

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 318 of 2020

Mohan Agrawal, aged about 45 years, S/o Late Raghunath Agrawal, R/o Ramniwas Talkies Road Raigarh, Police Station Chakradhar Nagar, Tahsil Civil And Revenue District Raigarh Chhattisgarh.

---- Petitioner/ Defendant No.1

Versus

1. Ramesh Agrawal S/o Late Ramkumar Agrawal, Aged About 60 Years Occupation Business, R/o Ramniwas Talkies Road Raigarh, Police Station Chakradhar Nagar, Tahsil, Civil And Revenue District Raigarh Chhattisgarh.
2. Suresh Agrawal, S/o Late Ramkumar Agrawal, Aged About 52 Years Occupation Business, R/o Kelo Vihar Colony Raigarh, Tahsil And District Raigarh Chhattisgarh.
3. Ashok Agrawal, S/o Late Ramkumar Agrawal, Aged About 50 Years Occupation Business, R/o Ramniwas Talkies Road Raigarh, Police Station Chakradhar Nagar, Tahsil, Civil And Revenue District Raigarh Chhattisgarh.
4. Rahul Agrawal, S/o Ashok Agrawal, Aged About 26 Years R/o Ramniwas Talkies Road Raigarh, Police Station Chakradhar Nagar, Tahsil, Civil And Revenue District Raigarh Chhattisgarh.
5. Richa Agrawal, D/o Ashok Agrawal, W/o Rohit Agrawal, Aged About 24 Years R/o Ramniwas Talkies Road Raigarh, Tahsil And District Raigarh Chhattisgarh. At Present R/o Hanuman Rice Mill Lailunga, Tahsil Lailunga, District Raigarh Chhattisgarh.
6. Dipesh Agrawal, S/o Ramesh Agrawal, Aged About 24 Years R/o Ramniwas Talkies Road Raigarh, Tahsil And District Raigarh Chhattisgarh.....Plaintiff.

---- Respondents/ Defendants

For the Petitioners	: Shri Ratnesh Kumar Agrawal, Advocate.
For the Respondents	: Shri Manoj Paranjpe, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

9-3-2021

Heard.

1. This petition under Article 227 of the Constitution of India has been filed against the order dated 22.2.2020, passed by the learned Seventh

Additional District Judge, Raigarh in Civil Suit No. 28A of 2014.

2. The facts of the case, in brief, are that Santra Devi (dead) filed this civil suit against Rakesh Agrawal (dead) for the relief of possession and damages. Subsequent to death of plaintiff – Santra Devi, respondent No.6 – Dipesh Agrawal was substituted as her legal representative on the strength of a will executed by Santra Devi in his favour.
3. Respondent No.3 – Ashok Agrawal and others have challenged the registered will dated 14.11.2014 in favour of Dipesh Agrawal in Civil Suit No.22-A of 2016, in which judgment and decree dated 23.3.2019 was passed and the said will was declared void. It was subsequent to this development, respondent No.6 – Dipesh Agrawal filed an application under Order XXIII Rule 1 of the Code of Civil Procedure, praying for withdrawal of the civil suit on ground that he is not entitled to prosecute the suit as legal representative of deceased – Santra Devi. This application was opposed by the petitioner, however, the same was unopposed by respondent No.1/ defendant No.2. The application for withdrawal of the civil suit was allowed by the impugned order. Respondent No.1/ defendant No.2 then filed a separate application under Order XXIII Rule 1A of the CPC, praying for his transposition as plaintiff in the civil suit, claiming to be legal representative of deceased Santra Devi, which has been allowed by the trial Court.
4. It is submitted by counsel for the petitioner that respondent No.1 – Ramesh Agrawal had no entitlement to be transposed as plaintiff under the provision of Order XXIII Rule 1A of the CPC. In the Civil Suit No.22-A of 2016 filed by respondent No.3 and others challenging the validity of the will executed by deceased – Santra Devi, one issue was framed, whether the plaintiffs have entitlement for share in the property, which has been decided that the plaintiffs i.e. respondents No.3 and 4

and defendants No.1, 2 and 3 who are respondent - Dipesh Agrawal, respondent No.1 - Ramesh Agrawal and respondent No.2 - Suresh Agrawal are entitled for equal shares in the disputed property in the capacity of their being sons/ successors of deceased – Santra Devi. Therefore, the transposition of respondent No.1 as a sole legal representative of deceased – Santra Devi in the civil suit is totally an erroneous order which is not at all sustainable.

