

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No.56 of 2016**

Shabbir S/o Shri Safaiyatdin, aged about 60 years, R/o Ward No.8, Ghoghra Para, Pandariya, P.S. & Tahsil Pandariya, District Kabirdham (CG)

---- Applicant

Versus

1. Manjit Singh, aged about 58 years, S/o Kartar Singh, R/o Ward No.09, Barasin Chowk, Pandariya, P.S. & Tahsil Pandariya, District Kabirdham (CG)
2. Trilok Singh, aged about 65 years, S/o Budh Singh, R/o Ward No.09, Barasin Chowk, Pandariya, P.S. & Tahsil Pandariya, District Kabirdham (CG)
3. State of C.G. through Collector, Kabirdham, District Kabirdham (CG)
4. Nagar Panchayat, Pandariya Through Chief Municipal Officer, Nagar Panchayat, Pandariya, District Kabirdham (CG)
5. Bhagwat S/o Khorbahra Satnami, age not mentioned, R/o Ward No.8, Ghoghra Para, Pandariya, P.S. & Tahsil Pandariya, District Kabirdham (CG)
6. Paltu S/o Fattu Ram, age not mentioned, R/o Ward No.8, Ghoghra, R/o Ward No.8, Ghoghra Para, Pandariya, P.S. & Tahsil Pandariya, District Kabirdham (CG)

---- Respondents

For Applicant	:	Mr. Ram Kumar Tiwari and Mr.F.S.Khare, Advocates
For Res.No.1 and 2	:	Mr.R.S.Marhas, Advocate
For Res.No.3	:	Mr.Neeraj Jain, G.A.
For Res.No.5	:	Mr.Sakti Singh Thakur, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment on Board

22/06/2016

1. The plaintiffs filed the suit for declaration of title, recovery of possession and permanent injunction stating inter-alia that the applicant/defendant No.5 has encroached upon the suit land and constructed his house and therefore, they are entitled for the aforesaid reliefs.
2. The applicant/defendant No.5 filed an application under Order 7 Rule 11 of the Code of Civil Procedure stating inter-alia that the plaint does not disclose triable cause of action, the land is not properly demarcated, suit is not properly valued, provision of Section 80 of the CPC has not been

followed and suit is liable to be dismissed on account of non-joinder of the party.

3. While dismissing such application, the trial Court has held that the question with regard to non-service of notice to defendant No.4 has already been adjudicated, question of non-joinder of the party would be decided as preliminary issue and suit is not barred by limitation.
4. Mr.Ram Kumar Tiwari, learned counsel appearing for the applicant would submit that the plaint does not disclose triable cause of action, suit is barred by limitation and boundaries of the land have not been identified.
5. Learned counsel appearing for respondents would oppose the submission made by learned counsel for the applicant.
6. It is well settled that in order to decide the application under Order 7 Rule 11 of the CPC, plaint averments have to be examined as a whole to find out whether the plaint discloses triable cause of action or not.
7. From perusal of averments made in the plaint, it appears that the plaint discloses triable cause of action. The defendants defence and their documents cannot be seen at this stage.
8. A bare perusal of the plaint would show that the plaintiffs have categorically alleged that defendant No.5 has encroached upon the suit land and constructed his house over the land.
9. Question of limitation raised by the applicant/defendant No.5 is mixed question of law and fact and it can be examined after evidence is adduced by the parties and as such, at this stage it cannot be held that suit is barred by limitation. I do not find any jurisdictional error in the impugned order.
10. Consequently, the revision being without substance is liable to be and is accordingly dismissed.

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-