

HIGH COURT OF CHHATTISGARH, BILASPUR**W.P. (227) No. 1016 of 2018**

Mukund Lal Rathore S/o Late Shri Chotelal Rathore, aged about 82 years, R/o Pratap Sadan, Rathod Chowk, Raipur (C.G.)

---- **Petitioner**

Versus

1. Sharad Kumar Rathore, S/o Late Shri Chotelal Rathore, aged about 68 years, R/o Pratap Sadan, Rathod Chowk, Raipur (C.G.)
2. Ranjeet Singh Rathod, S/o Late Shri Chotelal Rathore, aged about 70 years, R/o Pratap Sada, Rathod Chowk, Raipur (C.G.)
3. Smt. Jyoti Devi Rathore, W/o Late Shri Chandraprakash Rathore, aged about 67 years, R/o Pratap Sadan, Rathod Chowk, Raipur (C.G.)

---- **Respondents**

For Petitioner	:	Mr. Anoop Majumdar, Advocate.
For Respondents	:	None.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

12/12/18

1. By the impugned order dated 02.11.2018, the application filed by petitioner/defendant under Order 14 Rule 2(2) of CPC to try issue No. 4 as preliminary issue has been rejected by the trial Court thereby imposing cost of Rs. 5000/- upon him against which this writ petition has been preferred.

2. Learned counsel appearing for petitioner would submit that trial Court is absolutely unjustified in not accepting the application of petitioner and declining to decide issue No. 4 as preliminary issue and,

therefore, the impugned order is liable to be set aside.

3. I have heard learned counsel for the petitioner and perused the impugned order with utmost circumspection.

4. The issue No. 4 relates as under :-

"क्या वादी द्वारा वाद का उचित मूल्यांकन कर उचित न्याय शुल्क चशपा किया गया है ?"

This issue is purely with regard to valuation of suit under Order 14 sub-rule (2) of Rule 2 CPC which states as under :-

"O. 14, R.2- Settlement of Issues and Determination of Suit on Issues of Law or on Issues Agreed Upon-

1. xxx xxx xxx

2. Court to pronounce judgment on all issues. -

(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to -

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue."

A careful perusal of the aforesaid provision would show that if

the issue relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force, the issue proposed be tried as preliminary issue.

5. In the instant case, the issue proposed out and out relates to the valuation of the suit which cannot be tried as preliminary issue as the proposed issue is a mixed question of law and fact and as such, the trial Court is absolutely justified in rejecting the petitioner/defendant's application under Order 14 Rule 2(2) of CPC in which I do not find any illegality or perversity warranting interference under Article 227 of the Constitution.

6. Accordingly, the writ petition deserves to be and is hereby dismissed. However, the cost imposed by the trial Court to the extent of Rs.5000/- is highly excessive and it is set aside. The other side is at liberty to file an application for modification of the order, if aggrieved.

7. A copy of this order be sent to the trial Court for information and compliance.

Sd/-

(Sanjay K. Agrawal)
Judge