

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 442 of 2021

1. Ankal Bai D/o Late Adhin Ram Aged About 56 Years R/o Village Kritbans, P.S. And Tahsil Gandai, Distt. Rajnandgaon (Chhattisgarh)
2. Mankunwar W/o Shyamlal Aged About 60 Years R/o Village Kritbans, P.S. And Tahsil Gandai, Distt. Rajnandgaon (Chhattisgarh)
3. Janaki Bai W/o Late Malikram Aged About 65 Years R/o Village Kritbans, P.S. And Tahsil Gandai, Distt. Rajnandgaon (Chhattisgarh)

---- Petitioners

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Revenue And Disaster Management, Mahanadi Mantralaya, Nawa Raipur, Post Office And Police Station Naya Raipur, District Raipur (Chhattisgarh)
2. Director General Of Police Police Headquarters, Nawa Raipur, Post Office And Police Station Naya Raipur, District Raipur (Chhattisgarh)
3. Superintendent Of Police Rajnandgaon, District Rajnandgaon (Chhattisgarh)
4. Sub Divisional Officer (Revenue) Chhikhadan, Distt. Rajnandgaon (Chhattisgarh)
5. Tahsildar Gandai, District Rajnandgaon (Chhattisgarh)
6. Station House Officer Police Station Gandai, Tahsil Gandai, District Rajnandgaon (Chhattisgarh)
7. Sunil S/o Radheshyam Aged About 30 Years R/o Village Kritbans, P.S. And Tahsil Gandai, Distt. Rajnandgaon (Chhattisgarh)
8. Jaylal S/o Mayaram Aged About 35 Years R/o Village Kritbans, P.S. And Tahsil Gandai, Distt. Rajnandgaon (Chhattisgarh)
9. Dhannu S/o Late Jayram Aged About 40 Years R/o Village Kritbans, P.S. And Tahsil Gandai, Distt. Rajnandgaon (Chhattisgarh)

---- Respondents

For Petitioners : Shri R.S. Baghel, Advocate

For State : Shri G.I. Sharan, Government Advocate

Hon'ble Shri Justice Narendra Kumar Vyas

Order on Board

16.07.2021

1. Learned counsel for the petitioners would submit that Late Bela Bai filed Second Appeal No. 363/2003 against judgment and decree dated 29.04.2003 passed by learned lower Appellate Court reversing the judgment and decree dated 17.01.2002 passed by the Trial Court in Civil Suit No. 50-A/87. Learned lower Appellate Court decreed the suit

of the plaintiff.

2. During the pendency of the Second Appeal, appellant No. 1 Bela Bai died and vide order of this Court dated 15.06.2015 her legal representatives were brought on record namely Mayaram, Radheslal, Radheshyam, Smt. Prem Bai, Smt. Paraniya and Smt. Radha. Thereafter, appellant No. 2 Ghasanin Bai also died and vide order of this Court dated 17.10.2019 her legal representatives were brought on record namely Arun Kumar, Bade Lal and Ramji. Learned Single Bench of this Court allowed the Second Appeal and passed the following orders :-

“16. The effect of provisions of Section 14 of the Act of 1956 was that the limited estate or ownership which the widow was enjoying prior to coming into force of the Act of 1953, became absolute.

17. Therefore, the learned lower Appellate Court was not correct in law in holding that the appellant /defendant – Leela Bai would not get any interest in the property and only the plaintiff would be entitled to succeed to the property earlier held by his father.

18. Accordingly, the appeal is allowed by answering substantial question of law in favour of the appellant and against the respondent that the defendants are also having interest in equal share along with Adhinram in the disputed property described in Schedule C of the plaint and therefore, plaintiff's suit was rightly dismissed by the learned Trial Court as the plaintiff is not entitled to declaration that the entire property is held by him to the exclusion of his mother – Leela Bai.

19. In the result, the appeal is allowed. The impugned judgment and decree is set aside. Plaintiff's suit is dismissed. Parties to bear their respective costs. Decree be drawn accordingly.”

3. Thereafter, Legal representatives of respondent-Adhinram filed Special Leave Petition before Hon'ble Supreme Court bearing SLP (C) Diary No. 12848/2020. Hon'ble Supreme Court issued notice on 15.10.2020 to the petitioners herein on leave petition as well as interim relief application.
4. The Petitioners have preferred this Writ Petition on 12.07.2021, with the following reliefs:-

“10.i. That, this Hon'ble Court may kindly be pleased to direct the respondent authorities to protect the interest of the petitioners by providing due protection to them.

10.ii. That, this Hon'ble Court may kindly be pleased to direct the respondent authorities to respondents No. 7 to 9 to enter into the agricultural fields of the petitioners and also to evict them.

10.iii Cost of the petition may also be granted to the petitioners.

10.iv Any other relief, which this Hon'ble Court deems fit and proper, may also kindly be granted to the petitioners, in the

interest of justice.”

5. Learned counsel of the petitioners would further submit that this Court under Article 226 of Constitution of India can order or issue any direction to the authorities for maintenance of law and order despite of the fact that SLP is pending before the Hon'ble Supreme Court.
6. This submission of the learned counsel for the petitioners cannot be accepted at this juncture because entitlement of the petitioners over this property is under dispute and subjudice before the Hon'ble Supreme Court, as such Court should be restrained from issuing any direction.
7. Accordingly, considering the matter is pending before the Hon'ble Supreme Court, it is not desirable that this Court should pass any direction or instruction to the authorities to allow the petitioners to use the land. This can only be prayed before the Hon'ble Supreme Court by the petitioners by moving appropriate application.
8. Therefore, the present writ petition is dismissed as not maintainable before this Court.

Sd-
(Narendra Kumar Vyas)
Judge

kishore