

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.104 of 2016

Krishna Kumar Shrivastava, Son of Shri Munna Lal Shrivastava, aged about 65 years, R/o Shristi Colony, Rajnandgaon, District Rajnandgaon (CG).

---Defendant No.5/

---- Applicant

Versus

1. Kripa Ram, son of Shri Jhadu Ram Sahu, aged about 70 years, R/o Village Farhad, Tahsil and District Rajnandgaon. **----Plaintiff**
2. Mannu Lal, son of Shri Governdhan Banjara, aged about 40 years.
3. Dwarika Prasad, son of Shri Governdhan Banjara, aged about 65 years.
4. Arun Kumar, son of Shri Governdhan Banjara, aged about 55 years.
5. Ashwani Kumar, son of Shri Governdhan Banjara, aged about 56 years.

No. 2 to 5 are resident of Choukhadiyapara, Rajnandgaon, District Rajnandgaon (LRs. Of Panni Bai).

6. Heera Bai, wife of Shri Bhagirathi Rawate, aged about 61 years, R/o Choukhadiyapara, Rajnandgaon, District Rajnandgaon (CG).
7. Tahsildar, Rajnandgaon (CG).

---- Non-applicants

For Applicant : Shri Vinod Kumar Sharma, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/08/2016

(1) In a suit filed by the plaintiff/non-applicant No.1 herein, the applicant/defendant No.5 herein raised an objection that the suit is hit by principle of res-judicata and therefore, plaint be rejected under

Section 11 of Code of Civil Procedure.

(2) The trial Court, after hearing learned counsel for the parties, by its impugned order dated 22.04.2016 rejected the application under Section 11 of Code of Civil Procedure finding no merit. Against which, this revision has been filed by the applicant/defendant No.5 herein.

(3) It is well settled principle of law that the plaint cannot be rejected on the ground that it is hit by principle of res judicata. Res judicata involves mixed question of law and fact, requires not only examination of plaint but also other evidence in addition rendered by Supreme Court in the matter of **Vaish Aggarwal Panchayat Vs. Inder Kumar & Others**¹. The Hon'ble Supreme Court has held in Para-16 & 17 as under:-

“16. After so stating, the Division Bench opined that in the facts of the said case, the suit could not be dismissed as barred by limitation without proper pleadings, framing of issue on limitation and taking evidence, for question of limitation is a mixed question of fact and law and on ex facie reading of the plaint it could not be held that the suit was barred by time.

17. Coming to the case at hand we find that the allegations in the plaint are absolutely different. There is an asseveration of fraud and collusion. There is an assertion that in the earlier suit a decree came to be passed because of fraud and collusion. In such a fact situation, in our considered opinion, the High Court has fallen into error by expressing the view that the plea of res judicata was obvious from

¹ AIR 2015 SC 3357

the plaint. In fact, a finding has been recorded by the High Court accepting the plea taken in the written statement. In our view, in the obtaining factual matrix there should have been a trial with regard to all the issues framed.”

(4) In view of the aforesaid legal position, I do not find any merit in the instant civil revision. Accordingly, the civil revision deserves to be and is hereby dismissed at motion stage without notice to other side.

Sd/-

(Sanjay K. Agrawal)
Judge

L/-

