

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 72 of 2018

- Chhattisgarh Rajya Sahkari Awas Sangh Maryadit Through, The Office- In- Charge- J. P. Yadav, S/o Late C. M. Yadav Aged 58 Years, Office At- First Floor, Taigore Nagar, Raipur, District- Raipur, Chhattisgarh.Applicant., District : Raipur, Chhattisgarh ---
Petitioner

Versus

1. Meghraj Rohra S/o S/o Thakur Das Rohra Aged About 53 Years R/o D-5 Galaxy, Residency, Amlidih, Raipur, Tehsil And District Raipur, Chhattisgarh.Plaintiff., District : Raipur, Chhattisgarh
2. Purvanchal Grih Nirman Sahkar Samitti Maryadit, Ring Road Chowk Pachmedinaka, Raipur Chhattisgarh. Through, President Shri Pawan Tiwari, S/o Shri B. P. Tiwari R/o Vyas Gali, Sadar Bazar Raipur, Tehsil And District Raipur, Chhattisgarh.Defendant No. 1, District : Raipur, Chhattisgarh
3. State of Chhattisgarh, Through The Collector, Raipur, Chhattisgarh.Defendant. No. 2, District : Raipur, Chhattisgarh
--- Respondents

For the Petitioner	:	Mr. Shakti Raj Sinha, Advocate
For the State/R-3	:	Mrs. Astha Shukla, P. L.

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

23.01.2018

1. Heard.
2. The instant petition is against the order dated 02.12.2016 whereby the application filed under Order 1 Rule 10 read with section 151 of CPC filed by the petitioner was dismissed.
3. Learned counsel for the petitioner would submit that a suit was filed by respondent no.1 Meghraj Rohra against Purvanchal Grih Nirman Sahkari Samiti Maryadit (respondent No.2 herein) whereby a relief was claimed that the sale deed dated 28.04.1997 is not binding on the plaintiff i.e., Meghraj Rohra and the same be declared as null and void and further

permanent injunction was also prayed for. It is contended that in the said civil suit, the plaintiff has contended that the sale deed dated 28.04.1997 was an outcome of fraud and as such it is not binding on the plaintiff, consequently the same may be declared as null and void. The petitioner further submits that the defendant Purvanchal Grih Nirman Sahkari Samiti Maryadit has mortgaged the same plot in favour of the petitioner Chhattisgarh Rajya Sahkari Awas Sangh Maryadit and has obtained the loan from it, therefore, if the sale deed is itself declared null and void, the right of the petitioner shall be seriously affected and they would be a necessary party in the case. However, when the application was moved the same was dismissed, therefore, the application of the petitioner may be allowed to join as a necessary party in the suit.

4. A perusal of the order dated 02.12.2016 records that no document was placed before the Court to show that how the interest of the petitioner could be affected and no particulars were placed before the Court. A perusal of the plaint would show that declaration was sought for in the prayer clause to the extent that the sale deed dated 28.4.1997 be declared as void and in response to such pleading, the defendant Purvanchal Grih Nirman Sahkari Samiti Maryadit at para 10 of its written statement has categorically stated that the said land after the sale deed was placed as mortgage with the petitioner and the Sahkari Samiti has availed the loan and it is stated that the C.G. Rajya Sahkari Awas Sangh Maryadit would be a necessary party.
5. Be that as it may, the law is that the plaintiff is dominus litus and he cannot be drawn against his will. However after the

evidence if the court finds that the suit property was subject of mortgage then in such a case the court may pass necessary orders and presently the perusal of the order which is under challenge would show that no document was placed before it while the application under Order 1 Rule 10(2) of CPC was considered. In this view of the matter, the petitioner is granted liberty to move application afresh with necessary documents showing that the property is subject of mortgage and in the event of such an application being filed, the trial Court shall adjudicate the same afresh on its own merits without being influenced by the observations made by the Court.

6. Accordingly, this writ petition is disposed of.

**Sd/-
GOUTAM BHADURI
JUDGE**