

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 719 of 2016

1. Mohd. Babar Khan S/o. Mohd. Rafique Khan, Aged About 68 Years R/o. Pathanapara, Post And Tehsil Balod, District Balod (Chhattisgarh).
2. Smt. Jaibunnisha, D/o. Mohd. Rafique Khan, Aged About 65 Years,
3. Kumari Zareena, D/o. Mohd. Rafique Khan, Aged About 60 Years

Both the petitioner no. 2 and 3 are R/o. Village Adhiyatola (Devarabhata), Post Jamrui, Tehsil Balod, District Balod (Chhattisgarh).

4. Smt. Najbunnisha, D/o. Mohd. Rafique Khan, Aged About 64 Years, R/o. Near Pawan House, Kailash Nagar, Post And Tehsil Rajnandgaon, District Rajnandgaon (Chhattisgarh).

---- Petitioners

Versus

1. Mohd. Raseed Khan S/o. Mohd. Rafique Khan, Aged about 70 Years R/o. Meregaon, Ward No. 1, Near Water Tank, Ambagarh P. S. Chauki, Tehsil Chauki, District Rajnandgaon (Chhattisgarh).
2. Mohd. Zahir Khan, S/o. Rafique Khan, Aged About 68 Years,
3. Mohd. Raza Ahmad Khan, S/o. Mohd. Rafique Khan, Aged About 54 Years
Both above respondents No. 2 & 3 are R/o. Pathanpara, P. S. and Post Balod, Tehsil Balod, District Balod (Chhattisgarh).
4. Mohd. Tabeeb Khan, S/o. Mohd. Rafique Khan, Aged About 62 Years, R/o. Village Adhiyatola (Devarbhat) Post Jamrui, Tehsil Balod, District Balod (Chhattisgarh).
5. Aarifa, D/o. Mohd. Rafique Khan, aged about 56 yeras (Since Died) Through L R S :

5 . (a) Kumari Nazmeen (Minor), Aged about 12 Years

5 .(b) Nafees Khan (Minor), Aged about 10 Years

Both the above respondent No. 5A and 5b Through their Legal Guardian Nabab Khan and both the above respondents are R/o. Old Fan Centre, In Front of State Bank, Ambagarh Chauki, Ward No. 2, P. S. and Post Rajnandgaon, Tehsil Rajnandgaon, District Rajnandgaon (Chhattisgarh)

6. State of Chhattisgarh, Through Collector, Balod, District Balod (Chhattisgarh)

---- Respondents

For Petitioners : Shri Prasoon Agrawal, Advocate

For Respondent No.1 : Shri Rakesh Thakur, Advocate
For Respondent/State : Shri Manish Nigam, Panel Lawyer

Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

03/02/2017

1. Heard.
2. The petitioner is aggrieved by order dated 01/10/2016, by which the petitioners' application for framing of the preliminary issue with regard to valuation of the suit has been rejected.
3. Learned counsel for the petitioners submit that the trial Court has failed to appreciate the grounds raised by the petitioner particularly with regard to valuation of property and Court fee. This issue ought to have been tried as preliminary issue. Learned counsel for the petitioners also submits that trial Court has not framed the issue with regard to the jurisdiction because in case the valuation of the property as given by the petitioner is accepted which is more than 5 lacs, as contended by the petitioners in their written statement, the trial Court will not have pecuniary jurisdiction in the matter.
4. Learned counsel for the respondents submits that the valuation of the suit is not to be based on valuation of property but valuation of the plaintiffs claim. Plaintiffs has only claimed 1/5th share in the property, therefore, in that view of the matter, at this stage, no case is made out for interference of the order.
5. It is found that the plaintiffs' claim is made basis of valuation of the suit. Moreover, at this stage when the issues have been framed and evidence has already been taken, I am not inclined to interfere with the impugned order only on this ground as the Court below has not committed any illegality in rejecting petitioner's application for framing preliminary issue. However, it will be open for the parties by leading oral as well as documentary evidence on the issue of valuation.
6. Accordingly, the writ petition is dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge