

HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 70 of 2015

1. Shatrughanlal Sinha S/o Ramdayal Sinha, aged about 50 years, R/o Village Parrikala, P.H. No. 30, Tah. Rajnandgaon, Civil and Revenue District Rajnandgaon Chhattisgarh

----Applicant/ Petitioner

Versus

1. Banshilal S/o Gaya Mahar (Ramtake), aged about 65 years, R/o Village : Parrikala, P.H. No. 30, Tah.- Rajnandgaon, Civil and Revenue District- Rajnandgaon, Chhattisgarh
2. State of Chhattisgarh, Through - District Collector, Rajnandgaon, District- Rajnandgaon, Chhattisgarh

---- Respondents

For Petitioner – Mr. Rakesh Thakur, Advocate.
For Respondent No.1 – Mr. Samir Singh, Advocate.
For Respondent No.2 –Ms. M.Asha, Panel Lawyer.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

14/01/2016

1. Heard on admission.
2. On behalf of the petitioner it is submitted that order passed by the Court below is illegal and improper as the matter is covered under the provisions of Order 7 Rule 11(d) of the CPC as the suit is barred by law. To support his contention reliance is placed on the matter of **Gurudwara Sahib Vs. Gram Panchayat Village Sirthala**¹ relying upon para 10 of the same which reads as under :-

10. As the appellant is in possession of the suit property since 13-4-1952 and has been granted the decree of injunction, it obviously means that the possession of the appellant cannot be disturbed except by due process of law. We make it clear that though the suit of the appellant seeking relief of declaration has been dismissed, in case the respondents file suit for possession and/or ejection of the appellant, it would be open to the appellant to plead in defence that the appellant had become the owner of property by adverse possession. Needless to mention at this stage, the appellant shall also be at liberty to plead that findings of Issue 1 to the effect that the appellant is in possession of adverse possession

¹ (2014) 1 SCC 669

since 13-4-1952 operates as res judicata. Subject to this clarification, the appeal is dismissed.”

Besides this, learned counsel for the petitioner failed to demonstrate under which law the suit is barred.

3. For appreciation for hearing on motion, the impugned order passed by the Court below vide order dated 28-01-2015 are perused.

4. The Court below after hearing the matter on interim application under Order 7 Rule 11 of the CPC held that as the suit is not barred by law for the declaration of title on the basis of adverse possession. The Court below further held that the cause of action as mentioned in the suit on the basis of the demarcation report is a subject matter of the evidence, hence adjudication of the same at this stage would not be appropriate.

5. After perusal of the petition, the impugned order and the case law cited, in the considered view of this Court, the petitioner failed to make out the case that the order passed by the Court below suffers from illegality or impropriety. Also the petitioner failed to demonstrate under which law the suit is barred. Also the case law cited **Gurudwara Sahib Vs. Gram Panchayat Village Sirthala** (supra) relying upon its para 10 is of no help to the petitioner at this stage.

6. On due consideration, I am of the view that the petitioner failed to demonstrate that the order passed by the Court below is illegal or improper. I do not see any reason for interference in the impugned order. Consequently, the instant civil revision is dismissed at the motion stage itself.

7. No order as to cost.

Sd/-

(Chandra Bhushan Bajpai)
Judge