

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 174 of 2021

- Shankar Lal Agrawal, S/o Late Shri Ram Krishna Agrawal, Aged About 57 Years, R/o Near Gandhi Chowk, Main Road, Juna Bilaspur, District- Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh Plaintiff

---- Petitioner

Versus

1. Vishnukant Agrawal, S/o Late Vyas Narayan Agrawal, Aged About 60 Years, Occupation- Agriculturist, R/o- Shiv Talkies Road, Bilaspur, Tahsil and District- Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
2. Shivkumar Shukla, S/o Late Vyas Narayan Shukla, Aged About 64 Years, Occupation- Agriculturist, R/o Bachhaud, Tahsil-Janjgir, District- Janjgir-Champa, Chhattisgarh. Presently Residing at Seepat Chowk, Sarkanda, Bilaspur, Tahsil and District- Bilaspur Chhattisgarh., District : Bilaspur, Chhattisgarh
3. Arvind Kumar Shukla, S/o Late Vyas Narayan Shukla, Aged About 52 Years, R/o Mahuda, Post - Mahuda, Tahsil and District- Janjgir-Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
4. Amrit Lal Agrawal, S/o Late Vyas Narayan Agrawal, Aged About 69 Years, Occupation- Business, R/o Bus Stand, Baloda District- Janjgir-Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh
5. State Of Chhattisgarh Through Collector, Janjgir Champa, District- Janjgir-Champa Chhattisgarh., District : Janjgir-Champa, Chhattisgarh

Defendants

----Respondents

For Petitioner – Shri Parag Kotecha and Shri Vivek Kumar Agrawal, Advocates.
For State/Respondent No.5 – Shri Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

18-03-2021

Heard.

1. This petition has been brought under Article 227 of the Constitution of India seeking indulgence of this Court for interfering with the impugned order dated 19-02-2021 passed by the Civil Judge Class-I Akaltara, District Janjgir-Champa in Civil Suit No.8A/2007.
2. It is submitted that the petitioner is plaintiff in the civil suit which was filed for the relief of declaration against the exchange deeds and for possession of the suit property. The petitioner is plaintiff in Civil Suit No.8A/2007. It was mentioned in the plaint regarding a litigation, that was pending between the respondent No.1 and 4, during pendency of this civil suit the litigation between respondent No.1 and respondent No.4 has concluded. The First Appeal

No.335/1998 filed before the High Court was withdrawn by respondent No.1 on 22-06-2009, therefore, the judgment and decree in Civil Suit No.9-A/97 is now binding on the parties, on the basis of which the petitioner/plaintiff has entitlement for relief. Therefore, the amendment was proposed in the application filed which was essential for adjudication of dispute between the parties. The dismissal of this application is erroneous and illegal, hence, the petition deserves to be allowed.

On behalf of the petitioner reliance has been placed on the judgment of this Court in the matter of **Yashodabai through LRs. Vs Umashanker Gupta & Others**, 2020(3) C.G.L.J. 497.

3. Considered on the submission.

4. Perused the application under Order 6 Rule 17 of the CPC filed by the petitioner on 02-02-2021. This application mentions about First Appeal No.335/1998 which was dismissed as withdrawn on 22-06-2009, on the basis of which the amendment to this effect, that the judgment in Civil Suit No.9-A/97 has become final which gives entitlement to the petitioner/plaintiff for reliefs.

5. On perusal of the copy of the plaint itself, it is found that the petitioner/plaintiff has already pleaded in paragraph No.5 regarding the civil suit pending before respondent No.1 and respondent No.4 and the judgment and decree of the trial Court along with mention, that the first appeal is pending. The effect of withdrawal of the first appeal and the finality of the judgment and decree in Civil Suit No.9-A/97 can be placed in final argument in the civil suit pending between the parties and there was no requirement for bringing any amendment on that basis. Learned Court below has not committed any error in passing the order by dismissing the application. Hence, I am of this view that this petition is without any substance, which is dismissed at motion stage.

Sd/-
(Rajendra Chandra Singh Samant)
Judge