

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 73 of 2015**

1. Anil Kumar Verma S/o Late Jugal Kishor Verma Aged About 63 Years
Corporator Office, A-60, Okhala Industrial Area, Phase-II, New Delhi - 110020
2. Arun Kumar Verma S/o Late Jugal Kishor Verma Aged About 60 Years
R/o Near Sharda Talkies, Maharani Mursing Home, Gorakhpur,
Jabalpur Madhya Pradesh

---- Petitioners**Versus**

1. Arun Kumar Soni S/o Bansulal Soni Aged About 54 Years R/o
Subhash Nagar, Bilaspur Chhattisgarh
2. State Of Chhattisgarh Through Collector, Bilaspur Chhattisgarh

---- Respondents

For Petitioners	:	Shri Alok Bakshi, Advocate.
For Respondent No.2/State	:	Shri Aditya Sharma, Panel Lawyer.
For Respondent No.1	:	Not noticed.

Order On Board**4/11/2015**

1. Heard on admission/ maintainability of the instant revision.
2. Admit.
3. With the consent of both the parties the matter is heard finally.
4. Facts in brief required for disposal of the instant civil revision are that Respondent No.1 had filed a civil suit for declaration of title, cost of the suit and other reliefs before the Sixth Additional District Judge, Bilaspur, District Bilaspur, Chhattisgarh as Civil Suit No. 55-A of 2014, which is pending. The present Petitioners are the Defendants. In the aforesaid matter the Petitioners/ Defendants No.1 and 2 had filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short 'the Code') for rejection of the plaint on the ground that the Plaintiff/Respondent has prayed

that he be declared as owner of the suit house on the doctrine of adverse possession as per settled law. The pleadings regarding adverse possession may not be the sole basis for declaration and instead the factum of adverse possession may only be used as a shield by the concerned party. The Court below vide order dated 7.7.2015 held that as the Plaintiff has claimed his possession not only on the basis of his adverse possession but also on the basis of agreement to sale and the genuineness of the agreement can only be decided after the evidence of both the parties and not at this stage as also the defendants did not disclose the value of suit property. Accordingly, the application under Order VII Rule 11 of the Code has been dismissed by the Court below with cost of Rs.500/-.

5. Against the impugned order the Petitioner has challenged the legality and propriety and prays for an interference in the impugned order and also prayed for quashment of the said order and held that the suit filed on behalf of the Plaintiff/ Respondent is held as not maintainable.

6. Heard the matter regarding maintainability and also on admission.

7. Learned counsel for the Petitioners submits that in paragraph 10 of the Plaint, the Plaintiff allegedly has shown cause of action as he is entitled being the owner of the suit land on the basis of the adverse possession from 21.10.2011 and in continuance no other grounds have been mentioned for declaration of the title of the suit house, hence, the plaint as filed is barred by law as mentioned in the Order VII Rule 11 (d) of the Code. Nothing has been submitted regarding the disclosure of the cause of action as required under Order VII Rule 11(a) of the Code. It was lastly submitted that the instant revision may be admitted as it is maintainable and the matter be disposed of according to law.

8. For the purposes of appreciation regarding the prayer made on behalf of the Applicants and the arguments advanced in this behalf, the impugned order dated 7.7.2015, the application and other annexed documents are perused.

9. In the plaint at paragraph 3, the Plaintiff pleaded regarding the delivery of possession, acceptance of sale proceeds and execution of agreement. Also in paragraph 5, it is pleaded regarding the consent of the Defendants regarding the sale of the suit house and possession of the suit house given to the Plaintiff. In paragraph 6 of the plaint, it is pleaded that since 26.10.1996 the Plaintiff is in the peaceful possession with the knowledge of owner of the house. In paragraph 3 also the pleadings regarding the sale amount to the owner of the suit land, possession and the agreement was mentioned. The Plaintiff also pleaded for the title of the suit house on the basis of the adverse possession.

10. Learned Court below has held that adverse possession is not the only basis but also the agreement to sale and the same is fabricated or genuine can only be decided after the evidence of both the parties and not at this stage.

11. On due consideration, it is evident from the perusal of the record that the Plaint is solely not based on adverse possession but also on some agreement of sale, delivery of possession, acceptance of the sale proceeds by the then owner of the suit house and the Court below further held that as the Defendants failed to disclose regarding the value of the suit property, dismissed the application for rejection of the plaint.

12. In view of above, I do not see any illegality or impropriety in the impugned order regarding rejection of the plaint. The impugned order is

reasoned and based on principles of law as the Petitioner even *prima facie* failed to demonstrate any reason for rejection of the plaint as mentioned in the Order VII Rule 11 of the Code. In view of this, the Court below has not committed any illegality or impropriety by rejecting the application though the Court below has dismissed the application alongwith cost of Rs.500/-.

13. Upon perusal of the stage in which the application was filed, I do not see any reason to impose the cost as the Petitioner had filed an application on the basis of the opportunity available under the law which cannot be said that the said application was filed with a view to delay the proceedings or otherwise.

14. In the considered view of this Court, the cost imposed upon the Petitioners amounting to Rs.500/- is liable to be set aside. Hence, the said part of the impugned order is set aside. As the order passed by the Court below regarding rejection of the plaint cannot be held as illegal or improper, the instant revision as filed is not liable for admission as also for its maintainability.

15. Consequently, the instant civil revision is dismissed at motion stage itself alongwith aforesaid modification for quashment of the order of cost. The petition is dismissed.

16. No order as to costs.

Sd/-
Chandra Bhushan Bajpai
Judge