class-I has acted in excess to the authority that was given to the Court by the order dated 05.04.2016 in S.A. No.417 of 2004, which had directed to determine only the issue of legal representatives of the parties, whereas the finding has been given in the impugned order, that the petitioner has failed to prove that he is the legal heir of the deceased appellant and similarly, the respondent has failed to prove that he is the legal heir of the deceased Sonbai. Such determination was not expected by the appellate Court and such determination was also not within the scope of the inquiry under Order 22 Rule 5 of C.P.C. that was entrusted to the Court of Civil Judge Class-I, Mungeli. Hence, I am of this view that the order passed is erroneous which is awarded and the learned Civil Judge, Class-I, Mungeli is directed to make an inquiry strictly within the authority that is available to it under Order 22 Rule 5 of C.P.C. and pass appropriate order in accordance with law. This proceeding may be completed within a time frame of 3 months from the date this order is passed.

11. Accordingly, the petition is disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika