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## HIGH COURT OF CHHATTISGARH AT BILASPUR

### CR No. 131 of 2026

**1 - Vinod Kumar Lalwani S/o Thawar Das Lalwani, Aged About 47 Years R/o Sindhi Colony, Raipur Naka, Durg (C.G.)**

**2 - Mukesh Lalwani S/o Thawar Das Lalwani Aged About 49 Years R/o Sindhi Colony, Raipur Naka, Durg (C.G.)**

**3 - Rajesh Kumar Lalwani S/ Thawar Das Lalwani Aged About 53 Years R/o Sindhi Colony, Raipur Naka, Durg (C.G.)**

**4 - Naresh Kumar Lalwani S/o Thawar Das Lalwani Aged About 51 Years R/o Sindhi Colony, Raipur Naka, Durg (C.G.)**

**... applicant (s)**

### **versus**

**1 - Manisha Lalwani W/o Ashok Kumar Lalwani Aged About 54 Years R/o Makan No. H 177, Anand Vihar Sector-2, Natraj Furniture Ke Samne, Taj Chowk, Telibandha, Raipur Tehsil And Distt. Raipur (C.G.)**

**2 - Sweta Lalwani R/o Makan No. H 177, Anand Vihar Sector-2, Natraj Furniture Ke Samne, Taj Chowk, Telibandha, Raipur Tehsil And Distt. Raipur (C.G.)**

**3 - Tushar Lalwani R/o Makan No. H 177, Anand Vihar Sector-2, Natraj Furniture Ke Samne, Taj Chowk, Telibandha, Raipur Tehsil And Distt. Raipur (C.G.)**

**4 - Collector, Durg (C.G.)**

**... Respondent(s)**

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For applicant (s) : N. Naha Roy, Advocate

For Respondent No. 4/ State : Mr. Suyashdhar Badgaiya, Govt. Advocate

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**Hon'ble Shri Justice Ravindra Kumar Agrawal, J**

### **Order on Board**

**11.06.2026**

- The present Civil Revision has been filed under Section 115 of the Code of Civil Procedure, 1908, against the order dated 19.05.2026

passed by learned Eighteenth Civil Judge, Junior Division, Durg in Civil Suit No. A/275/2025 whereby the application filed by the petitioner under order 7 Rule 11 of CPC has been rejected.

2. The brief facts of the case are that the applicants are defendants No. 1 to 4 before the learned trial Court, whereas respondents No. 1 to 3 are the plaintiffs in the civil suit. The plaintiffs have instituted the suit seeking a declaration that the Will dated 11.09.2015, alleged to have been executed in favour of defendants No. 1 to 4, is null and void. They have further prayed for a declaration of their title over the suit property and for the grant of permanent injunction. According to the pleadings made in the plaint, plaintiff No. 1 is the widow of Late Ashok Kumar Lalwani, while plaintiffs No. 2 and 3 are his children. Late Ashok Kumar Lalwani died on 16.11.2016. The defendants are the brothers of Late Ashok Kumar Lalwani. It is pleaded that, being the legal heirs of the deceased, the plaintiffs have succeeded to and are entitled to the suit property. However, the defendants are asserting rights over the suit property on the strength of a Will dated 11.09.2015, allegedly executed by Late Ashok Kumar Lalwani in their favour. It is the specific case of the plaintiffs that the suit property was the self-acquired property of Late Ashok Kumar Lalwani and that, after his demise, the defendants laid claim thereto on the basis of the aforesaid Will, thereby casting a cloud upon the plaintiffs' title. The plaintiffs contend that Late Ashok Kumar Lalwani neither executed any such Will nor transferred his interest in the suit property in favour of the defendants in any manner whatsoever. It is further pleaded that the plaintiffs had earlier instituted Civil Suit No. 63A/2019 before the learned 10th Civil Judge, Class-II, Durg. During the pendency of the said suit, the revenue

authorities ordered mutation of the suit property in favour of the plaintiffs. Consequently, the plaintiffs withdrew the said suit by filing an application under Order XXIII Rule 1 of the Code of Civil Procedure, reserving liberty to institute a fresh suit, and the same was permitted to be withdrawn vide order dated 05.07.2025. Subsequently, the Sub-Divisional Officer (Revenue), Durg, by order dated 13.10.2025, set aside the mutation order granted in favour of the plaintiffs and observed that mutation in respect of the suit property could be effected only after adjudication of the rival claims of title by a competent civil court. It is thereafter that the present suit came to be instituted by the plaintiffs.

