

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 872 of 2017**

1. Shri Krishna Builders And Developers Through Its Partner Gagan Rathi S/o Madan Lal Rathi Aged About 42 Years Occupation Business, Having Office At Ground Floor Of Chaitanya Nagar Complex Raigarh District Raigarh Chhattisgarh (Though In Impugned Order Wrongly Mentioned As Chaitanya Nagar Ground Floor)
2. Pawan Agrawal S/o Late S. R. Agrawal, Aged About 50 Years R/o Krinti Nagar Bilaspur, District Bilaspur Chhattisgarh,

---- Petitioners**Versus**

1. Ramdas Agrawal S/o Late Shishram Agrawal Aged About 66 Years R/o Friends Colony Raigarh, District Raigarh Chhattisgarh
2. State Of Chhattisgarh Through The Collector, District Raigarh Chhattisgarh (Though In The Cause Title Of Impugned Order State Is Not Shown As Party But In Civil Suit Filed By The Plaintiff State Is Party)

---- Respondents

For Petitioners : Mr. Ashish Surana, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****29/11/17**

1. The application filed by the petitioners under Order XIV Rule 2 and 5 of the C.P.C. for framing additional issues and its adjudication as preliminary issue has been rejected by the trial Court vide order dated 11.10.2017 on untenable ground against which this writ petition has been preferred by the petitioners.
2. Learned counsel appearing on behalf of the petitioners would submit that the petitioners / defendants have raised an objection with regard to the maintainability of the suit under Order II Rule 2 of the C.P.C. in para 7 of their written statement which has not been considered by the trial Court and,

therefore, the petitioners / defendants have filed an application under Order XIV Rule 2 and 5 of the C.P.C. for framing additional issue and its adjudication as preliminary issue and as such the suit is barred under Order VII Rule 10 of the C.P.C.

3. I have heard learned counsel for the petitioner and perused the impugned order with utmost circumspection.

4. The plea is substantial one and issues ought to have been framed with regard to the maintainability of the suit, therefore, the trial Court is required to frame issue to consider if the suit is barred under Order II Rule 2 of the C.P.C. and / or under Section 80 of the C.P.C.

5. The writ petition is allowed subject to payment of cost of Rs. 2,000/- to the plaintiffs. However, the plaintiffs would be at liberty to move an application for modification of the order, if they are aggrieved.

6. With the aforesaid observation, the writ petition stands finally disposed of. No order as to cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge