

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 50 of 2020

1. Sumer Singh S/o Late Chaitram Sahu, Aged About 50 Years, Resident of Village - Ganesh Khapri, Post - Mahroom, Tehsil - Daundilohara, District Balod Chhattisgarh., District : Balod, Chhattisgarh (Defendant -1B)
2. Likha Bai D/o Late Chaitram Sahu, Aged About 55 Years, Resident of Village - Ganesh Khapri, Post - Mahroom, Tehsil - Daundilohara, District Balod Chhattisgarh., District : Balod, Chhattisgarh (Defendant -1C)
3. Rukmani D/o Late Chaitram Sahu, Aged About 40 Years, Resident of Village - Ganesh Khapri, Post - Mahroom, Tehsil - Daundilohara, District Balod Chhattisgarh., District : Balod, Chhattisgarh (Defendant - 1D)

---- Petitioners

Versus

1. Paklu Ram Sahu S/o Dhansai Sahu, Aged About 65 Years, Resident of Village - Ganesh Khapri, Post - Mahroom, Tehsil – Daundi lohara, District Balod Chhattisgarh., District : Balod, Chhattisgarh (Plaintiff)
2. Mukesh Kumar Sahu S/o Chaitram Sahu 'Aarakshak', Aged About 30 Years, Presently residing at Office of Superintendent of Police, Durg, Tehsil and District - Durg Chhattisgarh., District : Durg, Chhattisgarh (Defendant No.02)
3. Kailash Ram Sahu S/o Ramu Singh Sahu, Aged About 35 Years, R/o Village Dumughucha, Ward No. 14, Post - Khertha Bazar, Tehsil - Daundi lohara, P.S. - Dewari, District Balod Chhattisgarh., District : Balod, Chhattisgarh (Defendant No.03)
4. State of Chhattisgarh Through Collector, Balod Chhattisgarh., District : Balod, Chhattisgarh (Defendant No.04)

Defendent No.1, Chaitram Sahu since deceased, hence not made party.

----Respondent

For Petitioners – Ms. Aditi Singhvi, Advocate.

For State/Respondent No.4 – Mr. Jitendra Shukla, Panel Lawyer.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order on Board

07-02-2020

1. This revision has been brought being aggrieved by the order dated 03-12-2019 passed by the Court of First Additional District Judge, Balod, District Balod, Chhattisgarh rejecting the application filed by the petitioners/defendants under Order 14 Rule 5 of the CPC praying for framing of additional issues.

2. It is submitted that respondent No.1 has filed a suit pleading that he had entered into an agreement for sale of the suit property with the father of the petitioners, Chaitram Sahu and on that basis relief of specific performance is prayed for.

3. It is submitted that the petitioners never had knowledge regarding the agreement which their father entered with respondent No.1. After the petitioners were incorporated as LRs. in the suit they have filed a written statement with pleadings on the maintainability of the suit and also other grounds regarding non-entitlement of the deceased father in entering into any such agreement. Therefore, the application was filed under Order 14 Rule 5 of the CPC praying framing of additional issues on the basis of the pleadings made by the petitioners in their defence, which has been erroneously rejected by the trial Court. Therefore, the order passed is unsustainable which may be set aside and relief be granted to the petitioners.

4. Heard learned counsel for the petitioners and perused the documents.

5. Perused the issues framed by the trial Court and it is found that it is being a case for specific performance of agreement to sale, therefore, the question in accordance with Section 16(c) of the Specific Relief Act, the issue of readiness and preparedness was necessary to be framed which has not been framed.

6. On perusal of the pleadings in the written statement copy of which has been filed along with the petition, I am of this view that the pleading made by the petitioners in paragraph 11 to this extent that the property regarding which the agreement was executed for sale was ancestral property and the deceased/defendant No.1 had no right to enter into any agreement for the same is ground for framing of issue. Therefore, without notice to the

respondents side this petition is disposed off at motion stage. The impugned order is set aside and the learned trial Court is directed to reconsider on the application filed by the petitioners in accordance with the observation that have been made in this order.

7. The petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge