

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(227) No. 176 of 2021

Om Prakash Gupta, S/o. Late Surajpal Gupta, aged about 65 years, R/o. Near Hazari Hotel, Gandhi Chowk Manendragarh, District Koriya Chhattisgarh.

---- Petitioner

Versus

1. Ravishankar Gupta, S/o. Late Sundar Lal Gupta, aged about 67 years,
2. Shivshankar Gupta, S/o. Late Sundar Lal Gupta, aged about 60 years,

Both are R/o. 6-B, Mandira Block, Marlin Jaishri Vihar, Mandi Road, Pandaritarai, Raipur, District Raipur Chhattisgarh.
3. Durga Prasad Gupta (Kesharwani), S/o. Late Surajpal Gupta, aged about 62 years, R/o. P-73, Liberty Colony, Village Samardha, Post Mandideep, Bhopal Madhya Pradesh.
4. Rajesh Kumar Kesharwani, S/o. Late Surajpal Gupta, aged about 52 years, R/o. Mahamaya Electricals, Near Hazari Hotel, Near Hazari Hotel, Manendragarh, District Koriya Chhattisgarh.
5. Vikash Kesharwani, S/o. Late Surajpal Gupta, aged about 40 years, R/o. Deepshikha General Store, Smriti Nagar Market, Post Nehru Nagar, Bhilai, District Durg Chhattisgarh.
6. State of Chhattisgarh, Through : The Collector, Koriya, District Koriya Chhattisgarh.
7. Ajeet Singh, S/o. Shiv Moti Singh, aged about 40 years, R/o. Amakherwa Road, near the house of Dr. Sinha, Manendragarh and Business Place, Jhagarakhand Road, in front of Khan Nursingh Home, Manendragarh, District Koriya Chhattisgarh.

---- Respondents

For Petitioner : Mr. Atanu Ghosh, Advocate
For Respondents No.1 and 2 : Mr. Parag Kotecha, Advocate
For State/respondent : Mr. Alok Nigam, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

20/07/2021

1. The present petition under Article 227 of the Constitution of India has been brought seeking interference of this Court for setting-aside the order dated 15.02.2021, passed by the Court of Civil Judge Class-I, Manendragarh, District – Koriya, in Civil Suit No. 52-A/2019, dismissing the application of the petitioner/defendant No.1 filed under Order 14 Rule 2 (2) of C.P.C.
2. Respondents No.1 & 2 have filed a civil suit praying for relief of declaration of title and permanent injunction against the petitioners and other defendants. It has been pleaded in the plaint that the plaintiffs/respondents No.1 and 2 are the sole owner of the disputed property, regarding which, relief of declaration and permanent injunction is sought for. The suit is contested by the petitioner. The trial Court has framed issues. The issue No.8 framed is this whether the suit filed is beyond the jurisdiction of the Court. Application under Order 14 Rule 2 Sub-rule 2 of C.P.C. has been filed by the petitioner praying for consideration on issue No.8 as a preliminary issue. The learned trial Court has held that the issue No.8 is a mixed question of facts and law, therefore, it can not be decided as a preliminary issue and has rejected the application.

3. It is submitted by the learned counsel for the petitioner that the issue No.8 framed by the trial Court is fit to be decided as preliminary issue according to the pleadings of the petitioner/defendants. Reliance has been placed on the judgment of Supreme Court in case of **Arjun Agrawal Vs. Nagreeka Exports (P) Ltd. & Another**, reported in **(2002) 10 SCC 101**, **Sujir Keshav Nayak Vs. Sujir Ganesh Nayak**, reported in **(1992) 1 SCC 731** and the judgment of the Full Bench of Karnataka High Court in **W.P. No.8087 of 2018**, between **Venkatesh R. Desai Vs. Smt. Pushpa Hosmani & Ors.**, decided on **26.10.2018**, in which it has been held that question of valuation of suit, which ousts the jurisdiction of the Court, in which the case is filed, should be decided at preliminary stage.
4. Learned counsel for the respondents opposes the petition and the submissions made in this respect. It is submitted that the learned trial Court has not committed any error because the issue No.8 is a mixed question of facts and law, for which, there shall be requirement of evidence, hence, there is no ground present for exercise of jurisdiction of this Court under Article 227 of the Constitution of India. It is prayed that petition be dismissed.
5. Counsel for the State/respondent formally opposes the petition and the submission made in this respect.
6. I have heard the learned counsel for both the parties and perused the documents placed on record.
7. The respondents No.1 and 2 have valued the suit in paragraph -14 of the plaint praying for declaration simplicitor valuing at

Rs.40,000/- and making payment of fixed Court fees of Rs.500/- and Rs.1000/- for the relief of permanent injunction.

8. Petitioner/defendant has in his written statement pleaded that the suit property is abadi/nazul land and the plaintiffs have deliberately show the property as agricultural land to take benefit of valuation on the lower side. The value of the property is huge, therefore, the suit is not within the pecuniary jurisdiction of the Court.
9. In case of *Sujir Keshav Nayak (supra)*, the Supreme Court has held that where the question of Court fee is linked with jurisdiction, a defendant has right to raise objection and the Court should decide it as a preliminary issue. It has been similarly held in the case of *Venkatesh R. Desai (supra)* by the Karnataka High Court that in the matter of objection of valuation of Court fees, the same is not invariably required to be tried as preliminary issue and before taking evidence on other issue but could be tried as preliminary issue if it relates to the jurisdiction and the trial Court is of the view that the suit or any part thereof could be disposed of on its determination.
10. Firstly in this case, the plaintiffs/respondents No.1 and 2 have brought the suit for declaration simplicitor and permanent injunction. The objection raised in written statement is on this basis that the suit land is a diverted and abadi land and therefore, it requires to be valued at the higher side. The plaintiffs have not valued the suit on the basis of the value of the property and further the objection raised by the petitioner/defendant is clearly a dispute raised and for the determination of the question raised in such

pleading there is requirements of evidence. The pleadings in the written statement do not make out a clear case at present that the civil suit filed by the respondents No.1 and 2 clearly beyond the pecuniary jurisdiction of the Court, which requires evidence for drawing conclusion on the objection, therefore, this Court is of the view that the learned trial Court has not committed any error.

11. In view of the forgoing discussion made here-in-above, the present petition is without any substance, which is dismissed at motion stage itself.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram