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HIGH COURT OF CHHATTISGARH AT BILASPUR

WP227 No. 141 of 2023

Lobhnarayan Chandrakar (L.N. Chandrakar) S/o Shri Kaliram Chandrakar, Aged About 82 Years R/o Plot No. M I G - B/ 199 And 200 Kavita Sahkari Grih Nirman Samiti Awanti Vihar, Colony Telibandha, Raipur, Tahsil And District Raipur, Chhattisgarh.

... Petitioner(s)

versus

1 - Kishan Chand Paraste S/o Babulal Paraste, R/o A - 283, Sector - E, Minal Residency J.K. Road, Bhopal, District : Bhopal, Madhya Pradesh

2 - Smt. Anusuiya Paraste W/o Shri Kishan Chand Paraste R/o A- 283, Sector - E, Minal Residency J.K. Road, Bhopal, District : Bhopal, Madhya Pradesh

3 - Kavita Sahkari Grih Niman Samiti Through Its President Telibandha Raipur, District : Raipur, Chhattisgarh

.. Respondent(s)

(Cause-title taken from Case Information System)

For Petitioner(s)	:	Mr. A. D. Kuldeep, Advocate.
For Respondent No. 1 and 2.	:	Mr. Ankit Singhal, Advocate.

Hon'ble Shri Justice Ravindra Kumar Agrawal, J.
Order on Board

28/10/2026

1. Heard.

2. Present is a writ petition filed by the petitioner under Article 227 of the Constitution of India, challenging the order dated 17.01.2023 passed

by learned 18th Civil Judge Class-II, Raipur, in Civil Suit No. 2369/2009, whereby the application filed by the plaintiffs under Order 6 Rule 17 read with Section 151 of the CPC and another application under Section 65 of the Indian Evidence Act, 1872, were allowed.

3. Learned counsel appearing for the petitioner would submit that the petitioner is defendant No. 2 before the learned trial Court, where respondent Nos. 1 and 2/plaintiffs are prosecuting a suit for declaration of title and possession of the suit property admeasuring 4800 sq. ft. of land bearing Plot Nos. MIG-B-199 and MIG-B-200, situated at Kavita Grah Nirman Sahkari Samiti Maryadit, Telibandha, Raipur, part of Khasra No. 454, Tahsil and District Raipur. He would further submit that the application under Section 65 of the Evidence Act filed by the plaintiffs for leading secondary evidence was allowed on wrong premises, only to fill the lacuna, without following the due process for proving the document by way of secondary evidence. Before permitting the plaintiffs to lead secondary evidence, the requisite compliance with Section 65 of the Evidence Act had not been made; therefore, permission to lead secondary evidence could not be granted. He would also submit that the learned trial Court has erroneously allowed the application under Order 6 Rule 17 of the CPC filed by the plaintiffs for amendment of their plaint. The plaintiffs, only to fill the lacuna in their case and to create a ground in their favour, filed the application for amendment of the plaint. By the proposed amendment, the entire nature of the suit is being changed; therefore, the same may not be permitted to be incorporated in the plaint. However, the learned trial Court allowed the application. Therefore, the impugned orders may be set aside and the writ petition may be allowed.

4. On the other hand, learned counsel appearing for respondent Nos. 1 and 2 would submit that the present writ petition is not maintainable, as the same has abated due to non-substitution of the LRs of the petitioner, as the sole petitioner died on 04.11.2023 and the application for substitution of his LRs had already been decided by the learned trial Court on 15.01.2024. Despite knowing the fact that the sole petitioner had died on 04.11.2023 and his LRs had already been substituted before the learned trial Court, his LRs have not made any attempt to get themselves impleaded in the present writ petition and to prosecute the same. He would further submit that during the pendency of the present writ petition, the plaintiffs' evidence has been closed. Further, two of the defendants' witnesses have also been examined, and the trial is at its fag end. Therefore, at this stage of the suit, the impugned order cannot be set aside, as the secondary evidence has already been led by the plaintiffs and the amendment has already been incorporated in the plaint. In furtherance thereof, the suit has already proceeded for a considerable period. Interference with the impugned order would amount to further complications in the suit, though no ground has been demonstrated by the petitioner to interfere with the impugned order. In view of the aforesaid, he submits that the writ petition is liable to be dismissed.

5. I have heard learned counsel for the parties and perused the documents annexed with the petition.

6. The petitioner could not dispute the submissions made by learned counsel for respondent Nos. 1 and 2 that the sole petitioner died on 04.11.2023 and his LRs were substituted before the learned trial Court vide order dated 15.01.2024. He also could not dispute the

submissions made by learned counsel for respondent Nos. 1 and 2 that the plaintiffs' evidence has been closed, two of the defendants' witnesses have also been examined before the learned trial Court, and the trial of the case is at its fag end. Since the sole petitioner in the present writ petition died on 04.11.2023, despite having knowledge of his death since the date of substitution of his LRs before the learned trial Court, his LRs have not made any efforts to get themselves substituted in the present writ petition to prosecute the same. In the absence thereof, the present writ petition cannot be proceeded with further, as the sole petitioner has already died. Further, the learned trial Court, vide the impugned order dated 17.01.2023, allowed the application under Section 65 of the Evidence Act and permitted the plaintiffs to lead secondary evidence. In furtherance thereof, the plaintiffs led their evidence, and after completion of their examination, the plaintiffs' evidence was closed. The defendants' witnesses are also being examined, and two of the defendants' witnesses have been examined. Further, by allowing the application under Order 6 Rule 17 of the CPC in favour of the plaintiffs, the necessary amendment had already been incorporated in the plaint. In view thereof, the plaintiffs have led their evidence, and the proceedings have continued for a considerable period. At this fag end of the trial, this Court is not inclined to interfere with the impugned order passed by the learned trial Court.

7. In view of the aforesaid, the writ petition fails and is hereby **dismissed**.

Sd/-

(**Ravindra Kumar Agrawal)**
Judge

Alok