5. Learned counsel for the respondents opposes the submissions and submits that the petitioner/ defendant No.1 is in possession of the suit property, therefore, respondent No.1 who is defendant in the civil suit has entitlement to prosecute the cause of action available to deceased – Santra Devi after the dis-entitlement of respondent No.6 – Dipesh Agrawal, the erstwhile legal representative of deceased – Santra Devi. Subsequent to the judgment in Civil Suit No.22A of 2016, first appeal has been filed against the same, which is pending. The provision under Order XXIII Rule 1A of the CPC entitles respondent No.1 to be transposed as plaintiff in place of deceased – Santra Devi, after the failure of her earlier LR who was representing her cause of action.
6. Placing reliance on the judgment of the Supreme Court in the case of **R. Dhanasundari alias R. Rajeswari vs. A.N. Umakanth and Others**, reported in (2020) 14 SCC 1 and on the judgment of Madhya Pradesh High Court in the case of **Sulemanji Sanibhai (M/s.) and Others vs. Abde Ali and Others**, reported in 1995 JLJ 338, it is prayed that the petition is without any substance, which may be dismissed.
7. In reply, learned counsel for the petitioner submits that the suit property was purchased benami in the name of deceased – Santra Devi, which was joint property of Ramkumar Agrawal and Raghunath Agrawal. The petitioner is the successor of Raghunath Agrawal, therefore, the

petitioner has a claim over the suit property himself, hence, this petition deserves to be admitted and allowed.

8. Considered the submissions. On perusal of the copy of the plaint, it is found that the plaintiff had claimed relief of possession from defendant who is the petitioner herein and therefore, there was no claim of any relief against defendant No.2, who is respondent No.1 in this petition and now he has been transposed as plaintiff in the civil suit.
9. Order XXIII Rule 1A of the CPC is reproduced as follows:

‘1A. When transposition of defendants as plaintiffs may be permitted.

Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under [rule 10 of Order I](#) the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.’

10. It was observed by the Supreme Court in the case of **R. Dhanasundari alias R. Rajeswari vs. A.N. Umakanth and Others** (supra) in paragraphs 10 and 11 is as follows:

‘10. It remains trite that the object of Order 1 of Rule 10 CPC is essentially to bring on record all the persons who are parties to the dispute relating to the subject-matter of the suit so that the dispute may be determined in their presence and the multiplicity of proceedings could be avoided. This Court explained the principles, albeit in a different context, in the case of **Anil Kumar Singh v. Shivnath Mishra: (1995) 3 SCC 147** in the following:-

"7. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at the same time

without any protraction, inconvenience and to avoid multiplicity of proceedings."

11. As per Rule 1-A *ibid.*, in the eventuality of plaintiff withdrawing the suit or abandoning his claim, a proforma defendant, who has a substantial question to be decided against the co-defendant, is entitled to seek his transposition as plaintiff for determination of such a question against the said co-defendant in the given suit itself. The very nature of the provisions contained in Rule 1-A *ibid.* leaves nothing to doubt that the powers of the Court to grant such a prayer for transposition are very wide and could be exercised for effectual and comprehensive adjudication of all the matters in controversy in the suit. The basic requirement for exercise of powers under Rule 1-A *ibid.* would be to examine if the plaintiff is seeking to withdraw or to abandon his claim under Rule 1 of Order XXIII and the defendant seeking transposition is having an interest in the subject-matter of the suit and thereby, a substantial question to be adjudicated against the other defendant. In such a situation, the proforma defendant is to be allowed to continue with the same suit as plaintiff, thereby averting the likelihood of his right being defeated and also obviating the unnecessary multiplicity of proceedings.'

11. The similar view was taken by the Madhya Pradesh High Court in the case of **Sulemanji Sanibhai (M/s.) and others (supra)**. After taking into consideration the facts present in this case, it is clear that respondent No.1 was a proforma defendant in Civil Suit No. 28A of 2014. The withdrawal made by respondent No.6 under Order XXIII Rule 1 of the CPC need not be questioned as Order XXIII Rule 1 of the CPC does not prescribe any clarification for withdrawing any suit, therefore, the plaintiff/ respondent No.6 being dominus litus, made that choice and withdrew from the suit. The impugned order on this application needs no

interference.

12.The claim of respondent No.1/ defendant No.2 for transposition has been examined herein-above and according to the settled position of law, it is clear that respondent No.1 has entitlement to prosecute the cause of action which was available to the deceased – Santra Devi. His capacity as being son and thus, legal representative of deceased – Santra Devi is not having any dispute. Hence, for these reasons, I do not find any substance in this petition which is liable to be dismissed.

13.Accordingly, the petition is dismissed and disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Nimmi