

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.784 of 2019

1. Mahendra Lal S/o Late Arjun Aged About 32 Years
2. Narendra Lal S/o Late Arjun Aged About 29 Years
3. Parmeshwar Lal S/o Late Arjun Aged About 27 Years
4. Akhileshwar Lal S/o Shri Arjun Aged About 25 Years (Present Age 33 Years.)
5. Sumitra Devi D/o Late Arjun Aged About 35 Years
6. Mohini Devi D/o Late Arjun Aged About 33 Years
7. Tara Kumari D/o Late Arjun Aged About 20 Years

(all are r/o Village Golpuri, Vijay Nagar, Tata Nagar, (Jamsedpur), State Jharkhand, Profession Shopkeeping, Main Post Office Agrico)

{That During pendency of the suit Plaintiff No.1 Arjun Lal, S/o Fagulal died, thus legal heirs were impleaded as party, thereafter plaintiff No.1(1) Phekan Bai, Wd/o Late Arjun Lal also died thus were not made party in the instant petition.}

---- Petitioners

Versus

1. Latmar S/o Late Ramlal Aged About 35 Years Caste- Lodhi, R/o Village Chorbhatti, Tahsil Saaja, District Durg, Chhattisgarh
2. Laxman S/o Late Ramlal Aged About 32 Years Caste Lodhi, Village Chorbhatti, Tahsil Saaja District Durg, Chhattisgarh
3. Khorbahrin Bai D/o Late Ramlal R/o Dhaar, P.O. Kongiyakala, Tahsil Saaja, District Durg, Chhattisgarh

.....{Defendants No.1(2), 1(3) & 1(4)}

4. Smt Manbati Wd/o Fagulal Umar Age 60 Years, Caste - Lodhi Profession Agriculture. R/o Somaikala, Tahsil Bemetara, District Durg Chhattisgarh

.....(Plaintiff No.2)

{That During pendency of the suit Defendant No.1 Ramlal, S/o Ghanaram Umar died, thus legal heirs were impleaded as party, thereafter Defendant No.1(1) Neera Bai, Wd/o Late Ramlal also died thus were not made party in the instant writ petition.}

---- Respondents

For Petitioners : Mr. Alok Kumar Dewangan, Advocate.

For respondents : Mr. Vaibhav A. Goverdhan, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

09/07/2021

1. This petition has been brought under Article 227 Constitution of India against the order dated 02.09.2019 passed by the Court of Civil Judge Class- I, Bemetara, District- Bemetara, C.G. in Civil Suit No.100-A/82, by which the application filed by the petitioners/plaintiffs under Order I Rule 10 of C.P.C. read with order VI Rule 17 of C.P.C. was dismissed.
2. The suit was filed by the plaintiff Arjunlal and Bhanmati. It was pleaded that they are the sole owner of the suit property in which the respondents are interfering, therefore, relief of declaration and permanent injunction may be granted to the plaintiffs. Petitioners are the successors of plaintiff Arjunlal. The suit was filed on 13.10.1980, which was dismissed by the trial Court on 19.09.1983. This judgment and decree was challenged in first appeal, which was allowed by the judgment dated 09.10.2001, by which the case was remanded to the trial Court directing to permit the plaintiff to correct the valuation of the civil suit and to pay the proper Court fees for the same. The plaintiff prayed for extension of time to pay Court fees, which was rejected and

the suit was dismissed. The appeal filed was also dismissed. The plaintiffs then preferred second appeal before the High Court which was allowed on 01.07.2019 and the plaintiff was given opportunity to present Court fees. Subsequent to which, the trial in the suit has initiated.

3. It is submitted that the petitioners filed application under Order VI Rule 17 of C.P.C. praying for amendment in the plaint on the ground that the survey numbers of the suit property have changed and also on the ground that the defendant/respondents have alienated some of the suit property. An application under Order I Rule 10 of C.P.C. read with Order VI Rule 17 of C.P.C. was separately filed praying for impleadment of the purchasers of the suit land as parties.
4. It is submitted that during the pendency of the suit and the litigation, which was being pursued by the petitioner side continuously, the circumstances have arisen, that the survey number of the suit land has been changed in settlement and the revenue proceedings, therefore, for the proper identification of the suit land, the amendment is necessary. Similarly, the suit property which has been alienated by the respondents is hit by the Section 52 of the Transfer of Property Act, therefore, the subsequent purchasers are also necessary parties. The learned trial Court has committed error in rejecting both the applications, hence, it is prayed that this petition may be allowed, impugned order may be quashed and relief may be granted.
5. Learned counsel for respondents opposes the petition and the submissions made by the learned counsel for petitioners and submits that the learned trial Court has passed order by elaborating the reasons for rejection of the applications. There is no explanation of delay given by the petitioners/plaintiffs for making such application under Order VI rule 17 of C.P.C. and under Order I Rule 10 of C.P.C. belatedly,

therefore, no error has been committed by the trial Court. Therefore, it is prayed that this petition may be dismissed.

6. Heard learned counsel for both the parties and perused the documents present.
7. Considered on the submissions. As it is submitted in the petition itself, the suit was filed in the year 1980 which was dismissed by the trial Court in 1983. Subsequent to which, the appeal was allowed for granting opportunity to the plaintiff to make proper valuation of the suit and also pay proper Court fees for the same. As the plaintiff's side could not comply the order, the suit was again dismissed by the trial Court on 15.05.2003, the appeal preferred was also dismissed and then the suit of the petitioners/plaintiff was restored on 01.07.2019 by the orders in Second Appeal. Hence, before the date 01.07.2019, there have been practically no proceeding in hearing before the trial Court. The applications for amendment and impleading additional parties was filed on 05.08.2019, that is soon after the restoration of the Civil Suit. Hence, it cannot be said that there have been any delay for which the petitioners are required to explain.
8. The proposed amendment in the plaint is with regard to the subsequent development that has taken place regarding the change in the survey numbers of the suit property and also regarding the alienation of the property by the respondent side, which are certainly necessary for the proper adjudication of the Civil Suit between the parties. Similarly, the subsequent purchasers of the suit property have an interest to defend, therefore, they are also necessary parties, hence, I am of this view that the impugned order is incorrect, illegal and arbitrary, which is liable to be set aside. Hence, the petition is allowed and the impugned order is set aside. The prayer of the petitioners under Order VI Rule 17 of C.P.C.

also is allowed. The learned trial Court is directed to grant permission to the petitioners/plaintiffs to incorporate the amendment in the plaint. The application of the petitioners under Order I Rule 10 of C.P.C. is also allowed. The learned trial Court is directed to provide an opportunity to the petitioners to propose amendment in impleading additional parties in plaint and then decide the same in accordance with law.

9. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Monika