

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 728 of 2014**

1. Smt. Kamla Devi, D/o Late Shri Sitaram Gupta, aged about 63 years, R/o- Village Muwarpara, Tahsil - Sitapur, Occupation - Shopkeeper, Post-Sitapur District - Surguja (C.G.)
2. Smt. Nirmala Devi, D/o Late Shri Sitaram Gupta, aged about 55 years, R/o Ramanujganj, Tahsil – Pal, Occupation-Shopkeeper, District Surguja (C.G.)

---- Petitioners**Versus**

1. Shri Biharilal Gupta @ Jwala Prasad Gupta, S/o Late Shrisitaram Gupta, aged about 63 years.
2. Shri Bansi Prasad Gupta, S/o Late Shri Sitaram Gupta, aged about 55 years.
3. Shri Ramesh Kumar Gupta, S/o late Shri Sitaram Gupta, aged about 46 years

Respondents No.1 to 3 are residents of Ramanujganj Ward No.10, Occupation-Shopkeeper, Tahsil-Pal, District-Surguja (C.G.)

4. Sub Divisional Officer, Public Works Department, Ramanujganj, Samudayik Vikas Khand – Ramanujganj, Tahsil -Pal, District Surguja (C.G.) (Formal Party)
5. Guleshwar Prasad Gupta, Through the Superintendent of Police, Raipur, Chhattisgarh.

---- Respondents

For Petitioners : Shri Amrito Das, Advocate.
 For Respondents 1 to 3: Shri Manoj Paranjpe, Advocate.
 For Respondent No.4 : Shri Ashutosh Pandey, Panel Lawyer.

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****23/03/2015**

1. This is the plaintiffs' petition under Article 227 of the Constitution of

India challenging the order passed by the trial Court rejecting their prayer under Order 6 Rule 17 CPC.

2. The plaintiffs have preferred a suit for declaration, partition and permanent injunction. After receiving summons, the defendants raised an objection regarding valuation and payment of Court fee. The trial Court framed issue No.5 regarding valuation and Court fee. The defendants also made prayer for deciding the said issue as preliminary issue, which was turned down by the trial Court. This led to filing of WP(227) No.3982/2009 before this Court. By order dated 30.7.2009, this Court directed the trial Court to decide the said issue as preliminary issue. During the pendency of adjudication on the said issue, the petitioners moved two applications; one under Order 11 Rule 14 CPC and the other under Order 6 Rule 17 CPC for amending the plaint. Since the application under Order 11 Rule 14 CPC was, in substance, an application for taking documents on record, the same was treated as application under Order 7 Rule 14 CPC. The application was decided on 9.12.2010 and the other application under Order 6 Rule 17 CPC was decided on 7.1.2011. The trial Court rejected both the applications on the ground that in these applications the petitioners have filed documents to demonstrate that they are not capable of paying Court fee and are also making proposed amendment to the same effect whereas issue No.5 is concerning valuation of the suit and payment of Court fee and not about exemption from payment of Court fee. When these applications were dismissed, the petitioners preferred WP(227) No.269/2011 and

WP(227) No.1076/2011, which were dismissed by a common order dated 20.6.2011.

3. Thereafter the trial Court decided the issue No.5 holding that the suit is under valued and the plaintiffs have not paid adequate Court fee. The present application under Order 6 Rule 17 CPC has been moved to insert pleading that the plaintiffs are not capable of paying Court fee. Similarly, the application under Order 7 Rule 14 CPC was moved to produce documents to prove that the plaintiffs are not capable of paying Court fee. The trial Court has partly allowed the application under Order 6 Rule 17 CPC and the other application under Order 7 Rule 14 has been dismissed.
4. Shri Das, learned counsel for the petitioners/plaintiffs would submit that when the matter traveled to this Court on earlier occasions, the issue for consideration was preliminary issue No.5 to be decided by the trial Court and at all relevant point of time the defendants objected to making of amendment and production of documents with respect to payment of Court fee on submission that the issue No.5 is regarding valuation and not as to whether the petitioners/plaintiffs are capable of paying Court fee. Therefore, the present applications were entirely different and the trial Court has not properly appreciated the impact of the earlier orders and wrongly rejected such part of the prayer for amendment and documents which shall prejudice the plaintiffs' case regarding payment of Court fee.
5. Per contra, learned counsel for the defendants would submit that the

petitioners' application under Order 6 Rule 17 CPC rejected on 7.1.2011 was precisely for this amendment which is again sought to be introduced by proposing such part of the amendment which has been refused by the trial Court by the impugned order. He would submit that the principle of *res judicata* applies in interim orders also in the same proceeding. Therefore, once rejection of prayer for amendment has not been interfered by this Court while deciding WP(227) No.269/2011, the present application, to the extent which has been disallowed by the Court, was not maintainable. He would also submit that for the same reason the application under Order 7 Rule 14 CPC has rightly been dismissed.

6. Having seen the order passed by the trial Court on 7.1.2011 and the order passed by this Court while deciding WP(227) No.269/2011 and after hearing learned counsel for the parties, it appears that similar plea was earlier dismissed by the trial Court and this Court has refused to interfere with the trial Court's order. Therefore, such part of the proposed amendment which has been refused by the trial Court does not suffer from infirmity and dis-allowance of the prayer under Order 7 Rule 14 CPC also does not suffer from any irregularity. However, at the same time, it is to be seen that the petitioners' prayer for exemption from payment of Court fee in terms of notification issued under Section 35 of the Court Fee Act has never been considered on merits. Whether or not the petitioners are entitled to such exemption has to be considered at some stage of proceeding, if any such application is moved by the plaintiffs. Therefore, while refusing to

interfere with the impugned order, liberty is reserved in favour of the petitioners to move application under Section 35 of the Court Fee Act.

7. With the aforesaid observations, the writ petition is dismissed.

J U D G E

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