

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 435 of 2018

Shri Gangadhar Ramtekkar, S/o. Shri Shobharam Ramtekkar, Aged About 52 Years, R/o. Qr. No. E-40, National Institute Of Technology (Earlier Known As Government Engineering College) Raipur, Tehsil And District Raipur Chhattisgarh.

---- Petitioner

Versus

1. Shri Balram Kashyap, S/o. Late J.L. Kashyap, Aged About 40 Years, R/o. Lakhenagar, Raipur, Tehsil And District Raipur Chhattisgarh.
2. Shri Sahil Hussain, S/o. Shri Salman Haider, Aged About 37 Years, R/o. Mominpara, Raipur, Tehsil And District Raipur Chhattisgarh.
3. Udaya Sahakari Girih Nirman Sanstha Maryadit, Through President, Office Udaya Nagar, Tatibandh, Raipur, Tehsil And District : Raipur, Chhattisgarh
4. State Of Chhattisgarh, Through District Judge, Raipur Chhattisgarh.

---- Respondents

 For Petitioner : Mr. Ankur Agrawal, Advocate
 For State : Mr. Sangharsh Pandey, Dy. Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

10.05.2018

Heard

1. The present petition is against the order dated 25.01.2018 whereby the amendment preferred by the petitioner defendant in their written statement has been dismissed by observing the fact that the amendment sought for is not required for the just decision of the case.
2. Learned counsel for the petitioner would submit that a suit was filed by Balram Kashyap and Sahil Hussain, respondent No.1 & 2 herein, against Udaya Sahakari Grih Nirman Sanstha Maryadit & Shri Gangadhar Ramtekkar claiming possession of the suit land bearing Khasra No.234 admeasuring 0.057 hectare. It is contended that after the service of summons, the defendant petitioner herein raised an objection that the suit property has

already been sold by the plaintiff in the year 2007 to one Brijkishore Surjan thereby the plaintiffs no longer remain the owner with interest to continue the suit in their capacity. It is stated that after such submission was made, an application was moved by plaintiffs under Order 1 Rule 10 of C.P.C. whereby the plaintiff wanted to add the said purchaser in the suit. It is contended the said application was not pressed during the course of argument. It is stated that the plaintiff had filed another document titled as Sanshodhanpatra, wherein it was stated that earlier the sale deed which is dated 11.12.2007 by mistake the Khasra No.234 was included in sale deed and it was further stated by the plaintiff that the land bearing Khasra No.234 admeasuring 0.057 hectare was actually a mortgaged and not sold.

3. The counsel submits that the said document i.e. Sanshodhanpatra so produced by the plaintiff was taken on record. It is stated under this background the amendment was moved wherein it was stated that the suit property has already been sold to Brijkishore Surjan and Sansodhan amendment deed is also forged. The amendment was sought as 25A to 25G in written statement. It is contended that the Court without any application of mind dismissed the petition. He submits that the entire amendment so sought for is just and necessary and in absence of the pleading the defendant would not be able to prove the fact that the plaintiff has divested him out of the property as such the amendment goes to the route of the issue; consequently, the Court should have allowed the same.
4. Perusal of the record would show that a sale deed was relied on by the defendant that the plaintiff has sold the suit property to one Brijkishore Surjan before the suit was filed. The copy of the sale

deed which is placed on record shows that both the Khasra No.213 admeasuring 0.231 hectare and Khasra No.234 admeasuring 0.057 hectare were subject of sale to Brijkishore Surjan. The sale deed is dated 11.12.2007 whereas the suit was filed in the year 2014. Under the circumstances, when such amendment was sought for by the defendant claiming that plaintiffs were not owners of suit property and ownership vested with others, the same fact would be absolutely necessary to adjudicate the issue, since the plaintiffs are claiming right of the same property. In the circumstances, in the opinion of this Court, dismissal of the amendment application suffers with illegality as in absence of the amendment the defendant shall not be entitled to lead any evidence. The nature of the amendment which is sought for shows that the entire ownership of the land was claimed to be with the other person. The plea that the sale was fictitious sale and it was actually mortgaged also cannot be appreciated in view of Section 58 of the Transfer of Property Act as the factum of mortgage is not contained in the same sale deed.

5. In a result, the order of the Court below dated 25.01.2018 is set aside. The amendment petition so moved by the petitioner defendant is allowed. He is directed to carry out the amendment within a further period of two weeks.

Sd/-
(Goutam Bhaduri)
Judge