

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No.973 of 2019

- Amitap Shrivastava S/o Late V.P. Shrivastava A/a 49 Years, R/o Club Chowk Near Shitala Mandir, Ward No. 43, Basantpur, Rajnandgaon, Tehsil And District Rajnandgaon, Chhattisgarh

---- Petitioner

Versus

1. Smt. Laxmi Shrivastava (Ramteke) W/o Amiptap Shrivastava Aged About 46 Years Working As Zila Nazir, District And Sessions Court Janjgir, Tehsil Janjgir, District Janjgir Champa, Chhattisgarh
2. State Of Chhattisgarh Through Collector Rajnandgaon, Chhattisgarh

---- Respondents

For Petitioner – Mr. Priyank Rathi, Advocate.

For State/respondent No.01 – Mr. Parasmani Shriwas, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

19-08-2021

Heard.

1. This petition has been brought being aggrieved by the order dated 13.11.2019, passed in Civil Suit No.16-A/2017, by which the application of the petitioner/plaintiff under Order XI Rule 12 of C.P.C. was dismissed.
2. The petitioner has filed a Civil Suit praying for relief of declaration and permanent injunction against the respondents. It is pleaded in the plaint that the petitioner/plaintiff has purchased the suit property from his own financial resources in the name of respondent No.1. Respondent No.1 being a Government servant, did not have the financial resources to

make such purchase, on that basis, the declaration is sought that the petitioner is the actual purchaser and title holder of the suit property.

3. It is submitted by the learned counsel for the petitioner that on the basis of the pleadings, the application filed under Order XI Rule 12 of C.P.C. praying for the direction of the Court to respondent No.1 to file documents regarding her appointment and service and also regarding her salary statement. It is submitted further that the learned trial Court has erroneously dismissed the application without application outlined.
4. Reliance has been placed on the judgment of Calcutta High Court in the case of Kamaljeet Gupta vs Fresenius Kabi Oncology Ltd. reported in AIROnline 2019 Cal 69, in which it is held that “before determining the objection of the party is obliged to disclose a document on oath or not two tests should be applied (i) whether the said document is relevant or not: (ii) whether it is in possession, custody or power of the party against whom the application is filed or not.”
5. It is further submitted that there was no reason to dismiss the application. The application was dismissed arbitrarily and erroneously. Hence, the petition may be allowed and impugned order may be set aside and relief be granted to the petitioner.
6. Learned counsel for the respondent has opposed the submissions made in this respect and submits that the learned trial Court has not committed any error in passing the impugned order. It is the burden of the petitioner/plaintiff to prove that the respondent did not have any resource to make purchase of the suit property. It is the claim of the respondent No.1 that she has purchased the suit property from her own resources, therefore, the petition is unsustainable, which may be dismissed.

7. Heard learned counsel for the parties and perused the documents present on record.
8. Considered on the submissions. There is no denial that the respondent No.1 is a clerical staff employed in the Court of District and Sessions Judge, Janjgir-Champa. The learned trial Court has held in the impugned order that the petitioner has option to call the accountant of the District Court, Janjgir-Champa as witness to prove the salaried income of the respondent no.1 and if the petitioner choses to have this option, then the salaried income of the respondent No.1 can be produced and proved in the Court. The documents required to be discovered final confidentiality, however, by the orders of the Court, the same can be produced in the Court by the concerned department. Further, it is also held, that the existence of the documents produced is not in question and method of proving the same is already suggested in the impugned order, hence, for these reasons, I am of this view that the learned trial Court has not committed any error in dismissing the application of the petitioner, it is found that there is no substance in the petition, which is dismissed.
9. Accordingly, this petition stands disposed off.

Monika

Sd/-
(Rajendra Chandra Singh Samant)
Judge