

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (227) No. 266 of 2016**

G Rajan S/o Late Shri Gopalan Nair, Aged About 55 Years R/o G. Pocket 43/D, Maroda Sector Bhilai Tah. And District Durg Chhattisgarh.

---- Petitioner**Versus**

1. M. S. Rajkumar S/o Shri S. Menual Raj, Aged About 45 Years R/o M.I.G. 2/179, Hudco Amdi Nagar, Bhilai District Durg Chhattisgarh.
2. State Of Chhattisgarh Through The Collector Durg, District Durg Chhattisgarh.

---- Respondents

For the Petitioner	:	Shri Vipin Tiwari, Advocate.
For Respondent No.2/ State	:	Shri S.C. Khakhariya, Deputy Advocate General on advance copy.

Hon'ble Shri Justice Goutam Bhaduri**Order on Board****20/04/2016**

1. The challenge in this petition is to the order dated 15.9.2015 whereby an application preferred by the Petitioner/ Defendant under Order VII Rule 11 of the Code of Civil Procedure (for short 'the CPC') was dismissed.
2. It is contended that a suit was filed by Respondent – M.S. Rajkumar against the Petitioner/ Defendant for declaration and permanent injunction. After service of the summons, an application under Order VII Rule 11 of the CPC was filed wherein it is alleged that proper court fee has not been paid. The suit has been valued for declaration at Rs. 300/- and for permanent injunction at Rs.300/- on which the court fee of Rs.200/- affixed. It is contended that in the original agreement sale consideration was for Rs.4,50,000/- and therefore the suit is not tenable in view of the bar under Order VII Rule 11(a)(b) of the CPC.

3. Perusal of the plaint would show that the Plaintiff has filed a suit on the ground that he is in possession of subject suit land/ house by virtue of agreement executed in 1998. The suit is filed for simplicitor declaration and injunction. The Court while deciding the application under Order VII Rule 11 of the CPC came to a finding that the valuation of the suit can be determined after the written statement is filed. Perusal of the plaint alongwith this petition shows that the suit was filed for simplicitor declaration. Before filing the written statement certain objections were raised. After perusal and consideration of the documents, this Court do not find that any material irregularity has been committed since the defence which has been raised by the Defendant/ Petitioner can be raised before the Court below by way of written statement.

4. The Petitioner shall free to raise all the grounds in his written statement and the nature of defense which is raised cannot be adjudicated while deciding the application under Order VII Rule 11 of the CPC. In the result, no material jurisdictional error appears to have been committed by the Court below.

5. In the result, I am not inclined to entertain the petition and the same is accordingly dismissed. It is observed that the Petitioner shall be at liberty to raise all the grounds before the Court below in its written statement.

Sd/-
(Goutam Bhaduri)
Judge