NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No.701 of 2017

Vijay Anant, aged about 58 years, son of Late Sakharam, Resident of Qtr. No.724, Sundar Nagar, Raipur, Distt.Raipur (CG)

---- Petitioner

Versus

1. Smt. Indu Mishra, wife of Shri Madhu Sudan Mishra, R/o. Prayag Kunj, Boriya Road, Bajrang Chowk, Santoshi Nagar, Raipur, Distt. Raipur (CG)
2. Ashok Verma, son of Shri Kripashankar Verma, Resident of Raipur Convent School, Ashwani Nagar, Raipur, Distt. Raipur (CG)
3. The State of Chhattisgarh, through the Collector, Raipur, Chhattisgarh

---- Respondents

For Petitioner : Mr.M.K.Bhaduri, Advocate
For Respondent No.1 : Mr.Y.C.Sharma, Advocate
For State : Mr.Aditya Sharma, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

13/10/2017

1. This writ petition is directed against the order dated 17.8.2017 by which application under Order 47 read with Section 151 of the CPC has been rejected by the trial Court.

2. Learned counsel for the petitioner would submit that order of this Court dated 18.7.2017 has not been complied with and the impugned order has been passed on the basis of earlier order of this Court dated 1.9.2011, which is unsustainable and bad in law.

3. On the other hand, learned counsel for respondent No.1 would support the impugned order.

4. I have heard learned counsel appearing for the parties,

considered their rival submissions made hereinabove and also gone through the record with utmost circumspection.

5. This Court by order dated 18.7.2017 clearly directed the trial Court to decide as to whether Article 23-A of Schedule I of the Indian Stamp Act, 1899 would be applicable or Article 23 of the Indian Stamp Act, 1899 would be applicable, but it appears that the trial Court again decided the matter in view of the earlier order of this Court dated 1.9.2011, in which this Court has directed to decide the application afresh in the light of Article 23A of Schedule 1 of the Indian Stamp Act, 1899, whereas the trial Court was required to decide the applicability of stamp duty in accordance with law, which the trial Court has not decided and relying upon the earlier decision of this Court the impugned order has been passed stating that order dated 1.9.2011 has become final, which is unsustainable and bad in law.

6. Accordingly, the writ petition is allowed and the impugned order is set aside. The trial Court is directed to decide the application afresh on its own merit without being influenced by the observation made by this Court in the earlier orders strictly in accordance with law. No cost(s).

Sd/-

(Sanjay K. Agrawal)

Judge

B/-