3. It is also the pleading of the plaintiffs that after the passing of the order by SDO (Revenue), Durg, on 13.10.2025, the cause of action arose in favour of the plaintiffs, and then they filed the suit on 14.11.2025, for declaration of their title over the suit property, declaring the Will deed dated 11.09.2015 as null and void, and also for permanent injunction. The filing of the earlier suit and its withdrawal have also been pleaded by the plaintiffs in their suit. The subsequent suit has been registered as Civil Suit No. A/275/2025.
4. In the aforesaid civil suit, the defendants entered appearance and filed an application under Order VII Rule 11 of the Code of Civil Procedure on 09.02.2026 seeking rejection of the plaint. The principal ground urged in the application was that the plaintiffs had earlier instituted a civil suit on the same facts and cause of action, which they subsequently withdrew, and that the present suit, being based on the same cause of action, was therefore not maintainable. In the order dated 05.07.2025, no liberty was observed, permitting them to file the

fresh suit on the same cause of action, for the same relief and between the same parties. The plaintiffs were well aware of the Will deed dated 11.09.2015, and the limitation to challenge it is 3 years, and therefore, the present suit of the plaintiffs is barred by limitation. No fresh cause of action arose in favour of the plaintiffs, and their plaint is liable to be rejected.

5. The learned trial Court, after hearing the parties, rejected the said application filed by the defendants, under Order VII Rule 11 CPC vide order dated 19.05.2026. Aggrieved by the said order, the defendants have preferred the present civil revision.
6. Learned counsel for the applicants/defendants would submit that the impugned order dated 19.05.2026, rejecting the application under Order VII Rule 11 CPC, is wholly unsustainable in law. He would submit that the plaintiffs had earlier instituted Civil Suit No. 63A/2019 on the very same subject matter, challenging the same Will dated 11.09.2015 and claiming identical reliefs. The said suit was admittedly withdrawn by the plaintiffs under Order XXIII Rule 1 CPC on the ground that their grievance stood redressed after mutation of the suit property was effected in their favour. No liberty was granted by the learned trial Court to institute a fresh suit on the same cause of action. Therefore, by virtue of the express bar contained in Order XXIII Rule 1(4) CPC, the plaintiffs were precluded from filing a subsequent suit in respect of the same subject matter and cause of action. It is argued that the learned trial Court failed to appreciate the legal consequence flowing from the withdrawal of the earlier suit and thereby committed a jurisdictional error in refusing to reject the plaint. He would further submit that the subsequent order dated 13.10.2025, passed by the

Sub-Divisional Officer (Revenue), Durg, setting aside the mutation in favour of the plaintiffs, did not give rise to any fresh cause of action. According to him, the said order merely reiterated the settled position of law that disputed questions relating to title on the basis of a Will are required to be adjudicated by a competent civil court and did not confer any new substantive right upon the plaintiffs. It is submitted that the challenge to the Will had already been made in the earlier suit and, therefore, the cause of action stood exhausted when the plaintiffs voluntarily withdrew the said suit without obtaining liberty to institute a fresh suit. Reliance is placed upon the decision of the Hon'ble Supreme Court in **Sarguja Transport Service v. State Transport Appellate Tribunal, M.P., Gwalior**, 1987 (1) SCC 5, to support that withdrawal of proceedings without liberty bars initiation of fresh proceedings on the same cause of action, and the same principle is embodied in Order XXIII Rule 1(4) CPC.

7. It is further argued that the suit is ex facie barred by limitation and, therefore, liable to be rejected under Order VII Rule 11(d) CPC. Learned counsel for the applicants also submits that the Will in question was allegedly executed on 11.09.2015 and the plaintiffs themselves had challenged the same in the earlier suit instituted in the year 2019, thereby demonstrating their knowledge thereof. In the absence of any specific pleading regarding a fresh accrual of cause of action, the subsequent suit filed after withdrawal of the earlier suit is clearly barred under Article 58 of the Limitation Act, 1963. Placing reliance upon the decisions of the Hon'ble Supreme Court in **Nikhila Divyang Mehta**, decided on 15.04.2025 by Hon'ble Supreme Court in SLP (C) No. 13459 of 2024, learned counsel would argue that where,

on a reading of the plaint, the suit appears to be barred by law, and the pleadings merely create an illusion of a continuing cause of action, the plaint is liable to be rejected at the threshold. He would therefore submit that the impugned order deserves to be set aside and the plaint is liable to be rejected under Order VII Rule 11 CPC. He would also refer to the judgment of **Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra)**, 2020 (7) SCC 366, and **Shri Mukund Bhawan Trust and Others v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle and Another**, 2024 SCC Online SC 3844.

