

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 826 of 2019

Omprakash Bhaiya (Maheshwari) S/o Late Ganesh Lal, Aged About 64 Years R/o C-16, Shailendra Nagar, Raipur, Tahsil And District Raipur Chhattisgarh.....Defendant No. 1, District : Raipur, Chhattisgarh.

---- Petitioner

Versus

1. Rajesh Kumar Gupta S/o. Late Ganesh Prasad Gupta, Aged About 56 Years R/o. Akriti Shop, Malviya Road, Raipur, Tahsil And District : Raipur, Chhattisgarh
2. Mahesh Kumar Gupta S/o Late Ganesh Prasad Gupta Aged About 61 Years R/o. Malviya Road, Raipur, Tahsil And District : Raipur, Chhattisgarh
3. Dinesh Kumar Gupta S/o Late Ganesh Prasad Gupta Aged About 56 Years R/o. Malviya Road, Raipur, Tahsil And District : Raipur, Chhattisgarh
4. Urmila Gupta Wd/o Late Kishore Gupta, Shri Rajan Gupta, Aged About 65 Years R/o. Govind And Company Fardushan Road, Ganpat And Kadam Road, Lower Parel-13, District : Mumbai, Maharashtra
5. Pramila Gupta, Wd/o Late Ramgopal Gupta Aged About 63 Years R/o. Taltalla, Doctor Lane, Culcatta, District : Kolkata, West Bengal
6. Ramesh Kumar Gupta S/o Late Ganesh Prasad Gupta Aged About 73 Years R/o. Malviya Road, Raipur, Tahsil And District : Raipur, Chhattisgarh
7. Vivek Gupta S/o Late Suresh Gupta Aged About 36 Years R/o. Malviya Road, Raipur, Tahsil And District : Raipur, Chhattisgarh
8. Vaibhav Gupta S/o Late Suresh Gupta Aged About 33 Years R/o. Malviya Road, Raipur, Tahsil And District : Raipur, Chhattisgarh
9. State Of Chhattisgarh Through Collector, Raipur, District : Raipur, Chhattisgarh

---- Respondents

For Petitioner	: Shri Manoj Paranjpe, Advocate.
For Respondent No.9/ State	: Shri Devendra Pratap Singh, Dy. A.G.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

21-11-2019

1. Heard.
2. This petition has been brought aggrieved by the order dated 10.10.2019 passed by the trial Court in Civil Suit No. 161A of 2018 by which the

application under Order VII Rule 11 of the C.P.C. of the petitioner was dismissed.

3. Learned counsel appearing for the petitioner submits that his insistence is only on one ground which was raised in the application under Order VII Rule 11 of the C.P.C. that the suit was filed for relief of possession also, however, no court fee was paid accordingly. It is further submitted that in the plaint itself it is mentioned in paragraph 4 that defendant No.1 was in possession of the suit land, however, in paragraph 9 the plaintiffs have, while pleading for valuation of the suit, valued the suit only for declaration and relief of permanent injunction. Further, in the relief clause also the plaintiffs have prayed for relief possession in clause (b), therefore, the order passed by the trial Court is without appreciation of the pleadings and without appreciation of the plaint, which is not sustainable.
4. Learned State counsel appearing for respondent No.9 makes a formal objection.
5. On perusal of the copy of plaint, the submission made by counsel for the petitioner finds support and it is clearly pleaded by the plaintiffs that they are not in possession of subject matter of the suit and also that they have prayed for relief of possession which is a consequential to the relief of declaration. Therefore, the relief of possession also had to be valued according to provision under Section 7(iv)(c) of the Court Fees Act. Although, in this respect the trial Court can pass a curative order that if the defect is cured, the proceedings may go further, therefore, the petition is disposed of at the motion stage. The impugned order so far it relates to the dismissal of the application under Order VII Rule 11 of the C.P.C. filed on the ground of improper valuation and payment of court fee for relief of possession, is set aside and the trial Court is directed to

reconsider the prayer made by the petitioner only to the extent of the proper valuation of the suit in respect to the relief of possession before proceeding further.

6. Accordingly, the petition is disposed of.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nimmi