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HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.48 of 2018

Lakhanlal Agrawal S/o Late Manoharlal Agrawal Aged About 66 Years R/o Sakti Ward No.10, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh (Defendant No.2), District : Janjgir-Champa, Chhattisgarh

---- Applicant

Versus

1. Girjacharan Mehar S/o Late Kaushal Prasad Mehar Aged About 54 Years R/o Sakti, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh, Present Address Village Dabhra, Tahsil Dabhra, District Janjgir-Champa, Chhattisgarh (Plaintiff), District : Janjgir-Champa, Chhattisgarh
2. Ramcharan S/o Late Kaushal Prasad Aged About 68 Years R/o Sakti Ward No.8, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh (Defendant No.1), District : Janjgir-Champa, Chhattisgarh
3. Krishnacharan S/o Late Kaushal Prasad Aged About 61 Years R/o Narayan Sagar Road Sakti, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh (Defendant No.3), District : Janjgir-Champa, Chhattisgarh
4. Shricharan S/o Late Kaushal Prasad Aged About 57 Years R/o Narayan Sagar Road Sakti, Tahsil Sakti, District Janjgir-Champa, Chhattisgarh (Defendant No.4), District : Janjgir-Champa, Chhattisgarh
5. State Of Chhattisgarh Through Collector District Janjgir-Champa, Chhattisgarh (Defendant No.5), District : Janjgir-Champa, Chhattisgarh

------Respondents

For Applicant:	Shri PR Patankar, Advocate.
For Non-Applicants No.1 & 3:	Shri Ishwar Jaiswal, Advocate.
For Non-Applicant No.5/State:	Shri Vijay Bahadur Singh, Panel Lawyer.

Single Bench:Hon'ble Shri Sanjay Agrawal, J
Order On Board

27.06.2018

1. This Revision has been preferred under Section 115 of the Code of Civil Procedure, 1908 (for short 'the CPC') against the order dated

27.03.2018 passed by the Civil Judge, Class-I, Sakti passed in Civil Suit No.115-A/2015 by which, the application filed by Applicant/Defendant No.2 under Order 7 Rule 11 CPC has been rejected.

2. Briefly stated, the facts of the case are that the Plaintiff-Girjacharan Mehar instituted a suit on 05.08.2011 claiming declaration of title, confirmation of his possession, injunction and also praying for declaration that registered deed of sale dated 13.06.2011 executed by his brother namely Ramcharan (Defendant No.1) in favour of the present Applicant Lakhanlal Agrawal on 23.11.2011 to be declared as null and void. According to the Plaint averments, the property in question came in share of the Plaintiff in partition effected on 07.08.1987 and pleaded further that without disclosing this material fact, Defendant No.1 sold the suit property to Defendant No.2 without any authority. Based on these facts, the instant suit has been filed.

3. Upon receiving summons of the suit, Defendant No.1 appeared and submitted his written submissions in the year 2012 while contesting the claim of the Plaintiff. After considering the pleadings, the trial Court has framed the issues on 03.4.2012 and much after filing of the written statement and framing of the issues as such, the application enumerated under Order 7 Rule 11 CPC has been made by Defendant No.2 on 21.11.2017 in which, it has been stated that the Plaintiff was required to pay *ad valorem* fee with regard to the sale consideration as mentioned in the registered deed of sale dated 13.06.2011 and stated further that the suit as claimed is improperly valued and therefore, deserves to be rejected.

4. The said application was contested by the Plaintiff by stating

interalia that since he was not a party to the alleged deed of sale, therefore *ad valorem* Court fee was not required to be paid by him and submits further that the requisite Court fee required for seeking relief of possession has been paid by him and therefore, the application as filed in a belated stage deserves to be rejected.

5. After considering the said application and its reply, the trial Court has rejected the same vide its order impugned dated 27.03.2018 holding that mixed questions of law and facts are involved in the matter and therefore, the same cannot be decided by entertaining the application filed under Order 7 Rule 11 CPC and observed further that since the Plaintiff is not a party to the alleged deed of sale dated 13.06.2011, therefore, the suit as framed is duly made.

6. Being aggrieved, the Applicant/Defendant No.2 has preferred this Revision. Shri PR Patankar, learned Counsel for the Applicant submits that the order impugned is apparently contrary to law and therefore, deserves to be set aside. According to him, the requisite Court fee has not been paid in accordance with the sale consideration and since the Plaintiff is seeking relief of possession, therefore, proper Court fee payable under the Court Fees Act was required to be paid by him. However, without considering the application in its proper perspective, the trial Court has committed an illegality in rejecting the same and the order impugned, therefore, deserves to be set aside.

7. Shri Ishwar Jaiswal, learned Counsel for Non-Applicants No.1 & 3 supported the order impugned and submitted that proper Court fee as required in order to seek the relief of possession has already been paid by the Plaintiff and since he was not a party to the alleged deed of sale

therefore, he is not required to pay *ad valorem* court fee as objected by Defendant No.2.

8. I have heard learned Counsel for the Applicant and perused the entire relevant papers annexed with this Revision.

9. Admittedly, the suit was instituted by the Plaintiff on 05.08.2011 for declaration of title, confirmation of possession, injunction and also for declaration to the effect that the alleged registered deed of sale as executed by his brother (Defendant No.1) in favour of Defendant No.2 be declared as null and void.

10. It is the settled principle of law that while considering the application filed under Order 7 Rule 11 CPC, the Plaint averments alone are required to be seen. Here in the instant case, the suit was filed on 05.08.2011 and the written statement was submitted by the Applicant/Defendant No.2 in the year 2012 and issued were framed thereafter on 03.04.2012 and that after passing of considerable period, the application enumerated under Order 7 Rule 11 CPC has been made on 21.11.2017. This fact shows that the said application has been made just to linger on the matter. In any case, the Plaintiff who was not the party to the alleged deed of sale was not required to pay *ad valorem* Court fee on it. The further Plaint averments would show that for seeking the relief of possession, the requisite Court fee as required according to the Plaintiff under the Court Fees Act has been paid by him and one of the issues in this regard has also been framed by the trial Court. Considering all these materials coupled with the observation made by the trial Court that mixed questions of law and facts are involved in the matter, I do not find any infirmity in the order impugned rejecting the application for rejection of Plaint under Order

7 rule 11 CPC.

11. The Revision is accordingly dismissed. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE

Priya