

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 51 of 2018**

1. Endless Vinimay Private Limited Company R/o 9 Ashutosh Mukharjee Lane Block-III, Third Floor, Salkiya, Howrah (West Bengal) Through Authorized Officers, District : Howrah, West Bengal
2. Mahesh Singh Thakur S/o Late Jhannu Singh Thakur, R/o Tatiband, M.I.G. Pole No. Aaccb1065 E Post Office Tatiband Raipur, Chhattisgarh (Defendants)

---- Petitioners**Versus**

- Latelu S/o Kapil Satnami Aged About 58 Years R/o Satnamipara, Raipura, District Raipur, Chhattisgarh (Plaintiff),

--- Respondent

For Applicant : Shri A.P.Sharma, Advocate.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****24.07.2018**

1. Heard on admission.
2. This revision petition has been preferred under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908) against the order dated 15.02.2018 passed by the 5th Additional District Judge, Raipur, in Civil Suit No. 22-A/2017, by which, the trial Court has rejected the applicants' application filed under Order 7 Rule 11 of the Code of 1908.
3. Shri A.P.Sharma, learned counsel for the applicants submits that the trial Court has committed an illegality in rejecting the applicants' said application without considering the materials in its proper manner. He submits further that the plaintiff is competent to pay the requisite court fee, as required under the law and does not require to be exempted under Section 35 of the Court Fees Act. He submits further

that in absence of any enquiry report being submitted by the Collector in this regard, the trial Court ought not to have rejected the said application for rejection of the plaint.

4. I have heard learned counsel for the applicants and perused the entire relevant papers annexed with this revision petition.

5. The plaintiff Latelu has instituted a suit claiming declaration to the effect that the registered deed of sale dated 26.04.2010 be declared as null and void as the same has been obtained by defendant No.1 through his Power of Attorney Holder, namely, Mahesh Singh (defendant No.2) by playing fraud upon him, and praying alternatively for recovery of sum of Rs.2,27,95,500/- (Rupees two crores twenty seven lakhs ninety five thousand and five hundred only). While filing the suit, the plaintiff has moved an application praying for exemption in payment of Court fee as per the provisions prescribed under Section 35 of the Court fees Act on the ground that since his annual income is below Rs.6,000/-, therefore, he is entitled to be exempted from paying the Court fee, as per the notification issued by the State Government on 01.04.1983. After considering the said application, the trial Court has observed that despite several opportunities being given, the Collector has not submitted its report in this regard, and it has, therefore, been observed while registering the suit that it could be determined at the time of passing the decree. As a consequence of it, the trial Court has rejected the said application for rejection of the plaint.

6. Be that as it may, from a bare perusal of the application as filed by defendants (applicants herein) under Order 7 Rule 11 of the Code of 1908 would show that none of the grounds as specified in clauses (a) to (f) therein are attracted so as to hold that the plaintiff's suit based

upon the said application is liable to be rejected. In absence thereof, the application seeking rejection of plaint under Order 7 Rule 11 of the Code of 1908 is liable to be and is hereby rejected.

7. The revision petition is, accordingly, dismissed at motion hearing stage itself. No order as to costs.

Sd/-
(**Sanjay Agrawal**)
Judge