

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.32 of 2015

Karelia Bai, W/o Shyam Lal Patel, aged about 39 years, Caste Patel, R/o Vill. Nirtu, Tah. & P.S. Masturi, Distt. Bilaspur (C.G.) (now dead) through

1A. Shyam Lal Patel, S/o late Seook Ram Patel (wrongly written as sewak ram), aged about 60 years, R/o Vill. Dharsiwa, P.S. Dharsiwa, Distt. Raipur (C.G.)

1B. Basant, aged about 35 years.

1C. Pyare, aged about 33 years.

1D. Pankaj, aged about 30 years.

1B to 1C S/o Shyam Lal Patel, Caste Patel, R/o Vill. Nirtu, Tah. & P.S. Masturi, Distt. Bilaspur (C.G.)

---- Applicants/
(Defendants)

Versus

1. Ram Kishore Agrawal, S/o late Madhav Prasad Agrawal, aged about 55 years, R/o Vill. Nirtu, Tah. & P.S. Masturi, Distt. Bilaspur (C.G.) at present R/o Akaltara, P.S. Akaltara, Distt. Janjgir-Champa (C.G.)

(Plaintiff)

2. State of C.G., Through Collector, Bilaspur, P.S. Civil Lines, Bilaspur, Distt. Bilaspur (C.G.)

(Defendant No.2)
---- Non-applicants

For Petitioners: Mr. B.P. Gupta & Ms. Richa Jain, Advocates.
For Respondent No.1: Mr. Hanuman Prasad Agrawal, Advocate.
For Respondent No.2: Mr. Neeraj Jain, Government Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

15/07/2016

1. Heard.

2. The trial Court by its impugned order decided the question of maintainability of the suit based on the plea of res judicata and also decided that the suit is not barred by limitation against which this revision has been filed.
3. Mr. B.P. Gupta, learned counsel appearing for the petitioners, would submit that the question of res judicata is a mixed question of law and fact and the plea of limitation is also a mixed question of law and fact and these issues cannot be decided as preliminary issues unless evidence is recorded and they will also not come within the purview of Order 14 Rule 2(2) of the Code of Civil Procedure, 1908 which clearly mandates that the issue relates to the jurisdiction of the Court and a bar to the suit created by any law for the time being in force cannot be decided.
4. Mr. Hanuman Prasad Agrawal, learned counsel appearing for respondent No.1/plaintiff, would submit that the trial Court has rightly decided both the issues.
5. It is well settled law that the plea of res judicata and the plea of limitation are mixed questions of law and fact, they require not only examination of plaint but also other evidence.
6. Order 14 Rule 2 of the CPC reads as follows: -

“2. Court to pronounce judgment on all issues.-(1)

Notwithstanding that a case may be disposed of on a preliminary issue, the court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates

to—

(a) the jurisdiction of the court, or

(b) a bar to the suit created by any law for the time being in force,

and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

7. In a recent decision, the Supreme Court in the matter of **Vaish Aggarwal Panchayat v. Inder Kumar and others**¹ struck a proposition holding that the plea of res judicata involves mixed question of law and fact, requires not only examination of plaint but also other evidence. Apart from this, both the questions i.e. plea of res judicata and plea of limitation would not fall within the two categories envisaged under Order 14 Rule 2(2)(a) & (b) of the CPC. Therefore, the trial Court is absolutely unjustified in deciding both the issues as preliminary issues.
8. For the foregoing reasons, the revision is allowed and the order impugned dated 17-12-2014 is hereby set aside. However, these issues will be decided afresh at the time of final hearing along with other issues without being influenced by any of the observations made herein-above. No order as to costs.

Sd/-
(Sanjay K. Agrawal)
Judge

Soma

1 2015 AIR SCW 5079