

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP (227) No. 121 of 2021

Smt. Meriyan Kujur, W/o Aalksiyus Kujur, Aged About 45 Years, R/o Village Kusmi, Tahsil & Police Station- Kusmi, District- Balrampur-Ramnuganj (C.G.)

--- Petitioner

Versus

1. Jagani, D/o Late Polu, Aged About 49 Years, W/o Shiva Uraon, R/o Village Kusmi, Tahsil & Police Station- Kusmi, District- Balrampur-Ramnuganj (C.G.)
2. Suganti, D/o Late Polu, Aged About 44 Years, W/o Pransis, R/o Village Shahpur, Tahsil & Police Station- Kusmi, District- Balrampur-Ramnuganj (C.G.)
3. Smudri, W/o Late Jagdev Uraon, Aged About 39 Years.
4. Chinmudri, D/o Late Jagdev Uraon, Aged About 8 Years Juvenile through natural guardian his Mother Smudri, W/o Late Jagdev Uraon.

Respondent No. 3 & 4 are R/o Village Kusmi, Tahsil & Police Station- Kusmi, District- Balrampur-Ramnuganj (C.G.)

5. Santosh, S/o Late Jagdev, Aged About 24 Years.
6. Sushila, D/o Late Jagdev, Aged About 22 Years.

Respondent No. 5 & 6 are R/o Village Kusmi, Tahsil & Police Station- Kusmi, District- Balrampur-Ramnuganj (C.G.)

7. State of Chhattisgarh, Through- Collector Balrampur, District- Balrampur-Ramanuganj (C.G.)

--- Respondents

For Petitioner : Mr. Vikas Pandey, Advocate.

For State/ Respondent No. 8 : Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

25/02/2021

1. This writ petition has been brought under Article 227 of the Constitution of India, being aggrieved by the order dated 06.01.2021 passed by the learned Additional District Judge, Ramanujganj, District- Balrampur-Ramanujganj (C.G.) in Civil Appeal No. 01/2020, dismissing the application filed by the petitioner under Order 41 Rule 5 of the C.P.C.
2. It is submitted by learned counsel for the petitioner that the petitioner being aggrieved by the judgment and decree of the trial court in Civil Suit No. 12A/2014 dated 29.03.2014, has preferred an appeal before the court of Additional District Judge, Ramanujganj and filed an application under Order 41 Rule 5 of the C.P.C. praying to stay the effect and operation of the impugned judgment and decree. The learned appellate court has made appreciation that the mutation proceeding that has been stayed by the SDO (Revenue), Kusmi, District- Balrampur-Ramanujganj and on that basis, it was held that the petitioner does not require any relief and her application was dismissed.
3. It is further submitted that the learned appellate authority has failed to appreciate the nature of prayer that has been made by the petitioner, which was very specific prayer to stay the effect and operation of the judgment and decree. Hence, the order passed is erroneous and the same is liable to be set aside.
4. Learned counsel for the State/ respondent No. 7 opposes the submissions made by the petitioner submitting that there is already stay order in favour of the petitioner passed by the SDO

(Revenue), Kusmi, therefore, there is no requirement of grant of any relief in favour of the petitioner.

5. Considered on the submissions. The prayer made in the application under Order 41 Rule 5 of the C.P.C. is very clear for stay on the effect and operation of the judgment and decree. The judgment and decree that is against the petitioner contains declaratory reliefs in favour of the respondent side and also the relief of permanent injunction. Therefore, the application should have been considered by the appellate court on all the aspects, which may be of concern after the filing of appeal by the petitioner. Hence, the application under Order 41 Rule 5 of the C.P.C. has not been properly decided. No consideration has been given on all the aspects of the decree against the petitioner.
6. Hence, for these reasons, the writ petition is disposed of at motion stage. The impugned order dated 06.01.2021 passed by the learned Additional District Judge, Ramanujganj, District-Balrampur-Ramanujganj (C.G.) in Civil Appeal No. 01/2020, is set aside. The application under Order 41 Rule 5 of the C.P.C. filed by the petitioner, is restored. The appellate court is now directed to reconsider on the application, in accordance with law and pass appropriate order.
7. In view of the above, the instant writ petition stands disposed of at motions stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge