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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 608 of 2015**

{Arising out of Order dated 25.06.2015 passed in Civil Suit No. 05-A/2014 by the First Additional District Judge, Sakti, District Janjgir-Champa}

Chandrakumar son of Firturam Patel, aged about 40 years, resident of Nandeli, Police Station and Tahsil Sakti, District Janjgir-Champa, Chhattisgarh.

---- **Petitioner****Versus**

1. Rajesh Kumar Son of Ghansiram Aged About 46 Years
2. Ramkumar Son of Ghansiram Aged About 38 Years
Both are By Caste- Yadav, Resident Of Sakti, Ward No. 9, Sakti, District- Janjgir- Champa Chhattisgarh
3. Ghanshyam S/o Maheshram Dewangan Aged About 40 Years
4. Pushpendra Kumar Son of Maheshram Dewangan Aged About 34 Years
Both are Resident Of Sakti Ward No. 12, Nawdha Chowk, Sakti, District- Janjgir- Champa Chhattisgarh
5. Smt. Janki Bai Wife of Hulasram Dewangan Aged About 25 Years Resident Of Sakti, Ward No. 10, Sakti, District- Janjgir- Champa Chhattisgarh
6. Pramesh Dewangan Son of Uttamlal Aged About 27 Years
7. Kamlesh Dewangan Son of Uttamlal Dewangan Aged About 21 Years
Both are resident of Mohandikala, Tahsil- Malkharoda, Police Station-Sakti, District- Janjgir- Champa Chhattisgarh.
8. Shatrughan Son of Arjunlal Dewangan Aged About 55 Years Resident Of Ward No. 10, Sakti, District - Janjgir - Champa Chhattisgarh
9. (A) Dukalhin Bai Widow of Ramlal Aged About 50 Years Resident of Ward No. 10, Sakti, District- Janjgir - Champa Chhattisgarh (LRs. of Respondent No. 9 Ramlal Dewangan) (Since Deceased)
10. Narottam Dewangan Son of Nanhuram Caste- Koshta, Resident Of Akhra Bhantha, Ward No. 10, Sakti, District- Janjgir - Champa Chhattisgarh
11. Smt. Usha Dewangan Wife of Lochan Dewangan Aged About 26 Years Resident Of Ward No. 10, Sakti, District- Janjgir- Champa Chhattisgarh
12. State of Chhattisgarh, Through The Collector, District - Janjgir - Champa Chhattisgarh

---- **Respondents**

For Petitioner	: Shri Ishwar Jaiswal, Advocate.
For Respondents No.1 to 11	: None
For Respondent/State	: Shri UNS Deo, Government Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Order on Board

09/03/2018

1. This writ petition under Article 227 of the Constitution of India is instituted by the plaintiff challenging the decision rendered by the Court below on the question of sufficiency of court fee, by considering it as a preliminary issue.

2. Hearing the learned counsel for the Petitioner/Plaintiff and the learned Government Advocate, it is noted that the suit has reached the stage of trial after framing of issues. Once issues are framed, it is the mandate of Rule 2(1) of Order 14 Rule of the Code of Civil Procedure, 1908; for short 'the CPC'; that the Court shall, subject to the provisions of sub-rule (2) of Rule 2 pronounce judgment on all issues. Sub-rule (2) of Rule 2 of Order 14 CPC enumerates the situations in which a suit may be disposed of on an issue of law only. This means that unless the issue is one of law only, the Court cannot deal with that matter as a preliminary issue. Going to clause (a) of sub-rule (2) of Rule 2 of Order 14 CPC, it can be seen that such issue of law should relate to jurisdiction of the Court. This is the relevant point for this case. The contents of clause (b) of Order 14 Rule 2(2) CPC need not be considered further for this case. The jurisdiction of Court are often categorized as subject matter jurisdiction, pecuniary jurisdiction and territorial jurisdiction. The suit is one of civil nature and therefore the subject matter jurisdiction issue does not arise for decision as against the Plaintiff. The territorial jurisdiction issue also does not arise. The pecuniary jurisdiction issue can arise only when the Court is of the opinion that the valuation of the suit is such that it would lie only to a

Court superior to it; or otherwise, the valuation is done in such a manner as to escape an adjudication at the hands of the lowest Court where that suit can be tried. In the case in hand, there is no finding by the Court below that the valuation of the suit has been done in any such manner or that, the valuation of the suit would take it out of the pecuniary jurisdiction of the Court below. If that is so, the question of the court fee to be paid ought not to have been tried as a preliminary issue in the suit. May be, an order on the question of court fee could be passed in terms of the Court Fees Act. But, when an issue is to be tried by framing issues, the inhibition in Order 14 Rule 2(2) CPC is that no issue can be tried as a preliminary issue unless it is an issue of law only and even then it should fall among clauses (a) or (b) of sub-rule (2) of Rule (2) of Order 14 CPC. Otherwise, even a pure issue of law cannot be decided.

3. The learned counsel for the Petitioner/Plaintiff argued for the position that the decision of the Apex Court in **Suhrid Singh alias Sardool Singh v. Randhir Singh** {(2010) 12 SCC 112}, has been wrongly applied by the Court below. Cognizance of that submission is taken and it is found that the classification of cases into different types as delineated in paragraph 6 and 7 of that judgment (as reported in SCC) have not been correctly appreciated and applied by the Court below.
4. Be that as it may, such separate adjudication of that issue was never called for in the case in hand having regard to the clear provisions of Order 14 Rule 2(2) of the CPC. One of the cardinal principle which form part of the object of provisions similar to Order 14 Rule 2(2) of the CPC is to exclude the zone of consideration of what are treated as "preliminary issue". This will exclude piecemeal trial and hearing. It will call for comprehensive and cohesive consideration of all issues and complete the trial, adjudication and decision making. Therefore, framing preliminary

issue and considering issues as preliminary issue and rendering decision thereon should always be treated as to be done in exceptional circumstances and only when such issues arise in a case as would fall within the different limbs of Order 14 Rule 2 sub-rules (1) and (2) CPC and in particular, clauses (a) and (b) of sub-rule (2) of Rule 2 of Order 14 CPC. The procedure adopted by the Court below in deciding the question of court fee as preliminary issue cannot be sustained. Hence, the impugned order is set aside also directing that at final hearing, the Court below will consider the issue of court fee afresh and independent of whatever has been stated in the order impugned in this writ petition and also advertent to and considering the contents of the judgment of the Apex Court in **Suhrid Singh** (supra) and by deciding on its application after assimilating the law laid there.

5. It is noted that the trial of the suit appears to be held up due to the pendency of this writ petition. It is further directed that the Court below will expedite the final hearing of the suit and deliver its verdict within an outer limit of two months from the date of passing of this order.
6. The writ petition is ordered accordingly.

Sd/-
(Thottathil B. Radhakrishnan)
CHIEF JUSTICE