

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WP227 No. 725 of 2018

- M.A. Wasim S/o Late M.A. Alim, Aged About 60 Years, R/o Sadan Bazar, Salhewarpara, Dhamtari, District Dhamtari Chhattisgarh., District : Dhamtari, Chhattisgarh

---- Petitioner/Defendant

Versus

- M.A. Fahim S/o Late M.A. Alim, Aged About 62 Years, R/o Sadar Bazar, Salhewarpara, Dhamtari, District Dhamtari Chhattisgarh., District : Dhamtari, Chhattisgarh

--- Respondent/Plaintiff

For Petitioner – Shri A.K. Prasad, Advocate.
For Respondent – Shri Adil Minhaj, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant
Order on Board

03-02-2020

Heard.

1. This petition has been brought being aggrieved by the order dated 17-07-2018 by which the application filed by the petitioner/defendant under Order 26 Rule 9 of the CPC was dismissed by the trial Court.
2. It is submitted by learned counsel for the petitioner that he has pleaded that he is in possession of half of the portion of the suit property on which there is construction. The real market value of the property in dispute has been claimed by the petitioner to be about Rs.40,00,000/-, whereas, the respondent/plaintiff has claimed and pleaded its value to be only Rs.1,00,000/-. The petitioner had earlier filed an application under Order 7 Rule 11 of the CPC raising the ground of improper valuation of the suit, which has been although rejected. Therefore, there being pleading of the petitioner/defendant present challenging the valuation of the suit, hence, for the purpose of determination of the same appointment of commissioner was essential. Order 26 Rule 9 of the CPC provides that commission can be issued for ascertaining the market value of any property when it is necessary for resolution of any dispute between the parties.

Reliance has been placed on the order of Madras High Court in the matter of **S.N. Balapattabi Vs. Mrs. Balanagalakshmi**, passed in C.R.P. PD No.3686 of 2016 and C.M.P. No.18699 of 2016, in which it was held by the Madras High Court that when the defendant has raised the issue of undervaluation of the properties before recording of evidence, in that case, question of jurisdiction becomes involved, therefore, this matter has to be examined as preliminary issue.

Reliance has also been placed on the judgment of High Court of Himachal Pradesh delivered in the matter of **Bali Ram Vs. Mela Ram and another**, AIR 2003 Himachal Pradesh 87.

3. Learned counsel for the respondent opposes the submission made by learned counsel for the petitioner and submits that the petitioner has already raised the same issue before the trial Court in his application filed under order 7 Rule 11 of the CPC which has been rejected by the trial Court on 17-05-2018. The application under Order 26 Rule 9 of the CPC was deliberately filed only for the purpose of collection of evidence by the petitioner by making use of legal process which cannot be permitted. Therefore, the petition brought is totally without any substance and the learned trial Court has not committed any error in passing the impugned order.

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

5. The respondent has filed a civil suit pleading that the suit property having a house constructed on it was gifted to him by his mother in 1986 and the possession was also handed over to him. The petitioner/defendant made a request to the respondent to provide a house for his residence for some time, before he makes his own arrangement, which was acceded to by the respondent and the possession of the property was given to the petitioner as licensee. It is also pleaded that then the petitioner with intention to cause damage to the title of the respondent has acted in numbers of ways, therefore

the respondent terminated the license of the petitioner by a notice dated 14-06-2016 and asked the petitioner to vacate the disputed property. As the petitioner did not vacate the property, the civil suit has been filed in which it is pleaded that market price of the property in possession of the petitioner is Rs.1,00,000/-, relief of declaration and possession has been prayed for.

6. The petitioner/defendant has denied the pleadings in the plaint regarding the title of the respondent over the suit property and raised his own claim over the same. He has alleged that it is the respondent who has in collaboration with the authorities has entered his name in the official records, whereas, he is in possession of the property since 1992 and he himself has raised the construction over the same. The present market value of this property is between Rs.40,00,000/- to Rs.50,00,000/-, challenging the valuation he has further claimed that he is joint owner of the suit property and has prayed for dismissal of the suit.

7. Value of the suit property is subject under challenge, therefore, it is a dispute to be resolved. Claim of both the parties regarding the valuation of the property are different, therefore, firstly this claim needs to be established by bringing in evidence in that regard on issue of valuation framed in this respect. The wording in Order 26 Rule 9 are very clear, that when Court deems a local investigation to be requisite or proper, only then a commission can be issued. In this particular case as the pleadings between the parties are already complete and it can be gathered that the issues are also framed. Since it is not clear from the documents produced by both the sides whether such issue regarding proper valuation and proper payment of Court Fees has been framed by the trial Court or not, a direction can be issued to the learned trial Court with regard to the same looking to the necessity in the case for framing of such issue.

As the application filed by the petitioner on the same ground under

Order 7 Rule 11 of the CPC was rejected, therefore, I am also of this view that this application was not fit to be entertained at this stage for the simple reason that firstly both the parties should have opportunity to produce evidence in support of their claims in their pleadings and subsequent to that, if the Court is of the opinion that evidence brought on record is not sufficient to come to any conclusion, in that case, the parties shall have opportunity to file repeat application at a later stage praying for appointment of commissioner for the purpose of valuation of the suit property. Hence, in this particular case when the civil suit is at the stage of initiation of hearing of the parties such application for appointment of commissioner to evaluate the suit property cannot be regarded to have been filed at appropriate stage. Hence, I do not find any error in the impugned order.

Therefore, the petition filed is dismissed and disposed off at the motion stage. The learned trial Court is directed, that if an issue regarding proper valuation and proper presentation of the Court fees has not been framed, it be framed pursuant to this order and the parties be given opportunity to produce evidence in support of their claims with respect to the valuation of the suit property. Both the parties have liberty to file application under Order 26 Rule 9 of the CPC at any later stage, if it is so required.

8. The petition stands disposed off.

Sd/-

(Rajendra Chandra Singh Samant)
Judge