

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.581 of 2021

- Tilak Kumar S/o Shri Feruram Sahu, Aged About 42 Years R/o Parsuram Ward, Near Naka No. 1, Bhatapara, P.S. And Tahsil Bhatapara, District Baloda Bazar Bhatapara, Civil And Revenue District Baloda Bazar Bhatapara (Chhattisgarh)

---- Petitioner

Versus

1. Dilip Kumar S/o Shri Feruram Sahu, Aged About 50 Years R/o Village Jhiriya, P.S. And Tahsil Bemetara, District Bemetara Chhattisgarh
2. Thakur Ram S/o Ramu Sahu, Aged About 35 Years Village Jhiriya, P.S. And Tahsil Bemetara, District Bemetara (Chhattisgarh)
3. Chetan S/o Shri Ramu Sahu, Aged About 33 Years Village Jhiriya, P.S. And Tahsil Bemetara, District Bemetara Chhattisgarh

---- Respondents

For Petitioner

– Mr. Manoj Kumar Sinha, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

26-10-2021

1. Heard on this petition.
2. It is submitted that the petitioner is plaintiff in Civil Suit No.21-A/2014 which has been dismissed by judgment and decree dated 08.05.2018. The petitioner/plaintiff had filed an application before the trial Court praying for framing of additional issues, that application was rejected and judgment and decree was passed. The petitioner has then preferred the appeal against the impugned judgment and decree which is pending. At the appeal stage, the petitioner has again filed application

under Order 14 Rule 5 of C.P.C. which has been dismissed by the impugned order, in an arbitrary manner. Hence, this impugned order is erroneous and unsustainable.

3. Considered on the submissions. The framing of issues is a matter for consideration by the trial Court, however. The appellate Court can exercise this jurisdiction to frame the issues, in case, any case is remanded to the Subordinate Court at the stage of disposal of the appeal. Therefore, I am of this view that the appellate Court has proceeded to decide the application at an early stage, which should have been kept pending for decision at the stage of the judgment in the appeal itself. Therefore, this petition is disposed off at the motion stage. The impugned order dated 30.09.2021 Annexure-P/1 is set aside and an application under Order 14 Rule 5 of C.P.C. filed by the petitioner is restored. The learned trial Court is directed to consider and decide the application of petitioner under Order 14 rule 5 of Cr.P.C. at the stage of passing final judgment in the appeal.
4. Accordingly, this petition stands disposed off.

Monika

Sd/-
(Rajendra Chandra Singh Samant)
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

M.C.C. No.615 of 2021

- Tilak Kumar S/o Shri Feruram Sahu Aged About 42 Years R/o Parsuram Ward, Near Naka No. 1, Bhatapara, P.S. And Tahsil-Bhatapara, District Baloda Bazar-Bhatapara, Civil And Revenue District Baloda Baar-Bhatapara Chhattisgarh.

---- Applicant

Versus

1. Diip Kumar S/o Sshri Feruram Sahu Aged About 50 Years R/o Village Jhiriya P.S. And Tahsil-Bemetra, District Bemetra, Chhattisgarh
2. Thakur Ram S/o Ramu Sahu Aged About 35 Years R/o Village-Jhiriya, P.S. And Tahsil-Bemetra, District Bemetra, Chhattisgarh.
3. Chetan S/o Shri Ramu Sahu Aged About 33 Years R/o Village - Jhiriya, P.S. And Tahsil-Bemetra, District Bemetra, Chhattisgarh.

---- Non-applicants

For Applicant

– Mr. Manoj Kumar Sinha, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

15-11-2021

1. Heard on application praying for correction in the order passed by this Court on 26.10.2021 in W.P.(227) No.581 of 2021.
2. It is submitted that in the paragraph No.3 of the order dated 26.10.2021, there is erroneous mention of trial Court and also the provision mentioned as Order 14 Rule 5 of Cr.P.C., which are clerical mistake which needs correction. Hence, the order may be passed for correction.
3. Considered on the submissions and perused the order dated

26.10.2021. In the latter part of the paragraph No.3 there is an error present as pointed out by learned counsel for the petitioner, hence, the prayer made in this application is allowed.

4. It is ordered that in the order dated 26.10.2021 in W.P.(227) No.581 of 2021 in the 11th line of the paragraph No.03, the word 'trial Court' shall be read as 'appellate Court' and in the 12th line, the word 'Cr.P.C.' shall be here-in-after read as 'C.P.C.'
5. A copy of this order be made a part of W.P.(227) No.581 of 2021.
6. With these observations, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika