

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 340 of 2018**

- Shivam Builders And Developers, Through Partner- Sandeep Pandey, Son Of Shri Vinod Kumar Pandey, Aged About 35 Years, R/o L-4, Vinoba Nagar, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.....Plaintiff

---- Petitioner**Versus**

1. Dr. I.D. Kalwani R/o Saket Apartment, Agrasen Chowk Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh.Defendants
2. Smt. Monika Kolhe W/o Shri Anand Kolhe R/o Shanti Apartment, Tikrapara, Bilaspur, Tahsil And District- Bilaspur, Chhattisgarh
3. State of Chhattisgarh, Through District Magistrate, Bilaspur, District- Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	:	Shri KPS Gandhi, Advocate
For Respondent-State	:	Shri S.K. Mishra, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****23/04/2018**

1. Heard.
2. The instant petition is against the order dated 08.03.2018, whereby an application filed under Order 1 Rule 10 CPC for impleading Tarini Sharma as defendant, has been dismissed.
3. Learned counsel for the petitioner submits that the plaintiff / Shivam Builders and Developers had entered into an agreement of sale with Baishakhu Prasad Sharma, husband of Tarini Sharma, who is the subsequent seller in the year 2008. The declaration has been sought for that the property for which the suit is filed is a property of firm. It is submitted that thereafter Tarini Sharma has executed a sale in favour of Smt. Monika Kolhe,

therefore, Tarini Sharma would be necessary party and the rejection of application under Order 1 Rule 10 CPC by the Court below is bad in law.

4. Perused the plaint. The plaint appears to be for declaration and permanent injunction and filed against Dr. I.D. Kalwani, Smt. Monika Kolhe and State of Chhattisgarh. It is pleaded in the plaint that the suit property was agreed to be purchased from the husband of Tarini Sharma i.e. Baishakhu Prasad Sharma and certain amount of sale consideration of Rs.2,33,000/- was paid to Baishakhu Prasad Sharma and sale agreement was executed on 27.06.2008. The documents filed along with the petition show that after death of Baishakhu Prasad Sharma, Tarini Sharma executed a sale deed in favour of Monika Kolhe on 08.03.2010. The sale consideration do not reflect that the earlier amount alleged to be paid by the plaintiff firm was adjusted towards sale-consideration and it shows a different sale consideration of Rs.2,50,000/- was paid to Tarini Sharma. Since purchaser Smt. Monika Kolhe, the purchaser of land from Tarini Sharma already been made a party and declaration has been sought that land be declared to be a partnership property, I do not find any necessity to implead Tarini Sharma from whom the defendant No.2 has purchased the property. It is for the plaintiff to prove its case that the earlier sale consideration was adjusted while the subsequent sale deed was executed by Tarini Sharma in favour of Smt. Monika Kolhe. Thereby part of consideration was paid by plaintiff firm. Likewise, it is for the defendant to prove that the entire sale consideration was an independent transaction, if any. Therefore, considering the nature of prayer in plaint, the rejection of the application under Order 1 Rule 10 CPC do not suffer from any illegality, which requires any interference.
5. The petition has no merits. It is accordingly dismissed.

Sd/-
Goutam Bhaduri
Judge