

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 933 of 2019

- Kanchan Sen Gupta S/o Late Manoranjan Sen Gupta Aged About 74 Years R/o Khamhardeeh, Raipur, Tahsil And District Raipur Chhattisgarh 492001

---- Petitioner

Versus

1. Manharn Lal Yadav S/o Kanhiyalal Yadav R/o Village Lagra, Bilaspur, Tehsil And Disitriect Bilaspur Chhattisgarh
2. M/s S.K.S. Chhattisgarh Fly Ash Bricks, Proprietor Murad Khan S/ Yashin Khan, R/o M-37, Ompur, Rajgamar, Tehsil And District Korba Chhattisgarh
3. Yasin Khan S/o Saiyad Khan R/o Rajga Marg, Tehsil And District Korba Chhattisgarh

---- Respondents

For Petitioner : Mr. Akhilesh Mishra, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

06-12-2019

1. This petition has been brought being aggrieved by the order dated 30.09.2019 passed by the trial Court in Civil Suit No.138-A/2018.
2. Learned counsel for the petitioner submits that the petitioner is plaintiff, who has filed a suit against the respondents praying for relief of refund of the advance amount and also for the specific performance of the contract for sale of the suit property. The respondent No.1 filed an application under Order 7 Rule 11 making an objection on the pecuniary jurisdiction of the Court which is the Court of 6th Additional Civil Judge, Class II, Bilaspur. The learned Court below has by the impugned order allowed the application and has ordered the petitioner to file application

for return of plaint under Order 7 Rule 10A of C.P.C.

3. It is further submitted that the petitioner is entrusted only for the refund of the advance amount given against the agreement with respondent No.1 as the property is now already sold to respondent No.2 and 3. Therefore, the petitioner is now entrusted only for the refund and not in the specific performance of the contract. Therefore, appropriate order be passed.
4. Considering that on the basis of the relief claimed for specific performance, I do not find any reason in the finding arrived at by the trial Court that the suit needs to be valued ad-valorem for the payment of Court fees. However, as the petitioner has shown his disinterest in claiming of relief for specific performance, therefore, he has liberty to file application before the learned trial Court to make amendments in the relief clause in the plaint for the purpose so that the suit remains within the jurisdiction of the learned trial Court. Therefore, the petition is disposed off. The petitioner has liberty to file application for amendment before the trial Court to make suitable amendments in his plaint.
5. Accordingly, the petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Monika