

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Orders on : 19.07.2021

Order Passed on : 29.07.2021

W.P.(227) No.324 of 2020

1. Shanti Bai W/o Shri Mangal Sai Aged About 67 Years
2. Bhatrri W/o Shri Kamlu Aged About 40 Years
3. Pali W/o Anturam Aged About 45 Years

(All are r/o Rautpara, Chitalanka, Tahsil And District Dantewada Chhattisgarh)

---- Petitioners

Versus

1. Kishnuram S/o Shri Chandan Aged About 50 Years R/o Chitalanka Tahsil And District Dantewada Chhattisgarh
2. Vidhyasagar Singh S/o Shri Kedarnath Singh Aged About 57 Years R/o Infront Of Ambedkar Park Dantewada Tahsil And District Dantewada Chhattisgarh
3. Tahsildar Dantewada Tahsil Office Dantewada District Dantewada Chhattisgarh
4. State Of Chhattisgarh Through Collector Dantewada, District Dantewada Chhattisgarh

---- Respondents

For Petitioners : Mr. Prafull N. Bharat, Sr. Advocate with Mr. Keshav Dewangan, Advocate.

For respondent No.1 : Mr. Shrawan Agrawal, Advocate.

For respondents No.03 & 04 : Dr. Anil Tripathi, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

29/07/2021

1. This petition has been brought being aggrieved by the order dated 24.12.2019 passed in Miscellaneous Civil Appeal No.11 of 2015.
2. It is submitted, that the petitioners are defendants in the Civil Suit No.5A

of 2013. The petitioners filed an application under Order VII Rule 11 of C.P.C. praying for rejection of the plaint, which was allowed by the trial Court vide order dated 05.10.2015 and the plaint of the respondent No.1/plaintiff was rejected. Respondent No.1 then preferred Miscellaneous Appeal before the Court of Additional District Judge, F.T.C. South Bastar Dantewada, C.G. which has been allowed by the impugned order and the Civil Suit of Respondent No.1 has been restored.

3. It is further submitted that the order of plaint rejection passed by the trial Court under Order VII Rule 11 of C.P.C. was not appealable under Order 43 Rule 1 of C.P.C. Such an order of plaint rejection is appealable as an appeal against the decree. Section 2(2) of C.P.C. provides that the order of rejection of plaint is included in the definition of decree. Therefore, such an order was appealable in the First Appeal under Section 96 read with Order 41 of C.P.C.
4. Reliance has been placed on the judgment of Supreme Court in the Case of Rishabh Chand Jain & Anr. Vs. Ginesh Chandra Jain reported in (2016) 6 Supreme Court Cases 675 and also on the judgment of Supreme Court in the case of Samsher Singh Vs. Rajinder Prashad & Ors. reported in AIR 1973 Supreme Court 2384.
5. Learned counsel for the private respondent concedes that the plaint rejection order of the trial Court was not appealable under Order 43 Rule 1 of C.P.C., however, it is submitted that the appeal has been decided on merits, therefore, it may be treated as decision in First Appeal filed under Section 96 of C.P.C.
6. Learned counsel for private respondents submits, that the High Court has directed for filing of Second Appeal which has been filed and

registered as 520 of 2017, therefore, the matter being subjudice in the Second Appeal, this petition under Article 227 Constitution is not maintainable.

7. Learned State counsel makes a formal objection.
8. In reply, it is submitted by the learned Counsel for petitioner that the order in miscellaneous Civil Appeal cannot be treated as First Appeal because it is an order passed without jurisdiction. It is the statute which governs the appeal and not the dictum of any Court. Therefore, the impugned order is not sustainable.
9. Heard learned counsel for both the parties and perused the documents present.
10. Considered on the submissions. It has been conceded by the learned counsel for private respondents that the order of the trial Court dated 05.10.2015 was not appealable under Order 43 Rule 1 of C.P.C. How the question raised is this, that whether the impugned order can be treated as an order passed in First Appeal. It appears that the petitioner has not raised any objection before the appellate Court regarding the maintainability of the Miscellaneous Appeal. However, maintainability of an appeal is a question of law. The petitioner cannot be penalised for not raising this issue before the appellate Court and that would not create a bar to challenge the legality of the impugned order, which has been clearly passed in a Miscellaneous Civil Appeal and it is not an appeal under Section 96 of C.P.C.
11. In the case of Rishabh Chand Jain & Anr. (Supra), it has been clearly held, that when the order passed is a decree under the definition of Section 2(2) of C.P.C. in that case, the only remedy against such an order shall be appeal under Section 96 read with order 41 of C.P.C. As there are specific provisions present and the remedy was available to

the respondent no.1 for filing appeal under Section 96 of C.P.C. and any order passed in such an appeal would be a lawful order, whereas the order that has been passed in Miscellaneous Appeal is clearly without jurisdiction and not permissible under the Code of Civil Procedure. Hence, for these reasons, the impugned order cannot be treated as an order passed in First Appeal for the reasons mentioned hereinabove.

12. The other statement of learned counsel for respondent No.1 regarding pendency of Second Appeal No.520 of 2017 has been verified and it has been found that the Second Appeal No.520 of 2017 is between the parties Prema Bai & Rewalal and not between the parties in this case. The respondent No.1 has not supplied any document of Second Appeal filed and only oral submission has been made, which has been verified and found incorrect. Hence, that submission is of no consequence.

13. On the basis of the discussions made hereinabove, it is held that the impugned order has been passed by the appellate Court without the authority of law. Therefore, it is unsustainable. Hence, the petition is allowed and the impugned order is quashed. The respondent No.1 is granted liberty to file appeal under Section 96 of C.P.C. against the order of the trial Court before the Court having jurisdiction.

14. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge