

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 58 of 2020

- Menprasad S/o Moharsai Aged About 47 Years, R/o Village Kharvat Chervapara, Tahsil Baikunthpur and District Koriya Chhattisgarh.....Plaintiff, District : Koriya (Baikunthpur), Chhattisgarh
Plaintiff/

---- Petitioner

Versus

1. Hans Kumar S/o Harinarayan Aged About 26 Years, R/o Village Kharvat Chervapara, Tahsil Baikunthpur And District Koriya Chhattisgarh.....Defendant, District : Koriya (Baikunthpur), Chhattisgarh
2. Chandrasekhar S/o Harinarayan Aged About 22 Years, R/o Village Kharvat Chervapara, Tahsil Baikunthpur and District Koriya Chhattisgarh.....Defendant, District : Koriya (Baikunthpur), Chhattisgarh
3. Kadam Kunwar D/o Moharsai W/o Babulal, Aged About 35 Years, R/o Village Girjapur, Police Station Patna, Tahsil Baikunthpur, District Koriya Chhattisgarh.....Defendant, District : Koriya (Baikunthpur), Chhattisgarh
4. Indra Kunwar D/o Moharsai, W/o Nankaram, Aged About 50 Years, R/o Village Jampara, Tahsil Baikunthpur, District Koriya Chhattisgarh, District : Koriya (Baikunthpur), Chhattisgarh
5. Sonkunwar @ Guddi D/o Moharsai, W/o Jagmohan, Aged About 45 Years R/o Village Sattipara, Tahsil Baikunthpur, District Koriya Chhattisgarh.....Defendant, District : Koriya (Baikunthpur), Chhattisgarh
6. Harinarayan S/o Moharsai, Aged About 27 Years, R/o Village Kharvat Chervapara, Tahsil Baikunthpur, District Koriya Chhattisgarh.....Defendant, District : Koriya (Baikunthpur), Chhattisgarh
7. State of Chhattisgarh Through The Collector, District Koriya Chhattisgarh.....Defendant, District : Koriya (Baikunthpur), Chhattisgarh

Defendants/

----Respondents

For Petitioner – Shri Gyan Prakash Shukla, Advocate.

For Respondents 1 to 6 – Shri Hemant Kumar Agrawal, Advocate.

For Respondent No.7/State – Shri Sudeep Verna, Deputy Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

19-03-2020

1. By this petition the petitioner has challenged the order dated 04-12-2019 passed by the Court of Civil Judge Class-II, Baikunthpur, District Koriya partly

allowing the application of the private respondents/defendants filed under Order 7 Rule 11 of the CPC.

2. It is submitted that the learned lower Court has committed an error in passing the impugned order. The petitioner/plaintiff was not a party to the sale deed and therefore, he had entitlement to make prayer to declare the sale deed dated 09-12-2013 void ab-initio, for which only fixed court fees is payable for the relief of declaration. The learned Court below has erroneously held that ad-valorem court fees had to be paid for the relief of declaration prayed by the petitioner/plaintiff. Therefore, the impugned order is not sustainable. It is prayed that this Court may exercise its jurisdiction and interfere with the impugned order.

3. Learned counsel for the respondents 1 to 6 firstly objects to the maintainability of this writ petition and submits that the petitioner had remedy to file revision petition against the impugned order.

Reliance has been placed on the judgment of Gujarat High Court in the matter of **Chandrakant Ratanshi Kothari vs Ratanshi Damji Kothari and Ors.**, AIR 1971 Gujrat 55. It is submitted that a wrong decision made as to court fees on plaint is a revisional order. Therefore, the petition is not maintainable. It is further submitted that on merits as well the petitioner has no case. Therefore, the petition be dismissed.

4. The petitioner is plaintiff who has brought the civil suit against the deceased defendant No.1 Mohar Sai who happened to be his father. It has been pleaded in the plaint that the suit property was though mutated and entered into the name of Mohar Sai in the official record, but the property was of joint nature. Deceased defendant No.1 Mohar Sai had no authority to sale the property excess to his 1/6th share, whereas, deceased defendant No.1 has sold out the whole property by the sale deed dated 09-12-2013. On this basis, the prayer is made for relief of declaration of title of the plaintiff and other

defendants over the suit property, partition share and possession of the suit property, permanent injunction and also relief is prayed for cancellation of sale deed dated 09-12-2013 on the ground that it is void ab-initio.

5. On perusal of the plaint itself, apart from the claim made by the petitioner/plaintiff that the property which was recorded in official records in the name of Mohar Sai was under the joint title of the petitioner and others, the petitioner is son of deceased Mohar Sai, therefore, as per principles of civil law, a son has obligation to honour all the transactions made by his father, therefore, the petitioner does not stand on a footing of a third person, hence, the petitioner can make a prayer to set aside the sale deed on the ground of its voidability and according to the facts present in this case, he cannot make a statement that the sale deed executed by his father deceased defendant No.1 is void ab-initio. The prayer required to be made would be of cancellation of the said sale deed, therefore, it would not fall under the category of declaratory decree, hence, in such cases the ad-valorem fees shall be payable, hence, the learned trial Court has not committed any error. Apart from this, it is also held that the petitioner had remedy to file a revision petition in this case. Hence, on merit and also on the ground of maintainability, this petition does not deserve to be allowed. Therefore, the petition is dismissed accordingly at the motion stage.

Sd/-

(Rajendra Chandra Singh Samant)
Judge