8. I have heard learned counsel for the applicants and perused the documents annexed with the Civil Revision Petition and gone through the pleadings.
9. The grievance of the applicants in the present civil revision is that the plaintiffs had earlier instituted a civil suit seeking substantially the same reliefs on the basis of the same set of facts, and, having withdrawn the said suit without obtaining liberty to institute a fresh suit, they were precluded from filing the subsequent suit. It is contended that the present suit is, therefore, barred under the provisions of Order XXIII Rule 1 of the Code of Civil Procedure. A perusal of the earlier plaint (Annexure-A/3) reveals that the plaintiffs had instituted the suit on the apprehension that the defendants, on the strength of the alleged Will dated 11.09.2015, might alienate the suit property and interfere with the plaintiffs' peaceful possession thereof. The plaintiffs had challenged the validity of the said Will and sought protection of their rights in respect of the suit property.
10. Thereafter, the plaintiffs filed an application dated 05.07.2025 under Order XXIII Rule 1 CPC seeking withdrawal of the suit. In the said

application, it was specifically pleaded that the suit property had already been mutated in the names of the plaintiffs in the revenue records and, consequently, the principal grievance for which the suit had been instituted no longer survived. It was further stated that, in view of the mutation having been effected in their favour, there was no necessity to pursue the challenge to the alleged Will any further. Taking note of the averments made in the application, the learned trial Court, by order dated 05.07.2025, permitted the plaintiffs to withdraw the suit under Order XXIII Rule 1 CPC. The withdrawal was sought on the premise that, owing to the mutation having already been carried out in favour of the plaintiffs, the suit had become unnecessary and, therefore, they did not wish to prosecute the same any further. It was the contention of the plaintiffs in the application filed by them under Order XXIII Rule 1 CPC that:-

"2. यह कि, वादिनी द्वारा प्रस्तुत दावा में मूलतः मूल उद्देश्य कपटपूर्वक निष्पादित वसीयतनामा दिनांक 11.09.2015 को अवैध घोषित करने बाबत था, अर्थात् उक्त कपटपूर्वक निष्पादित वसीयतनामा के आधार पर वादिनी के पति के नाम से स्थित संपत्ति खसरा नं.-632/20 रकबा 0.0020 हे. स्थित ग्राम-दुर्ग, प.ह.नं.-19, रा.नि.मं. दुर्ग, तह. व जिला-दुर्ग (छ.ग.) को अपने नाम पर हस्तांतरित करवाना प्रतिवादीगण का उद्देश्य था।

3. यह कि, उक्त संपत्ति वर्तमान समय में राजस्व अभिलेखों में वादिनी एवं मूल उत्तराधिकारी अन्य वादीगण के नाम पर नामांतरित राज्य शासन द्वारा प्रकरण वास्ते नामांतरण का प्रकरण चलाया जाकर, नामांतरित किया जा चुका है। ऐसी स्थिति में प्रतिवादीगण द्वारा जो वसीयतनामा अपने पक्ष में निष्पादित करवाया गया है, उक्त वसीयतनामा औचित्यहीन हो चुका है तथा उक्त वसीयतनामा को अब कपटपूर्वक निष्पादित वसीयतनामा को अवैध घोषित कराने की आवश्यकता नहीं रह गई है।

5. यह कि, वादिनी अपने अन्य अधिकारों को सुरक्षित रखते हुये इस प्रकरण को प्रत्याहरित करना चाहती है।"

11. Considering the application of the plaintiffs, the learned trial Court, by allowing the application, permitted the plaintiffs to withdraw the suit, vide order dated 05.07.2025. The relevant part of the order is as under:-

"अतः प्रकरण की समस्त स्थिति एवं परिस्थिति को देखते हुये वादीगण की ओर से प्रस्तुत आवेदन अंतर्गत आदेश 23 नियम 1 व्यवहार प्रक्रिया संहिता, 1908 का आवेदन प्रकरण का गुण-दोष पर विचार किये बिना स्वीकार कर वादीगण को अपना व्यवहार वाद वापस लिये जाने अनुमति प्रदान की जाती है।"

