

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 178 of 2015**

1. Ku. Bharti Sahu Do Late Biharilal Sahu Aged About 43 Years R/o Gandhi Chowk, Khamtarai, Raipur, Police Station And Post Raipur, Civil And Revenue District Raipur Chhattisgarh
2. Mahendra Sahu S/o Late Biharilal Sahu Aged About 43 Years R/o Gandhi Chowk Khamtarai, Raipur, Police Station And Post Raipur, Civil And Revenue District Raipur Chhattisgarh
3. Smt. Kesari Sahu W/o Ramnarayan Sahu Aged About 39 Years R/o Gandhi Chowk Khamtarai, Raipur, Police Station And Post Raipur, Civil And Revenue District Raipur Chhattisgarh
4. Devendra Sahu S/o Late Biharilal Sahu Aged About 34 Years R/o Gandhi Chowk Khamtarai, Raipur, Police Station And Post Raipur, Civil And Revenue District Raipur Chhattisgarh
5. Aarti Sahu W/o Harekrishna Mane Aged About 32 Years R/o Gandhi Chowk Khamtarai, Raipur, Police Station And Post Raipur, Civil And Revenue District Raipur Chhattisgarh
6. Amrit Lal Sahu S/o Late Kejuram Sahu Aged About 60 Years R/o Khamtarai Raipur, Police Station And Post Raipur, Civil And Revenue District Raipur Chhattisgarh
7. Lakhanlal Sahu S/o Late Kejuram Sahu Aged About 58 Years R/o Khamtarai Raipur, Police Station And Post Raipur, Civil And Revenue District Raipur Chhattisgarh
8. Mohan Lal Sahu S/o Late Kejuram Sahu Aged About 55 Years R/o Khamtarai Raipur, Police Station And Post Raipur, Civil And Revenue District Raipur Chhattisgarh
9. Parvati Sahu Wd/o Late Harilal Sahu Aged About 38 Years R/o Khamtarai Raipur, Police Station And Post Raipur, Civil And Revenue District Raipur Chhattisgarh
10. Nandani Sahu Wd/o Late Basantlal Sahu Aged About 40 Years R/o Vilalge Sejbahar, Police Station And Post Raipur, Civil And Revenue District Raipur Chhattisgarh
11. Kishanlal Sahu S/o Late Kejuram Sahu Aged About 47 Years R/o Village Sejbahar, Police Station And Post Raipur, Civil And Revenue District Raipur Chhattisgarh
12. Suresh Sahu S/o Late Kejuram Sahu Aged About 41 Years R/o Khamtarai Raipur, Police Station Raipur Civil And Revenue District Raipur Chhattisgarh
13. Smt. Shashi Bai Sahu D/o Late Kejuram Sahu Aged About 43 Years W/o Paluram Sahu R/o Vilalge Potiyadih Police Station And Post Dhamtarai Civil And Revenue District : Dhamtari, Chhattisgarh

---- Petitioners**Versus**

1. Shri Swami Thakur S/o Gurubihari Das Shri Ramchandraj Swami Sarvarakar Mahant Laxminarayan Das Through Present Sarvarakar, Purani Basti Raipur Police Station And Post Raipur, Civil And Revenue District Raipur C.G., Chhattisgarh

2. State Of Chhattisgarh, Through Collector Raipur, District Raipur C.G., District : Raipur, Chhattisgarh
3. Chhattisgarh Housing Board, Division No. 1, Raipur C.G., District : Raipur, Chhattisgarh
4. Mahant Ram Vikas Das Guru S/o Late Mahant Ram Bhushandas Jaitusao Math, Purani Basti, Raipur, Police Station And Post Raipur Civil And Revenue District Raipur C.G., District : Raipur, Chhattisgarh

---- Respondents

For Petitioners	:	Shri Manoj Paranjpe, Advocate
For Respondent No.4	:	Shri Punit Ruparel, Advocate

Hon'ble Thottathil B. Radhakrishnan, Chief Justice

Order on Board

29.01.2018

1. This writ petition is filed under Article 227 of the Constitution of India by the Plaintiffs.
2. Heard the learned counsel for the Petitioners and the learned counsel for the 4th Respondent.
3. The Plaintiffs' sued on the strength of a contract for sale of immovable property, but pleaded that the entire consideration under that contract was paid to the vendors and that possession was handed over to the Plaintiffs. On that premises, the Plaintiffs asserted that they obtained title to that property. Later, they applied for leave to withdraw the plaint without prejudice to their right to institute a suit for specific performance of the so-called contract for sale. The Court below has taken the view that the withdrawal with leave and liberty cannot be granted as sought for. This is under challenge.
4. The defect on which the suit would fail is that the Plaintiffs could not have asserted title on the strength of the unfructified contract for sale of immovable property. Such title could not have been obtained on the aforesaid facts in view of the clear provisions of the Transfer of Property Act. That being so, the only plea of the Plaintiffs is that the suit may be permitted to be withdrawn without

prejudice to their right, in accordance with law, to sue for specific performance of the contract for sale, which they held. This could have been granted because it does not amount to permitting a fresh suit to be instituted on the same cause of action. The suit which has already been instituted is on the cause of action of the asserted title and the alleged violation of that claim. However, the proposed suit is for specific performance of a contract for sale; meaning thereby, that the Plaintiffs would proceed with such suit, affirming that the title stands with the Defendants. For the aforesaid reasons, the writ petition is entitled to be succeeded.

5. In the result, this writ petition under Article 227 of the Constitution is allowed setting aside the impugned order and directing that the Court below shall permit the suit to be withdrawn with liberty to institute a suit for specific performance of the alleged contract for sale, if the Plaintiffs are entitled for such relief in accordance with law. The writ petition is ordered accordingly.

Sd/-
(Thottathil B. Radhakrishnan)
Chief Justice