

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 111 of 2015**

Smt. Neetu Rajput, aged about 35 years, W/o Shri Sudesh Rajput, R/o Police Line, Ward No.4, Tractor Training Center, Tahsil Budhni, Distt. Sihore (M.P.).....Defendant

---- Petitioner

Versus

1. Soma Bhattacharya, W/o Subir Bhattacharya, R/o Infont of Civil Hospital, Tahsil Pakhanjore, Distt. U.B. Kanker..plaintiff
2. State of Chhattisgarh, Through: The Collector, District Kanker (C.G.)

---- Respondents

For Petitioner : Mr. Parag Kotecha, Advocate.

For Respondent No.1 : Mr.A.D. Kuldeep, Advocate.

For Respondent No.2/State : Mr. O.P. Sahu, Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment of Board**12/08/2016**

(1) Plaintiff-Soma Bhattacharya filed a suit for declaration of title, permanent injunction and possession based on agreement to sell dated 20.04.2007 executed by defendant No.1 in her favour.

(2) Immediately after service of summons, defendant No.1 filed an application under Order 7 Rule 11 of the CPC stating that the suit is barred by law as the Collector has not been impleaded as party in

the suit and the provisions of Order 6 Rule 2 of the CPC has not been followed.

(3) It is the case of defendant No.1 that agreement to sell dated 5.5.2007 is unregistered, forged and fabricated and no possession has been delivered to the plaintiff and it is barred by limitation.

(4) The trial Court, rejected the application holding that the question that the agreement to sell dated 5.5.2007 is unregistered, forged, fabricated can be decided after recording evidence and further held that it is mixed question of law and facts and for which evidence of the plaintiff is required to be recorded in support of his contention, against which, instant revision has been filed.

(5) Learned counsel for the applicant would submit that from the pleading of the plaint, the suit is apparently barred by law of limitation as per Article 58 of the Limitation Act as the period of three years prescribed from the right to sue first accrues; and the suit is also barred by Section 34 of the Specific Relief Act as the plaintiff had not prayed any consequential relief as per law. He relied upon the judgment of the Supreme Court in the matter of **Suresh Kumar Dagla Vs. Sarwan and another, (2014)14 SCC 254** in support of his case.

(6) I have heard learned counsel appearing for the applicant.

(7) It is well settled that the question of limitation is a mixed question of law and fact and the same cannot be decided without proper pleadings and without taking evidence thereon.

(8) The trial Court has clearly recorded a finding that question of agreement to sell dated 5.5.2007 being forged & fabricated can be decided after recording evidence thereupon. Likewise the suit is not for specific performance of contract, therefore, Article 54 of the Limitation Act is not available to the applicant, however, it cannot be held at this stage, plaintiff's suit is liable to be rejected and relief claimed by the plaintiff for permanent injunction, declaration of title is barred by limitation, as such, civil revision deserves to be and is accordingly dismissed.

Sd/-

(Sanjay K.Agrawal)

Judge

D/-