12. It is not in dispute that the SDO (Revenue), Durg, has passed the order on 13.10.2025 and set aside the subject mutation order dated 17.10.2022, which was in favour of the plaintiffs and observed in its order that the party who is claiming mutation on the basis of the Will is required to get their title decided by the competent Civil Court. It is necessary to notice here the relevant part of the order passed by SDO (Revenue) Durg, dated 13.10.2025, which is as under:-

"अतएव उपरोक्त तथ्यों के आधार पर अपीलार्थी के द्वारा प्रस्तुत अपील आंशिक रूप से स्वीकार करते हुए अधीनस्थ न्यायालय द्वारा दिनांक 17 10.2022 विधिसंगत न होने से निरस्त किया जाता है तथा आवेदित भूमि पर पूर्व भूमिस्वामी अशोक कुमार लालवानी का नाम पूर्ववत् दर्ज करते हुए माननीय सर्वोच्च न्यायालय द्वारा 2022 (1) सी.जी.आर.जे. 92 एस.सी पक्षकार जितेन्द्र सिंह विरुद्ध म.प्र.शासन एवं अन्य स्पेशल लिव पीटिशन कमांक 13146/2021 में दिनांक 06.09.2021 को प्रतिपादित न्यायदृष्टांत के अनुपालन में अपीलार्थीगण को माननीय व्यवहार न्यायालय में वसीयत के आधार पर हक के संबंध में, विशेषकर उस समय कोई विवाद है जब नामांतरण की प्रविष्टि को वसीयत के आधार पर किये जाने का प्रयास किया गया है तो पक्षकार, जो वसीयत के आधार पर हक/अधिकार का दावा कर रहा है, को समुचित सिविल न्यायालय से उपागम करना होगा और अपने अधिकारों को

स्पष्ट कराना होगा, जिसके उपरांत ही आवेदित भूमि पर माननीय व्यवहार न्यायालय के विनिश्चय के आधार पर आवश्यक नामांतरण की कार्यवाही की जावेगी।"

- 13.** Thereafter, the plaintiffs filed the fresh suit on 14.11.2025, claiming for the relief of declaration of their title, declaring the Will dated 11.09.2015 as null and void and for permanent injunction. In the present suit, the plaintiffs have specifically pleaded about the earlier suit and its withdrawal, and also the accrual of the cause of action after the order dated 13.10.2025 passed by SDO (Revenue), Durg. In the plaint, filed on 14.11.2025, the plaintiffs have pleaded that:-

“7. यह कि, वर्तमान में न्यायालय श्रीमान अनुविभागीय अधिकारी (राजस्व) दुर्ग (छ.ग.) के राजस्व प्रकरण क्रमांक-202409100400308/31-6/2023-24 पक्षकार-विनोद कुमार लालवानी व अन्य विरुद्ध मनीषा लालवानी व अन्य में पारित आदेश दिनांक 13.10.2025 में धारा-44 (1) छ.ग. भू-राजस्व संहिता के तहत आदेश पारित किया गया है कि वसीयत के आधार पर हक के संबंध में विशेषकर उस समय कोई विवाद है तब नामांतरण की प्रविष्टि को वसीयत के आधार पर हक/अधिकार का दावा कर रहा है, को समुचित सिविल न्यायालय से उपागम करना होगा और अपने अधिकारों को स्पष्ट कराना होगा, जिसके उपरांत ही आवेदित भूमि पर माननीय व्यवहार न्यायालय के विनिश्चय के आधार पर आवश्यक नामांतरण की कार्यवाही की जावेगी, के आदेश के उपरांत यह दावा पुनः न्यायालय में प्रस्तुत करने की आवश्यकता पड़ने के कारण उक्त दावा माननीय न्यायालय के समक्ष प्रस्तुत है जिसके कारण पुनः वाद कारण दिनांक- 13.10.2025 की उत्पन्न होने के कारण दावा पेश करने की आवश्यकता हुई।"

- 14.** It is well settled that while considering an application under Order VII Rule 11 CPC, the Court is required to confine itself to the averments contained in the plaint and the documents relied upon therein, and the

defence raised by the defendants cannot be looked into. A meaningful reading of the plaint in the present case shows that the plaintiffs have specifically pleaded not only the institution and withdrawal of the earlier suit but also the subsequent order dated 13.10.2025 passed by the SDO (Revenue), Durg, and have asserted that, pursuant thereto, a fresh cause of action arose requiring adjudication of their civil rights by a competent civil court. Whether such plea is ultimately correct or sustainable is a matter to be adjudicated upon on the basis of evidence and cannot be conclusively determined at the threshold while exercising powers under Order VII Rule 11 CPC.

