

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Civil Revision No.113 of 2016**

1. Lalit Kumar Sahshi, S/o Shri Pratap Singh Shashi, aged about 55 years, R/o Sector-8, Sadad-9, House No.2/A, Bhilai Nagar, Tahsil & District Durg (CG).
2. Smt. Asha Devi Kori, W/o. Shri K.L. Kori, aged about 59 years, R/o. Sector-1, Qtr. No.B/8, Shanker Nagar, Raipur, Tahsil and District Raipur (CG).

**Defendants No.1 & 2/**

**---- Applicants**

**Versus**

1. Ajay Kushwaha, S/o late Shri P.S. Kushwaha, aged about 40 years, R/o. Bhilai Nagar, Tahsil and District Durg (CG), through Power of Attorney Holder Harendra Singh, S/o. Shri Niranjana Singh, aged about 54 years, R/o. Sikolabhatha, Premnagar Durg, Tahsil and District Durg (CG). **----(Plaintiff)**
2. State of Chhattisgarh, through Collector, Durg, District Durg (CG). **----(Defendant No.3)**

**---- Non-applicants**

For Applicants : Shri H.B. Agrawal, Senior Advocate with Ms. Preeti Yadav, Advocate

**Hon'ble Shri Justice Sanjay K. Agrawal**

**Order On Board**

**26/08/2016**

**(1)** Heard.

**(2)** The application under Section 11 read with Order 7 Rule 11 of Code of Civil Procedure filed by the applicants/defendants No.1 & 2 seeking rejection of the plaint on the ground that suit is barred by principle of res judicata.

**(3)** The trial Court, after hearing learned counsel for the parties, by

its impugned order dated 13.07.2016 rejected the application under Section 11 read with Order 7 Rule 11 of CPC holding that plea of res judicata is a mixed question of law and facts and it can be decided only after pleading of the parties and entire evidence are recorded thereupon.

(4) Against which, this civil revision has been filed by the applicants/defendants No.1 & 2 herein.

(5) Shri H.B. Agrawal, learned Senior counsel appearing for the applicants/defendants No.1 & 2, would submit that the trial Court has committed jurisdictional error in not rejecting the plea on the plea based on the res judicata in which, it has been held that the plea of res judicata is a mixed question of law and fact and it can be decided only after pleading of the parties and entire evidence are recorded thereupon.

(6) It is well settled principle of law that the plea of res judicata involves mixed question of law and facts and therefore, requires not only examination of plea but also other evidence, it cannot as such be a ground to reject plea as recently held by Supreme Court in the matter of **Vaish Aggarwal Panchayat Vs. Inder Kumar & Others**<sup>1</sup>. Paras 16 & 17 of the said decision are 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

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<sup>1</sup> AIR 2015 SC 3357

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 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.”

(7) 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/-