

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 515 of 2015**

1. Shivilal @ Sukhlal S/o Bagar Aged About 55 Years Caste- Dhobi, R/o Village- Semarakhurd, Police Station & Tahsil - Pratappur, District Surajpur (Chhattisgarh)
2. Kajalo Bai W/o Shri Charan Ram Aged About 45 Years Caste- Rajwar, R/o Village - Sohagpur, Police Station Jainagar, Tahsil & District Surajpur (Chhattisgarh)
3. Charan Ram S/o Bagar Aged About 50 Years Caste- Rajwar, R/o Sohagpur, Police Station- Jainagar, Tahsil & District- Surajpur (Chhattisgarh)

---- Petitioners**Versus**

1. Ramlal S/o Late Bagar Aged About 70 Years Caste- Dhobi
2. Fakira S/o Ramlal Aged About 35 Years Caste- Dhobi
Both Resident Of Village- Sohagpur, Police Station- Jainagar, Tahsil & District- Surajpur (Chhattisgarh)
3. State Of Chhattisgarh , Through Collector, Surajpur (Chhattisgarh)

---- Respondents

For Petitioners	:	Shri Sushil Dubey, Advocate.
For Respondent No.3/State	:	Shri Aditya Sharma, Panel Lawyer
For Respondents No.1 & 2	:	Not noticed.

Hon'ble Shri Chandra Bhushan Bajpai, J.**Order On Board****08/12/2015**

1. Heard on admission.
2. Challenge in this petition is to the order dated 8.5.2015 passed in Civil Suit No. 534-A/2012 (Ramlal & Another v. Shivilal @ Sukhlal & 4 Others) by 1st Civil Judge, Class II, Surajpur, District Surajpur, Chhattisgarh, whereby and whereunder the application filed by the Petitioners/defendants under Order VII Rule 14 read

with Section 151 of the Code of Civil Procedure, 1908 (for short 'the Code') has been rejected.

3. Learned Counsel for the Petitioners/defendants submits that the Court below while rejecting the aforesaid application, has observed that though provisions of law was wrongly quoted but the Court below has appreciated the said interim application as if it was filed under Order VII Rule 11 read with Section 151 of the Code. The Court below has further held that as the plaintiffs were not the part of instrument of sale, hence they are not required to value the suit on the basis of instrument of sale. Learned Court below further held that whether the valuation of the suit is proper or not is to be decided at the time of judgment. Learned Counsel for the Petitioners next submits that the order passed by the Court below is bad in law hence the same be set aside and relief as prayed for may be granted after hearing the petition bi-parte.

4. For appreciation of the argument advanced in this behalf at the stage of motion hearing, the impugned order dated 8.5.2015 is hereby perused. On due consideration, the trial Court has opined that with regard to the issue of valuation of the suit, the Petitioners/defendants had filed their written statement before the Court below.

5. As the prayer made in the said interim application regarding rejection of the plaint *prima facie* seems to be a mixed question of fact and law which can only be appreciated after affording an opportunity available under the law to the plaintiffs to demonstrate that suit valuation is proper. If at all written statement has been filed by the Petitioners/defendants, the trial court is required to frame the issues including the issue regarding proper valuation of the suit and the issues on the

basis of the pleadings by the parties including the Petitioners/defendants regarding suit valuation as provided under Order VII Rule 11(b) and (c) of the Code. Thereafter, the same may be heard either as a preliminary issue if only question of law is involved or may be heard alongwith other issues, otherwise.

6. In the considered view of this Court, as the point regarding suit valuation is still kept open by the Court below, the purpose of the Petitioners/defendants would be served by praying before the Court below for formulation of the issues regarding suit valuation if not already framed and after formulation of the issues, the Petitioners are at liberty to pray before the Court below to hear the said issue either as a preliminary issue or otherwise. If the Court below is satisfied that any of the issues including the issue of valuation of the suit seems to be a purely question of law, then the Court below would be at liberty and authority to hear those issues as preliminary issues and can dispose of all those issues. If in any of those issues mixed question of fact and law are involved, the same may be heard otherwise after appreciation of the evidence as permitted under the law.

7. In the opinion of this Court, the question involved is still open and no prejudice is caused to the Petitioners at all. If the Petitioners have already raised the issues pleaded in their written statement for proper valuation of the suit, the Court below may hear and dispose of the same according to law.

8. In the present facts and circumstances of this case, I am not inclined to admit the petition for consideration. The Petitioners may pray before the Court below for framing of the issue regarding valuation of the suit, if the same has not been framed so far and may also pray for framing of all the connected issues raised in the instant Writ Petition (227) as well as for hearing of all those issues

either as preliminary issues or otherwise.

9. The writ petition is disposed of with the aforesaid observations without any appreciation on its merits. No order as to costs.

Sd/-
(Chandra Bhushan Bajpai)
Judge