

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 505 of 2020

- Smt. Darshan Kaur Arora W/o Gurdeep Singh Arora, Aged About 72 Years, R/o Punjabi Colony, Dayalband, Bilaspur, Tahsil and District Bilaspur Chhattisgarh.....Plaintiff, District : Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Makela Ram @ Bhakala Yadav, S/o Narhar Yadav, Aged About 76 Years, R/o Chantidih, Bilaspur (Chhattisgarh) Presently R/o Rajendra Nagar, Bilaspur, Tahsil and District Bilaspur Chhattisgarh.....Defendant, District : Bilaspur, Chhattisgarh
2. Rajkumar Tiwari, S/o Late Anuj Prasad, R/o Bhairvi Goods, Near Old Rojgar Karyalaya, Koni Road, Sarkanda, Bilaspur, District Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh
3. State Of Chhattisgarh, Through the Collector, Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh

----Non-applicant

For Petitioner – Shri Ravindra Agrawal and Shri Vivek Shrivastava, Advocates.
For Respondent No.1 – None, though served.
For Respondent No.2 – Shri Atanu Ghosh, Advocate.
For State/Respondent No.3 – Shri D.P. Singh, Deputy Advocate General.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

17-03-2021

Heard.

1. This petition has been brought being aggrieved by the order dated 24-01-2020 by which the application of the defendant No.2/respondent No.2 under Order 1 Rule 10 of the CPC was allowed and the order dated 03-02-2020 by which the application of the petitioner/plaintiff under Order 6 Rule 17 read with Section 151 of the CPC has been dismissed by the Court of 4th Civil Judge Class-II, Bilaspur, Chhattisgarh.
2. It is submitted by learned counsel for the petitioner, that the petitioner has filed a civil suit praying for relief of declaration and permanent injunction with respect to her property which is Khasra No.32/6 measuring 0.17 acres situated in Village Chantidih, Bilaspur. Respondent No.1 has pleaded in written

statement that actual Khasra No. of the suit property is 30/15 on which respondent No.1 is in possession. During pendency of this suit the petitioner/plaintiff filed an application under Order 1 Rule 10 of the CPC praying that respondent No.2 has raised construction on the suit land after making encroachment on the same, therefore, he is a necessary party. That application was allowed by order dated 09-08-2019, at the same time, the amendment proposed under Order 6 Rule 17 of the CPC was also allowed by the same order. Subsequent to which, the prayer of the petitioner under Order 39 Rule 3 of the CPC was also allowed and Ad-interim temporary injunction was granted by the Court.

The respondent No.2 then has filed application under Order 1 Rule 10 of the CPC praying for deletion of his name as defendant No.2, which has been allowed by the impugned order dated 24-01-2020 and when the petitioner/plaintiff brought amendment application to clarify the position of respondent No.2 in the plaint the same has been erroneously rejected by the order dated 03-02-2020.

Reliance has been placed on the judgments of Hon'ble the Supreme Court in the matter of **Vidyabai and others Vs. Padmalatha and another**, (2009) 2 SCC 409 and in the case of **Mumbai International Airport Private Limited Vs. Regency Convention Centre and Hotels Private Limited and others**, (2010) 7 SCC 417.

Reliance has also been placed on the judgment of Madhya Pradesh High Court in the matter of **Kamta Prasad and others Vs. Vidyawati and others**, 1995 M.P.L.J. 127.

On this basis it is prayed that the impugned orders be set aside and relief be granted to the petitioner.

3. Respondent No.1 is not represented, though served with notice.

4. It is submitted by learned counsel for respondent No.2 that the civil suit is pending since the year 2009. On perusal of the plaint itself it is clear that there is no pleading with respect to respondent No.2, therefore, there had been no cause of action against him and his impleadment as a party in the civil suit was totally unnecessary. Respondent No.2 has no dispute regarding title and possession of the petitioner/plaintiff on the suit land which is described as Khasra No.32/6 measuring 0.17 acres. There is no demarcation present to show that the respondent No.2 is in possession of the suit property. Therefore, there was no reason for impleading respondent No.2 as party and also no reason to make any pleadings against him. Hence, the petition be dismissed.

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

6. Considered on the submissions.

7. It appears to be true that when the respondent No.2 was allowed to be impleaded as a party by the petitioner on 09-08-2019, there had been no pleading in the plaint against respondent No.2 and similarly the amendment that was proposed and accepted by the Court on the same date, was only for the purpose of amending the cause title by arraying respondent No.2 as defendant No.2 and the State Government as defendant No.3. The plaint dated 23-09-2009 does not mention of any allegation of any act of respondent No.2 against the interest of the petitioner/plaintiff. It was after allowing the application of respondent No.2 under Order 1 Rule 10 of the CPC by impugned order dated 24-01-2020, by deleting the name of respondent No.2 from the plaint, the application under Order 6 Rule 17 of the CPC was filed at later stage proposing pleadings against the respondent No.2 regarding his act against the interest of the petitioner, which has been dismissed by learned trial Court by order dated 03-02-2020. The application has been dismissed on the ground of delay.

8. The amendment that was proposed by the application dated 30-01-2020 does not speak of any date on which respondent No.2 encroached upon the suit land and raised his own construction, as the suit which was pending since the year 2009, therefore, the mention of dates have to be specific for the purpose of determination, that the cause of action on which relief is sought to be claimed is available to the plaintiff and also is within limitation. On perusal of the proposed amendment in the application dated 30-01-2020, it is found that the allegation of act against respondent No.2 appears to be vague. Further, there are no reason mentioned in the application as to why the application was brought in such belated stage. Hence, for these reasons I find no reason to interfere with the impugned order dated 03-02-2020 as such interference would not be fruitful in any respect.

Taking into consideration that it may be so that the petitioner/plaintiff has some grievance against respondent No.2 and the plaintiff should not be shut out from bringing such facts in the plaint, on the basis of which she may have entitlement for any relief, of course, that shall be subject to scrutiny of the trial Court, but such opportunity has to be given to the plaintiff. Hence, for this reason this petition is disposed off at motion stage. Without any order with respect to the impugned orders, the petitioner/plaintiff is granted opportunity to file fresh application for amendment regarding her grievance against respondent No.2 along with application under Order 1 Rule 10 of the CPC. Learned trial Court is directed to give opportunity to the parties for hearing on these applications and then pass orders in accordance with law taking into consideration the observations made hereinabove.

Sd/-

(Rajendra Chandra Singh Samant)
Judge