

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 2751 OF 2006

1. Umashankar Jha, S/o Udaykant Jha, aged about 30 years, R/o Dalpat Sagar Ward, Jagdalpur, District Bastar (C.G.)
2. Dayashankar Jha, S/o Udaykant Jha, R/o Dalpat Sagar Ward, Jagdalpur, District Bastar (C.G.)

... Petitioners

Versus

1. Shashi Shekhar Rath, S/o Late Abhimanyu, aged about 45 years.
2. Shitanshu Shekhar Rath, S/o Late Abhimanyu, aged about 41 years.
Both are R/o Bhairam Dev Ward, Jagdalpur, District Bastar (C.G.)

... Respondents

For Petitioners	:	Mr. Sourabh Sharma, Advocate.
For Respondents	:	Mr. J.N. Nande, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

21/08/2017

1. Challenge in the present writ petition is to the order dated 9.11.2001 whereby three preliminary objections raised by the defendants before the Court below have been decided as a preliminary issue and have also been decided in favour of the plaintiffs.
2. One such issue was in respect of whether the suit was properly valued. This issue does not need much adjudication for the simple reason that since the plaintiffs were not a party to the sale deed which is under challenge before the Court below, the requirement of payment of *ad valorem* court fee would not be required and therefore the order of the Court below on this issue does not require any interference.
3. The second issue was in respect of the suit being liable to be dismissed for want of necessary parties. At this juncture, this Court sets aside the order of the Court below on this issue on the ground that the said issue shall have to be considered and decided after permitting either of the parties to lead appropriate evidence to substantiate this contention.

4. As regards the third issue in respect of the suit being hit by Section 10, it does not survive any further in the light of the statement being made by the Respondents, i.e., the original plaintiffs, that a subsequent suit filed by the relatives of the original plaintiffs has already been decided in favour of the plaintiffs therein. Thus, the said objection decided by the Court below also does not warrant any interference at this stage.

5. The present writ petition thus is allowed in part to the extent that the sixth issue which has been decided as a preliminary issue and the finding given deserves to be and is accordingly quashed and the matter is sent back for the Court below to decide the said preliminary objection of non-joinder of necessary parties after the evidence are recorded on either side and if required then to decide the other issues on merits. Any observations made by this Court in the disposal of the writ petition or any orders passed during pendency of the writ petition shall not have any bearing on the outcome of the suit while deciding it on its own merits.

6. The writ petition is partly allowed and disposed of accordingly.

Sd/-
(P. Sam Koshy)
Judge