

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P. (227) No. 292 of 2016

1. Krishna Kumar Sahu @ Munna Sahu, S/o. Kashi Ram Sahu, aged about 46 years, R/o. Janakpur Road, Near Thakur Dev Temple, Tahsil- Takhatpur, District-Bilaspur (C.G.)

---- Petitioner

Versus

1. Virendra Mishra, S/o. Shiv Kumar Mishra, aged about 68, R/o. Janakpur Raod near Thakur Dev Temple, Tahsil Takhatpur, District-Bilaspur (C.G.)
2. Sashi Prabha Bajpai, W/o. Durga Prasad, aged about 59 years, R/o. Near Ajeet Hotel, Bilaspur, Tahsil and District-Bilaspur (C.G.)
3. Sandeep Shukla, S/o. Choote Lal Shukla, aged about 46 years, R/o. Imlipara Bilaspur at present Store Incharge Kusumunda Kalri, S.E.C.L., Kusmunda, District- Korba (C.G.)
4. Tarun Khandekar, S/o. Chova Das Khandekar, aged about 31 years,
5. Chova Das Khandekar, S/o. Punse Khandekar, aged about 55 years, Both R/o. Janakpur, Raad Near Thakur Dev Temple Tah. Takhatpur, District-Bilaspur (C.G.)

.....Respondents

For Petitioner : Mr. Amit Kumar, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

27/04/2016

1. Challenge in this petition is to the order dated 18.01.2016, passed in Civil Case No.55A/2011, passed by the Civil Judge Class-II, Takhatpur, District – Bilaspur, whereby the learned Trial Court has directed for payment of court fees in respect of the counter claim made by the defendant/petitioner.

2. The facts of the case are that a suit was filed by Virendra Mishra, the respondent herein for declaration and permanent injunction and claim was made on the basis of adverse possession. The petitioner herein, who is one of the defendant filed his written statement and a counter claim was also made. In the counter claim, it was stated that in between 14.09.2011 and 15.09.2011 after breaking upon the lock of the house, the plaintiff has acquired the possession of the suit property and therefore, the possession of the plaintiff over the property is that of an encroacher. It was further pleaded in the counter claim that suit property was purchased by the defendant/petitioner and since the plaintiff has entered into the possession, therefore, defendant has been dispossessed. The counter claim for mandatory injunction was evaluated of Rs.600/- and for means profit of Rs.20,000/- was claimed. In the prayer clause of the counter claim mandatory injunction has been prayed for and further in continuity it is stated that possession of the suit house be given to the petitioner.
3. Against the counter claim, an application under Order 7 Rule 11 of C.P.C. has been filed by the plaintiff. The trial Court after going through the pleading has directed to pay the Court fees for the purpose of claiming possession and directed to amend the counter claim if so advised. Against such order, the present petition has been filed.
4. Learned counsel for the petitioner submits that in the application under Order 7 Rule 11 of C.P.C., the Court can not order for

payment of court fees as only mandatory injunction has been claimed by the petitioner/defendant.

5. I am unable to appreciate the argument advanced by the counsel for the petitioner as necessarily when the possession has been claimed, it can not be clothed in the name of mandatory injunction and for possession separate court fees are payable according to Section 7 (V) of the Court-fees Act, 1870. The argument advanced by the learned counsel for the petitioner is completely misconceived and can not be sustained. Therefore, after going through the order, in my considered opinion no jurisdictional error appears to have been committed or it can be stated that it is a case where the Court has exceeded the jurisdiction vested in it by law. The entire finding is on finding of relief claimed. Consequently I am of the opinion that this is not a case where the power under Article 227 of the Constitution of India is to be invoked.
6. Accordingly, the petition is dismissed at admission stage itself.

Sd/-
(Goutam Bhaduri)
Judge