

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 59 of 2016**

Prabhat Kumar Dubey, S/o Bihari Lal Dubey, aged about 57 yrs,
R/o D-16, Near Career School, Gayatri Mandir, Vinoba Nagar, near
Durga pandal, Bilaspur (C.G.) Defendant No.1

---- Applicant**Versus**

1. Smt. Sandhya Goyal, W/o Sudhanshu Prakash Goyal, aged about 54 years, R/o D/6, Sector-2, Devendra Nagar, Raipur, presently residing at 5037-B, sector 38, West Chandigarh (Punjab)...Plaintiff
2. Smt. Jyoti Varyani, W/o Shri Prakashchand Varyani, aged about 52 years, R/o D-16, Devendra Nagar, Raipur, Tahsil and District Raipur (C.G.)

---- Non-applicants

For Applicant : Mr. H.B. Agrawal, Senior Advocate with Smt. Preeti Yadav, Advocate.

For Non-applicants : Mr. Hari Agrawal, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****17/06/2016**

(1) The civil suit filed by plaintiff/non-applicant No. 1 herein- Smt. Sandhya Goyal for specific performance of contract was decreed *ex parte* by the trial Court on 9.12.2004 and the trial Court in execution of decree executed the sale-deed in favour of Smt. Sandhya Goyal on 16.02.2006.

(2) On an application filed under Order 9 Rule 13 CPC by defendant No./applicant herein- Prabhat Kumar Dubey, the trial Court set aside the *ex parte* decree of specific performance of contract on 31.1.2011 and

ultimately the suit was restored to its original number for trial in accordance with law. In the meanwhile, plaintiff-Sandhya Goyal sold the suit land in favour of defendant No.2/non-applicant No. 2 herein- Smt. Jyoti Varyani on 6.11.2009.

(3) Thereafter, Smt. Jyoti Varyani, defendant No. 2 /non-applicant No. 2 herein, subsequent purchaser was impleaded as party defendant in the suit by order of the trial Court dated 16.04.2015 at the instance of the plaintiff, against which, it is stated at the bar that defendant No. 1 has filed writ petition before this Court, which is pending consideration.

(4) Now, defendant No.1 filed application under Order 7 Rule 11(a) & (d) read with Order 1 Rule 9 of the Code of Civil Procedure stating that suit does not disclose triable cause of action and barred by law.

(5) The trial Court, by its impugned order dated 18.02.2016 rejected the same, against which, instant civil revision has been filed by defendant No.1 questioning the same.

(6) Mr. H.B. Agrawal, learned Senior Advocate appearing for the applicant would submit that the the trial Court is absolutely unjustified in rejecting the application under Order 7 Rule 11 CPC as apparently the plaint does not disclose the triable cause of action on the date of suit.

(7) Per contra, Shri Hari Agrawal, learned counsel appearing for the respondents would support the impugned order.

(8) I have heard learned counsel appearing for the parties and perused the order with utmost circumspection.

(9) Fact remains that after setting aside the *ex parte* decree, the suit

was restored to its original number for trial by the competent court, which is pending consideration and impleadment of non-applicant No.2/defendant No. 2-subsequent purchaser is under challenge before this Court.

(10) It is well settled that in order to decide the application under Order 7 Rule 11 CPC, plaint averments have to be examined as a whole to find out whether plaint discloses triable cause of action.

(11) A minute examination of the plaint would show that plaint discloses the clear triable cause of action and that the impleadement of defendant No. 2, who is subsequent purchaser, is under challenge before this Court, therefore, I do not find any jurisdictional error in rejecting the application under Order 7 Rule 11 CPC by the trial Court warranting interference by this Court under its revisional jurisdiction.

(12) Accordingly, the revision fails and is hereby dismissed.

Certified copy, as per rules.

Sd/-

(Sanjay K. Agrawal)

Judge

D/-