

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**CR No. 79 of 2015**

1. Nanhu Diwan @ Sarangdhar Diwan S/o Ramdhan Diwan, aged about 54 years, R/o Gali No. 1 Krishna Nagar, Danganiya, Raipur, District- Raipur, Chhattisgarh
2. Guddu @ Pinakdhar Diwan S/o Ramdhan Diwan, aged about 50 years, R/o Brahman Para, in front of Bal Samaj Library Gali, Raipur, District- Raipur, Chhattisgarh

**---- Applicants/Petitioners**

**Versus**

1. Vinay Kumar Shukla S/o Shri Ashwani Kumar Shukla, aged about 26 years, R/o Near Murlidhar Temple, Ameenpara Raipur District- Raipur, Chhattisgarh
2. Santosh Kumar Shukla S/o Late Jagannath Shukla, R/o Near Murlidhar Temple, Ameenpara Raipur, District- Raipur, Chhattisgarh
3. Ashwani Kumar Shukla S/o Jagannath Prasad Shukla, R/o Near Murlidhar Temple, Ameenpara Raipur, District- Raipur, Chhattisgarh
4. State of Chhattisgarh, through Collector Raipur District Raipur (C.G.)

**---- Non-applicants/Respondents**

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For Applicants – Mr. Anil S. Pandey and Mr. Arvind Kumar Dubey, Advocates.  
For Respondents 1 to 3 – None, they are not noticed.  
For Respondent No.4 – Ms. Sangeeta Mishra, Panel Lawyer.

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**Order on Board**

**29/07/2015**

1. Heard on admission.
2. Brief facts applicable for adjudication of the instant civil revision are that a Civil Suit No.4A/13 (Vinay Kumar Shukla v. Nanhu @ Sarangdhar Diwan and others) is pending before the trial Court regarding declaration and possession. The applicants/defendants 1 and 2 filed an application under Order 7 Rule 11 read with Section 151 of the CPC in which they prayed rejection of the plaint on the ground of res judicata, it does not disclose any cause of action and the suit impugned is barred by limitation.
3. Respondent No.1/plaintiff filed reply and opposed the application.

4. The learned trial Court vide its order dated 21-04-2015 held that the application filed and the facts raised are mixed questions of facts and law, hence, the same may be disposed of on merits after recording of evidence. The trial Court dismissed the application filed under Order 7 Rule 11 of the CPC.

5. Against the impugned order the applicants preferred the instant civil revision under Section 115 of the CPC and prayed that the trial Court failed to appreciate the grounds taken in the application; res judicata can be appreciated in application of Order 7 Rule 11 of the CPC ; the trial Court is required to appreciate the material regarding earlier suit and the trial Court erred by not appreciating all the facts and documents filed along with the application. Hence, it is prayed that since the order of the trial Court is incorrect and illegal, the application be allowed and the order passed by the trial Court be set aside.

6. Heard the applicants on admission.

7. Learned counsel for the applicants submitted that in paras 2, 3, 4, 5 and 6 of the impugned application, the facts were raised for rejection of the plaint as it is with no cause of action, res judicata is applicable and the suit is barred by limitation. They duly supported the instant civil revision and submitted that the impugned order may be set aside.

8. The material annexed with the application perused.

9. As per settled law, to appreciate the principles of res judicata pleadings of written statement also has to be seen. Res judicata cannot be appreciated without consideration of pleadings made in written statement also res judicata cannot be appreciated only with the pleadings of the plaint. The Order 7 Rule 11 of the CPC not applicable for the doctrine of res judicata. So far as other points raised regarding no cause of action and suit barred by limitation, looking to the reply filed in this behalf, the trial Court not dismissed the above

points on its merits, rather held that they are mixed questions of facts and law, hence, they can only be disposed of on its merits after evidence. The applicants failed to demonstrate as to how these questions are purely question of law. In the absence of any acceptable material, in the considered view of this Court, the trial Court not committed any illegality or impropriety in holding that the issues raised are mixed questions of facts and law. I do not see any reason to interfere with the finding of the trial Court. Therefore, the instant civil revision is liable to be dismissed. Consequently, the instant civil revision is dismissed at the motion stage itself.

10. No order as to cost.

Sd/-  
(Chandra Bhushan Bajpai)  
JUDGE