

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No.75 of 2015**

Keshav Dhimar S/o Jagish Prasad Aged About 55 Years R/o Gudrupara,
Near Dhobi Kunwa, Mahasamund, District Mahasamund, C.G.

---- Petitioner**Versus**

1. Smt. Basanti Bai D/o Late Samaru Dhimar Aged About 50 Years W/o J.R. Tarak, R/o Gudrupara, Mahasamund, Tahsil And District- Mahasamund, C.G.
2. Smt. Premwati Wd/o Late Samaru Dhimar Aged About 70 Years R/o Gudrupara, Mahasamund, Tahsil And District- Mahasamund, C.G.
3. Ku. Toshani Bai D/o Late Samaru Dhimar Aged About 40 Years R/o Gudrupara, Mahasamund, Tahsil And District- Mahasamund, C.G.

---- Respondent

For Petitioner: Shri H. B. Agrawal, Sr. Adv. With Shri Rakesh Thakur, Adv.

Hon'ble Shri Justice Manindra Mohan Shrivastava**C A V Order****10/12/2015**

This petition under Article 227 of the Constitution of India is preferred against order dated 25-09-2014, by which, the petitioner's application under Order XIV Rule 2 CPC for trying the issue of valuation and non-joinder of necessary party, has been rejected.

2. The respondent-plaintiff filed a suit against the appellant-defendant for grant of possession of the land in dispute on the pleadings inter alia that the land in dispute is the ancestral property and it remained in possession of the plaintiff and her husband until the defendant forcibly entered into the possession and raised construction. It was pleaded that after death of her husband, the

defendant dispossessed the plaintiff from the land in dispute. It was pleaded that the plaintiff has no title or ownership of the land in dispute. It was further pleaded that the land in dispute is the government nazul land and it was so recorded in the revenue records, and therefore, the State is a necessary party, and therefore, on account of non-joinder of necessary party, the suit is liable to be dismissed. It was also pleaded that the suit was not properly valued and suffers from under valuation.

3. The learned trial Court framed issues including the issue of valuation as well as issue of non-joinder of necessary party. The defendant, thereafter moved an application under Order XIV Rule 2 CPC for trying issues relating to valuation and non-joinder of necessary party as preliminary issue. By the impugned order, the learned trial Court rejected the application, giving rise to this petition.

4. Learned counsel for the petitioner argued that in the light of pleadings, affidavit and documents on record, it is crystal clear that the land in dispute is a government nazul land, therefore, the State is a necessary party and without impleading the State, the suit itself was not maintainable. This is a pure question of law and therefore, the Court below ought to have decided this issue as preliminary issue. Next submission of learned counsel for the petitioner is that looking to the location of the plot, the plaint averments with regard to valuation are highly underestimated, which are only to avoid payment of appropriate Court fees and prayer was made to try this issue as preliminary issue and even according to the plaint, the land is a government nazul land, and therefore, it has prescribed rate, on which, ad valorem Court fees is required to be paid, it being a suit for possession.

5. Learned trial Court, after considering the submissions, holding that the

issues are mixed issue of law and fact, rejected the application. The issues, which have been placed on record by the petitioner, also show that another issue as to whether the suit is maintainable for mere recovery of possession without seeking any declaration was framed issue as preliminary issue by the trial Court, which the trial Court has decided as reflected from order sheet dated 05-01-2015. However, that order is not under challenge in this petition.

6. In the plaint, the plaintiff has pleaded that the land in dispute is the ancestral property of the plaintiff. It has been averred that the plaintiffs were in possession of the land in dispute but they were illegally dispossessed by the defendant. On this pleading, the suit rests. True it is that the defendant disputed the possession and according to the pleadings of the defendant, the land in dispute is the government nazul land, but that by itself, is not sufficient to oblige the Court to decide the issue as preliminary issue. This is serious issue with regard to nature of the land in dispute. Even according to the defendant, the defendant is in possession of the land in dispute and also constructed house wherein he is living since last 50 years. Therefore, if the defendant himself claims to be in possession and it is stated to be residential area, it is only after recording evidence and considering documentary evidence, if any, produced by the parties that true and correct nature of land can be decided and not before that. Whether the State should be impleaded as party or not, is an mixed issue of law and fact. It therefore require evidence. The defendant urged to decide it as preliminary issue, which is clearly untenable in law as this would deprive the plaintiffs from leading evidence to prove their possession along with the nature of the property.

7. Other issue is with regard to valuation. According to the plaint averments

as contained in para 12 therein, the plaintiffs have valued the suit at 20 times the land revenue payable on the land and that valuation of Rs.1,000/- for removing the construction and thereby valuing the suit for the purpose of jurisdiction and court fee at Rs.1180/-. This has been disputed by the defendant in the plaint by pleading that according to the defendant, the valuation of the land should have been done at the rate of Rs.2000/- per square feet and as the land ad measures 2000 square feet, valuation ought to be arrived at Rs.20 Lakh and the Court fee payable thereon. On the face of it, the issue of valuation will require collection of evidence by the Court to find out what was the correct valuation of the property. Moreover, upon decision of this issue, the Court below may require the plaintiff to pay the deficit court fee and if the plaintiff doesn't pay, then the plaint can be rejected. However, before allowing the plaintiff to lead appropriate evidence to prove valuation, the issue cannot be decided as preliminary issue as it is not a case that even according to the plaint allegations and the valuation, proper court fee as per law has not been paid.

8. After CPC amendment of 1976, the Code of Civil Procedure requires the Court to decide the issue relating to jurisdiction and bar, if any, under any law as preliminary issue and not any other issue much less issue relating to valuation of suit or joinder or non-joinder of necessary party. It would depend upon the documents and affidavit of the party as to whether the issue is such that it can be decided on clear enunciation of law without requiring any other oral or documentary evidence for decision of the issue.

The legislative intention is clear from the use of word “may” in Rule 2 (2) of Order XIV.

9. The power of the Court to decide the preliminary issue first are

discretionary and not mandatory and in the present case, decision to decide issue, after taking evidence along with other issues, does not suffer from any manifest illegality on the pleadings of the parties.

10. The plaintiffs have not suffered any prejudice. The issues which have been framed by the trial Court would be decided during the course of trial of the suit, in which, the petitioner can be granted opportunity to adduce evidence on these issues. There is no miscarriage of justice. Therefore, in the absence of jurisdictional illegality, perversity or miscarriage of justice, I am not inclined to interfere with the impugned order in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

11. In the result, the petition fails and is thereby dismissed.

Sd/-
Manindra Mohan Shrivastava
Judge