
(2003) 01 CHH CK 0004

Chhattisgarh High Court

Case No: Civil Revision No. 714 of 2001

Sheikh Rasul

APPELLANT

Vs

Anwar Haque and Another

RESPONDENT

Date of Decision: Jan. 21, 2003

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 5

Citation: (2003) 2 MPHT 14

Hon'ble Judges: Fakhruddin, J

Bench: Division Bench

Advocate: Ajay Dwivedi, for the Appellant; Alok Bakshi, for the Non-applicant No. 1 and Sharmila Singhai, Dy. Govt. Advocate for the State/Non-applicant No. 2, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Fakhruddin

1. Heard.

2. This revision is against the order dated 11-9-2001 passed by Civil Judge, Class-I, Mungeli, in Civil Suit No. 26-A/99, whereby the application for bringing L.Rs. of the plaintiff on record filed by applicant has been rejected.

3. It is submitted that Niyazbi filed a Civil Suit No, 26-A before the learned Civil Judge, Class-I, Mungeli against the respondent for declaration of title and permanent injunction of the suit land. The plaintiff Niyazbi had no issues and her husband had died as far back as in the year 1946. It is further submitted that as the plaintiff Niyazbi was old and infirm and there was no one in the family to look after her works, she used to take help from her brother's son namely Sheikh Rasul who is the present petitioner. During the pendency of the suit, the plaintiff Niyazbi died on 30-3-2001. After death of plaintiff, the present petition filed an application under

Order 22 Rule 3, CPC informing the Trial Court about the death of plaintiff Niyazbi and requested the Trial Court to substitute the name of petitioner in place of plaintiff on the ground that she had executed a Will (Vasiyatnama) in favour of the applicant and he is the surviving legal representative of late Niyazbi.

4. Learned Counsel for the applicant contended that the Will was executed in his favour and he had sought for impleadment as Legal Representative on the said ground and that the plaintiff during her life bequeathed the property by Will. Counsel for the respondents opposing the prayer of the petitioner submitted that no Vasiyatnama was executed in favour of the petitioner as alleged.

5. Order 22 Rule 5 of CPC is relevant here and quoted hereunder:--

"Order 22 Rule 5. Determination of question as to legal representative.-- Where a question arises as to whether any person is or is not the legal representative of a deceased plaintiff or a deceased defendant, such question shall be determined by the Court:

Provided that where such question arises before an Appellate Court that Court may, before determining the question, direct any Subordinate Court to try the question and to return the records together with evidence, if any, recorded at such trial, its findings and reasons therefore, and the Appellate Court may take the same into consideration in determining the question."

6. A perusal of the Order 22 Rule 5 shows that the provisions contained therein provides that where a question arises as to whether or not any person is legal representative of the deceased plaintiff/defendant, the Court shall determine such question.

7. Here in the present case, Trial Court without deciding the question under Order 22 Rule 5 has rejected the application filed by the petitioner for his impleadment as legal representative of the sole plaintiff.

8. Having considered the facts and circumstances of the case, material on record and since the question regarding legal representative of the plaintiff has not been decided as required under the provisions of Order 22 Rule 5, the impugned order is set aside and the matter is remitted back to the Trial Court. The Trial Court after holding such enquiry as required under Order 22 Rule 5, CPC and after considering the Vasiyatnama which is said to have been executed in favour of the petitioner, shall decide the question in accordance with law.

9. The parties and their Counsel shall appear before the Trial Court on 3-2-2003.

10. With the direction/observation aforesaid, this revision stands disposed of.

11. C.C. as per rules.