

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP(227)No. 127 of 2016**

- Ashish Das S/o Late Radhakrishna Das, Aged About 37 Years R/o Lalbagh Near Old Indane Gas Godown Jagdalpur, Distt. Bastar (Chhattisgarh)

---- Petitioner**Versus**

1. Smt. Asha Rani Patnayak W/o Shri Manohar Patnayak, Aged About 48 Years R/o State Bank Colony, Lalbagh, Jagdalpur, District Bastar (Chhattisgarh)
2. Smt. Rekha Patnayak, W/o Shri K.P. Patnayak, Aged About 46 Years Through : State Bank Of India, Jagatpur Branch, Cuttak (Orissa)
3. Smt. Meena Mohanti W/o Late R.K. Mohanti, Aged About 42 Years R/o Qr. No. 10, Vinobha Nagar, Bilaspur, District Bilaspur (Chhattisgarh)
4. State Of Chhattisgarh, Through : Collector Jagdalpur, District Bastar (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri Prafull N. Bharat, Advocate
For Respondent No.1 to 3	:	Shri Siddharth Bajpai on behalf of Shri P.K. Tulsyan, Advocate
For Respondent No.4	:	Smt. Shobha Kashyap, Dy. GA.

Hon'ble Shri Justice Chandra Bhushan Bajpai
Order On Board

25/01/2017

1. Heard on admission.
2. The brief facts of the Writ Petition are that Civil Suit No. 22A/2016 (old No. 20A/2015) is pending before the 6th Civil Judge Class -II, Jagdalpur, in which, respondents 1 to 3 are the plaintiffs. They have filed the said Civil Suit for declaration of title of possession, permanent injunction and also to

declare the Will dated 25.4.2007 as illegal and void. In the said Civil Suit, the present petitioner was defendant No.1. He had filed an application under order 7 Rule 11 C.P.C. wherein it is submitted that the property in question is situated within the city limit, therefore, the suit may be valued on the basis of market rate and the plaintiffs be directed to affix the Court fee accordingly as the plaint was for declaration of title and possession. The Court below after hearing the matter vide order dated 14.9.2015 allowed the application filed by the petitioner under Order 7 Rule 11(b) C.P.C. and directed the plaintiffs to pay the required Court fee under the provisions of Section 7(v) of the Court Fees Act, 1870, as per Schedule II, as the plaintiff was required to pay the Court fee at the market value. Thereafter, respondents 1 to 3 filed an application under Order 6 Rule 17 before the trial Court praying that they be permitted to delete the relief of possession as the case is at initial stage, Written Statement is not filed by the defendant and with this, there is no change in nature of suit and the property is ancestral one as also parties of the suit are real brother and sisters and possession of one member of the family is sufficient, which can be held possession of whole family. The trial Court after hearing the parties, passed the order dated 12.1.2016 and allowed the prayer of the plaintiff regarding deletion of possession part. Further directed the defendants to file written statement in the matter. The present petitioner approached this Court under the provisions of Article 227 of the Constitution of India praying that the order dated 12.1.2016 is illegal, contrary to the settled principles and bad in law, hence, same may be quashed and any other relief may be granted.

3. Heard learned counsel for the petitioner.

4. Learned counsel for the petitioner would submit that after the order passed by the trial Court on 14.9.2015, instead complying the said order, the plaintiff had filed an application for amendment to delete the possession part,

which is not permissible and the Court below had committed mistake in allowing the said application and directing to value the house situated over the suit property and affixing the court fee at the instance of the plaintiff, hence now the plaintiff cannot go beyond that order and to file amendment application. Therefore, the order passed may be quashed.

5. Perused the documents annexed along with the instant writ petition.

6. The Court below vide order dated 14.9.2015 directed the plaintiff to value the house at market value situated over the suit land and to affix appropriate court fee as required under Section 7(v) of the Court Fee Act, 1870. On the other hand, the plaintiff filed an amendment application well within limitation and as the written statement was not filed, the plaintiff prayed that relief for the possession may be deleted at the appropriate stage of proceedings. There was no legal bar to the plaintiff that simply on account of direction of the Court as aforementioned his authority to pray for amendment in the Civil Suit may be ceased. I do not see any illegality or impropriety in the order passed by the Court below on 12.1.2016. The Court below after due consideration has allowed the prayer of the plaintiffs and allowed to delete the relief for the possession. Even apart this amendment application cannot be held as a step taken to nullify or to flout the order passed by the court below on 14.9.2015.

7. There is no prayer made on behalf of the petitioner to direct the plaintiff to comply with the said order for valuation and to affix the appropriate court fee. The effect of deletion of relief clause has to be considered only if any prayer is made by the petitioner or the Court himself suo moto directs the plaintiff to comply with the said order dated 14.9.2015.

8. When the Court considers the authority of the court to pass an appropriate order, it shall be the duty of this Court to consider the legal

rights and forum available to any of the party for any of the prayer.

9. On due consideration, this Court is not convinced with the arguments and grounds taken by the petitioner that to nullify the effect of the said order, the amendment application was filed and same was allowed against the provisions of law. When we appreciate both it appears that the authority of jurisdiction is not in conflict with each other. With this, I do not see any reason to direct the Court below subordinate to the High Court with the jurisdiction vested under Article 227 of the Constitution of India to set aside that order.

10. The petitioner will be at liberty to take appropriate steps before the Court below for compliance and the Court below may dispose of the same if prayed for under the provisions of law applicable.

11. The instant petition is devoid of merits so far as its admission for hearing is concerned.

12. Consequently, the petition is dismissed at the motion stage itself.

13. No order as to cost.

Sd/

(Chandra Bhushan Bajpai)
Judge