

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**C.R. No. 64 of 2018****Order Reserved on 28.9.2021****Order Delivered on 22.10.2021**

Durga Singh S/o Late Shri Arjun Singh Aged About 50 Years R/o Shankar
Mandir Chowk, Naya Para, Raipur, District- Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. Smt. Veena Singh W/o W/o Late Vaidhraj Naveen Kumar Singh, Aged About 43 Years R/o Bhishma Aushadhalaya And Cancer Hospital, Raipura, Tehsil And District- Raipur, Chhattisgarh.Plaintiff.
2. Public At Large (General Public).

---- Respondents

For the Petitioner	:	Shri Jitendra Pali, Advocate.
For Respondents No.1 & 2	:	Shri Anish Tiwari, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV ORDER**

Heard.

1. This petition has been brought being aggrieved by the order dated 12.4.2018, passed by the Principal Judge, Family Court, Raipur in Civil Suit No. 15 of 2017, by which the application filed by the petitioner under Order VII Rule 11 of the CPC was dismissed.

2. It is submitted by counsel for the petitioner that respondent No.1 has filed a civil suit before the learned Family Court for declaration that she is legally-wedded wife of late Naveen Kumar Singh. It is further submitted by counsel for the petitioner that earlier there had been a civil suit contested between the petitioner and late Naveen Kumar Singh and others i.e. Civil

Suit No.10A of 2006. The suit was decreed in favour of the petitioner. Late Naveen Kumar Singh preferred F.A. No. 177 of 2008 and during the pendency of this appeal, Naveen Kumar Singh has expired. It is also submitted that respondent No.1 prayed for impleadment as legal representative of late Naveen Kumar Singh, which was challenged by the petitioner. Learned High Court directed the matter for enquiry under Order XXII Rule 5 of the CPC, by the District Judge, Raipur, who conducted the enquiry and held by the order dated 4.5.2012 that respondent No.1 has failed to prove that she is the wife of late Naveen Kumar Singh. This report was accepted by the High Court and the application of respondent No.1 for impleadment as legal representative of late Naveen Kumar Singh was dismissed by order dated 23.7.2012 in F.A. No. 177 of 2008. Respondent No.1 then preferred a special leave to appeal before the Supreme Court, which has also been dismissed by order dated 19.10.2012. Respondent No.1 then filed an application under Section 372 of the Indian Succession Act, 1925 praying for issuance of succession certificate for receiving the amount deposited in bank account of late Naveen Kumar Singh. The petitioner had filed an objection to her claim. Learned Court below by order dated 4.7.2015 has held that respondent No.1 is not the legally-wedded wife of late Naveen Kumar Singh and dismissed the application under Section 372 of the Indian Succession Act. It is subsequent to these proceedings, the civil suit had been filed in the Family Court.

3. It is submitted by counsel for the petitioner that the issue regarding the entitlement of respondent No.1 being a legal representative of late Naveen Kumar Singh has already been decided in the various litigations and

secondly, proper valuation has not been made and proper Court fees has not been paid, therefore, the plaint of respondent No.1 was fit to be rejected. The suit filed is also barred by limitation as any suit could have been brought only within three years from the date the cause of action has arisen which is also one of the ground on which, the plaint should have been rejected by the learned Family Court. Hence, the impugned order suffers from grave infirmity and it is prayed that the petition be allowed, the impugned order be quashed and the plaint filed by respondent No.1 be rejected.

Reliance has been placed on the judgment of Supreme Court in the case of **Rajendra Bajoria and Ors. vs. Hemant Kumar Jalan and Ors.**, reported in **2021 SCC Online SC 764**.

4. Learned counsel for the respondents opposes the submissions made by counsel for the petitioner and submits that the decision of the Court under Order XXII Rule 5 of the CPC is a decision made on the enquiry which is a summary procedure, therefore, the filing of civil suit is not barred. The civil suit has been filed by respondent No.1 on this basis that she was legally-wedded wife of late Naveen Kumar Singh and such an opportunity had not been available to her on previous occasions. It is also submitted that the suit has been valued properly and proper Court fees has been paid.

Relying on the judgment of Supreme Court in the case of **Suresh Kumar Bansal vs. Krishna Bansal and Ors.**, reported in **(2010) 2 SCC 162**, it is submitted that it is now well settled that determination of the question as to who is the legal representatives of the deceased plaintiff or defendant under Order XXII Rule 5 of the CPC is not conclusive and it does

not operate as *res-judicata*. Similarly, it has been held in the judgment of Supreme Court in the case of **Joginder Pal vs. Indian Red Cross Society and Ors.**, reported in **2000(8) SCC 143**, that whether the decision in this case under the provisions of Indian Succession Act does not bar the same question being raised between the same parties in any civil suit.

Relying on the judgment of Supreme Court in the case of **C. Natrajan vs. Ashim Bai and Ors.**, reported in **2007 (14) SCC 183**, it is submitted that the question of limitation raised by the petitioner is a mixed question of fact and law, therefore, it cannot be made a ground for rejection of a plaint. Therefore, the impugned order is sustainable and the present petition be dismissed.

5. Heard learned counsel for the parties and perused the documents present on record.

6. Considered on the submissions. Under Order VII Rule 11 of the CPC, the plaint can be rejected on the ground that it does not disclose a cause of action, which is not the case at present; or where the relief claimed is under valued and the plaintiff on being required by the Court to rectify the same within a time granted to do so or where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, or where the suit appears from the statement in the plaint to be barred by law.

7. It is settled possession that the order of rejection of plaint under Order VII Rule 11 of the CPC can be made only on the basis of averments present in the plaint. On perusal of the plaint, it is seen that respondent No.1 has

pleaded the facts regarding her previous filing of applications in previous civil suits between the petitioner and late Naveen Kumar Singh and the other litigations in which she could not succeed. Learned Family Court has examined the plaint at the stage of filing of the same and ordered for registration of the same showing satisfaction on the valuation and on the Court fees affixed for the same and also regarding the pleading of limitation made in the plaint. Therefore, on the plain reading of the plaint it cannot be said that there is any absence of cause of action, or that the suit is not properly valued and the Court fees is not paid properly and also that it is filed beyond limitation. All the objections that have been raised by the petitioner are in facts grounds of her defence and the same can be pleaded in written statement. Learned trial Court can frame the issues on the basis of these pleadings raised by the petitioner's side in the written statement and the same can be decided in the civil suit. Therefore, on plain reading of the plaint itself, it is found that there is no ground present for rejection of the plaint. The petitioner is at liberty to raise the grounds in her defence regarding the *res-judicata*, evaluation, court fees and limitation. Therefore, I do not find any error in the impugned order and the petition is dismissed and disposed off.

8. Accordingly, the present civil revision petition is disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge