

HIGH COURT OF CHHATTISGARH, BILASPUR

MCC No. 258 of 2018

Foolsingh Teli, S/o Jagde, Aged About 75 Years R/o Village
Bhatagaon, Tehsil Gunderdehi, District Balod, Chhattisgarh.

---- Applicant

Versus

1. Abhishek Jain, S/o Subashchand Jain, Aged About 33 Years, R/o
Hatri Bazaar, Durg, Tehsil And District Durg, Chhattisgarh.
2. State Of Chhattisgarh, Through Collector Balod, District Balod,
Chhattisgarh

---- Respondents

For applicant – Shri Prasoon Agrawal, Advocate.

For respondent No.1 – Shri Avinash Chand Sahu, Advocate.

For State/respondent No.2- Shri Dilman Rati Minj, Dy.G.A.

Hon'ble Shri Justice Goutam Bhaduri

Order

4/12/2018

Heard.

1. This MCC has been filed against the judgement and decree dated 15/03/2016 whereby the First Additional District Judge, Balod by the judgement and decree in Civil Suit No.11-A/2014 has decreed the suit for specific performance and directed to give possession of the suit land to the plaintiff. Against that instant MCC under Order 44 Rule 1 of CPC has been preferred.
2. Learned counsel for the applicant would submit that in MCC wherein appeal has been sought to be prosecuted under Order 44 Rule 1 of CPC the description of the property has not been suppressed and there is no deliberate suppression and the report of the State as has been received would show that even then it is considered it will amount to omission, therefore will not fall short for allowing MCC. He further submits that the applicant did not disclose the property because he was not earning from the property.

3. Learned counsel for the respondent No.1 opposes the same.

4. Report of the State is on record. Perused the application under Order 44 Rule 1 of CPC which is considered qua Order 33 Rule 2 of the CPC. In respect of list of immovable property the applicant stated he do not possess any sort of immovable property. Report of the State would show that after enquiry it was found that the applicant is owner of property khasra No.276 admeasuring 0.56 hectares. During the course of hearing it is also submitted that decree having been passed in March 2016, the execution of sale deed has been made by court on 25/11/2017, which is not disputed by the parties. Record would show that MCC has been filed on 22/01/2018 and contents of the order also shows that at the time of the agreement entire amount of the sale consideration of Rs.4 lakhs was received by the applicant. Considering the same receipt of the consideration amount of Rs.4 lakhs at the time of the execution as also the applicant in the MCC has failed to disclose his land which is owned by him, it appears that there has been deliberate suppression of the particulars of the immovable property. Considering the same and ratio laid down in case of **Mathai M. Paikeday Vs. C.K. Antony** reported in **(2011) 13 SCC 174** it appears that the applicant though have capacity of a person in ordinary course to raise money by available lawful means to pay court fee. The property which has been shown by the State is not a subject matter of the suit. Hence the application under Order 44 Rule 1 of CPC to sue as a indigent person is misconceived. Accordingly, the same is dismissed.

5. It shall be open for the applicant to pay required court fee if he so desires within a period of four weeks.

Sd/-

(Goutam Bhaduri)

JUDGE

