

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WRIT PETITION (227) NO. 288 OF 2016

- Mukesh Kumar Sen, S/o Sh. Firtu Ram Sen, aged 41 years, Caste Naai, Occupation Catering and General Store, R/o Shyam Nagar, Gandhi Chowk Raipur, P.S. Telibandha, Post Ravigram, Tehsil and District Raipur (C.G.)

... Petitioner

Versus

1. Abhishek Gupta, S/o Sh. Rahendra Gupta, aged 37 years, Caste Gupta, Occupation Kastkari, R/o Krishna Nagar, Ward Juna Bilaspur, Savbada, P.S. Kotwali, Tehsil & District Bilaspur (C.G.)
2. Sub Registrar, District Registrar Office, Bilaspur (C.G.)

... Respondents

For Petitioner	:	Mr. Sameer Oraon, Advocate.
For Respondent No.2	:	Mr. S.C. Khakhariya, Dy. Advocate General.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/04/2016

1. Challenge in the present writ petition is to the order dated 14.1.2016 passed by the Additional District Judge, Bilaspur in Misc. Civil Appeal No. 44 of 2015. Vide impugned order dated 14.1.2016, the Additional District Judge has affirmed the order passed by the IXth Civil Judge, Class-II, Bilaspur dated 17.9.2014 in Civil Suit No.285A/2014, wherein the plaint was returned to the Plaintiff/Petitioner for submitting before the competent Court of law.
2. Learned Counsel for the Petitioner submits that the two Courts below have erred in appreciating the fact that the suit was not properly valued and had to be filed before the appropriate Court of law. According to the Petitioner, in the present suit he has only sought for rectification in an agreement which was entered into between the contesting party, dated 23.2.2010, wherein certain typographical errors had crept. This fact about

the error the Petitioner came to know only on the date when the first suit which was filed by the Petitioner, i.e., Civil Suit No. 14A/2011, got dismissed.

3. According to the Petitioner, after the earlier suit filed by him was dismissed he realized his mistake and therefore in the year 2014 he filed a subsequent suit and this time the suit was filed only for a direction to the Respondent/ Defendant for rectification in the agreement entered into between the parties to the extent of certain entries with regard to the sale consideration made.

4. According to the Petitioner, since the Petitioner is not seeking any consequential relief and since the only relief sought is that of rectification in an agreement, the court fee has been valued properly and it has been filed before the proper Court of law and hence the orders passed by the two Courts below are not proper, legal or justified and the writ petition deserves to be allowed on this count.

5. Learned Counsel for the Petitioner has relied upon the judgment dated 13.1.2000 of the Punjab and Haryana High Court passed in the case of **Jai Singh v. Jai Bhagwan [2000 Law Suit (P&H) 21]**.

6. From perusal of the records as well as the orders passed by the two Courts below, it is evidently clearly that the Petitioner had initially filed a civil suit, i.e., Civil Suit No. 14A/2011 seeking for a relief of specific performance of contract for enforcement of the agreement to sale dated 23.2.2000. From the records it is also evident that the said suit got dismissed on 9.1.2012 on merits. After the dismissal of the said suit on 9.1.2012, without challenging the same in appeal the Plaintiff again in the year 2014 has now filed a fresh civil suit seeking for a specific relief for rectification of the agreement on the ground that there was some typographical error crept in the agreement to sale dated 23.2.2000. A

perusal of the records further would show that the Petitioner's contentions and submissions have all been considered by the Court below while dismissing the suit on 9.1.2012, which has not been challenged and it has attained finality.

7. Now, the Petitioner has filed the present suit with a different relief of the same nature but projecting it to be an entirely different cause of action. A cause of action which he has come to know at a later stage i.e., at the time of the rejection of the earlier suit, and therefore the second suit should be entertained. The Court below at the first instance on 17.9.2014 held to be not maintainable before the Court wherein it was presented and rejected the same returning the plaint to be filed before the competent Court of law. The reason being that the Petitioner also has sought for consequential relief and hence the valuation would automatically get enhanced.

8. The said order dated 17.9.2014 was also subjected to appeal in Misc. Civil Appeal No. 44 of 2015 wherein the Additional District Judge again reconsidered all the contentions and submissions put forth by the Counsel for the Petitioner and vide impugned order dated 14.1.2016 it too has reached to the same conclusion and held that there was no infirmity or illegality on the part of the Trial Court in returning the plaint for filing it before the proper Court of law.

9. A perusal of the impugned order dated 14.1.2016 also would reveal that the Court below has considered all the submissions and contentions and has reached to the conclusion that the suit which has been filed before the Court below though has been framed in a manner of seeking only a relief of rectification in an agreement, but at the same time the Plaintiff has also intended thereafter to grant of consequential relief as is evident from the relief clause of the plaint. Another aspect which has to be

borne in mind is that the earlier suit was decided on merits. The suit got dismissed on the objections raised by the Respondent-Defendant. One of the objection was the contents of the agreement to sale. Now the earlier suit of the Petitioner having been decided on merits and which has not been challenged further it has attained finality. Even while the earlier suit was being contested the Petitioner did not think it proper for seeking the relief that he is now seeking. In the opinion of this Court, the two Courts below have not committed any error of law in reaching to the said conclusion and that the findings of the two Courts below are based on the finding of facts which had erupted from the two suits revolving around the same agreement to sale dated 23.2.2000.

10. So far as the case of *Jai Singh* (supra) relied upon by the Petitioner is concerned, it would not come to the rescue of the Petitioner for the reason that the said judgment has been passed under entirely different factual matrix and that the prayer of the Petitioner for relying only on a portion of the said judgment cannot be accepted as the observations and the decision rendered by the High Court of Punjab and Haryana was on the factual matrix made out in the said suit which are entirely different from the one filed by the present Petitioner/Plaintiff.

11. Accordingly, the writ petition being devoid of merits the same is dismissed.

Sd/-
(P. Sam Koshy)
Judge