- 15.** So far as the objection founded upon Order XXIII Rule 1 CPC is concerned, it is true that the earlier suit was withdrawn without any express liberty to institute a fresh suit, but the application for withdrawal of the suit was allowed, in which they claimed liberty. However, a comparison of the pleadings of the two suits and the circumstances in which the earlier suit was withdrawn would show that the plaintiffs had withdrawn the earlier proceedings on the premise that the mutation of the suit property had already been effected in their favour and, therefore, according to them, the necessity of prosecuting the challenge to the Will no longer survived. Subsequently, the mutation order itself was set aside by the SDO (Revenue), Durg, on 13.10.2025, who further observed that the parties claiming rights on the basis of the Will were required to have their title adjudicated by a competent civil court. The question whether the subsequent suit is founded upon the very same cause of action or whether the order dated 13.10.2025 furnished a distinct and recurring cause requiring adjudication of title is itself a matter requiring examination on merits.

Such an issue cannot be conclusively decided merely on the basis of the pleadings so as to reject the plaint at the threshold under Order VII Rule 11 CPC. The bar contemplated under Order XXIII Rule 1 CPC would become applicable only when the Court is able to conclude, on a complete consideration of facts, that both proceedings arise from an identical cause of action and that no subsequent event has intervened giving rise to a fresh right to sue.

16. The contention regarding limitation also does not persuade this Court to interfere with the impugned order. The plaintiffs have specifically pleaded in paragraph 7 of the plaint that after the order dated 13.10.2025 passed by the SDO (Revenue), Durg, they were compelled to approach the civil court for adjudication of their title and challenge to the Will, and that a fresh cause of action arose on that date. Whether such plea is legally sustainable and whether the suit is within limitation are issues that cannot be determined without examining the factual matrix in its entirety. It is a settled principle that limitation ordinarily constitutes a mixed question of law and fact. Unless the plaint itself unequivocally demonstrates that the suit is barred by limitation, rejection under Order VII Rule 11(d) CPC is not warranted. In the present case, the plaint does not, on its face, disclose an absolute bar of limitation. Consequently, the issue is required to be adjudicated after framing of appropriate issues and recording of evidence.
17. The judgments relied upon by the applicants are also distinguishable on the facts. In **Sarguja Transport Service** (supra), the Hon'ble Supreme Court was dealing with the effect of the withdrawal of writ proceedings without liberty and the principle against re-agitation of the same cause. The said decision does not lay down that in every case

where an earlier proceeding has been withdrawn, a subsequent suit must necessarily be rejected at the threshold without examining whether subsequent events have given rise to a fresh cause of action. Likewise, the decisions in **Dahiben, Nikhila Divyang Mehta**, and **Shri Mukund Bhawan Trust** (supra) were rendered in cases where the plaint itself disclosed a clear legal bar or where the pleadings, on their own showing, revealed that the suit was not maintainable. In the present case, however, the plaint contains specific pleadings regarding the subsequent order passed by the revenue authority, the setting aside of the mutation order and the consequent necessity of seeking adjudication of title before the civil court. Therefore, it cannot be said, at this stage, that the plaint is a product of clever drafting intended merely to create an illusion of a cause of action.

18. Having heard learned counsel for the applicants and upon perusal of the plaint, the application filed under Order VII Rule 11 CPC, the impugned order and the documents brought on record, this Court is of the considered opinion that no jurisdictional error has been committed by the learned trial Court in rejecting the application under Order VII Rule 11 CPC. The learned trial Court rightly held that the questions relating to the effect of withdrawal of the earlier suit, the applicability of Order XXIII Rule 1 CPC, the existence or otherwise of a fresh cause of action, and the plea of limitation involve issues which require adjudication on the basis of pleadings and evidence led by the parties. Since the plaint does not ex facie disclose that the suit is barred by any law, nor does it satisfy the requirements of rejection under Order VII Rule 11 CPC, no ground for interference in exercise of revisional jurisdiction is made out.

- 19.** Consequently, the civil revision being devoid of merit deserves to be, and is accordingly **dismissed**.

Sd/-  
(Ravindra Kumar Agrawal)  
**Judge**

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