

NAFR

**HIGH COURT OF CHHATTISGARH, BILASPUR****Civil Revision No. 21 of 2015**

Keshav Dhimar, S/o Jagish Prasad, aged about 55 years,  
R/o Gudrupara, Near Dhobi Kunwa, Mahasamund, District  
Mahasamund (C.G.) .....Defendant

**---- Applicant****Versus**

1. Smt. Basanti Bai, D/o Late Samaru Dhimar, aged about 50 years, W/o J.R. Tarak.
2. Smt. Premwati, Wd/o Late Samaru Dhimar, aged about 70 years.
3. Ku. Toshani Bai, D/o Late Samaru Dhimar, aged about 40 years.

All R/o Gudrupara, Mahasamund, Tahsil and District –  
Mahasamund (C.G.) .....Plaintiffs.

**--- Non-applicants**

For Applicants:

Mr. H.B. Agrawal, Senior Adv.  
with Ms. Shashi Kumar  
Kushwaha, Advocate.

For Non-applicants:

None appeared on behalf of non-  
applicants.

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

**Order On Board****17/06/2016**

(1) Plaintiffs/non-applicants filed a suit for recovery of possession of the suit land based upon their title, in which, defendant/applicant raised a plea that the suit is barred by proviso to Section 34 of the Specific Relief Act, 1963 (henceforth 'Act, 1963').

(2) On the plea of defendant/applicant, trial Court framed issue including the issues which were already framed that as to whether the suit is barred by proviso to Section 34 of the Act, 1963.

(3) By the impugned order, the trial Court has decided the said issue as a preliminary issue and held that suit is not barred by proviso to Section 34 of the Act, 1963, against which, instant revision petition has been preferred by the defendant/applicant.

(4) Mr. H.B. Agrawal, learned Senior Counsel appearing for the applicant/defendant would submit that the trial Court was absolutely unjustified in deciding the preliminary issue in favour of the plaintiffs and against the applicant/defendant and, therefore, the suit is barred by proviso to Section 34 of the Act, 1963 as the plaintiff is not in possession of the suit land and, therefore, impugned order deserves to be set aside.

(5) In order to consider the plea raised by the defendant/applicant, it would be appropriate to quote Section 34 of the Act, 1963, which states as under:-

**“34.Discretion of court as to declaration of status or right.-** Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:

Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.- A trustee of property is a “person

interested to deny” a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee.”

(6) A bare perusal of Section 34 of the Act, 1963 would show that suit seeking a bare declaration of title of ownership of property, without seeking possession, when plaintiff not in possession, is not maintainable. (See **Union of India Vs. Ibrahim Uddin<sup>1</sup>**)

(7) Indisputably, in the case in hand, plaintiffs have not sought any relief of declaration under Section 34 of the Act, 1963 and suit for recovery of possession is based upon their title and, as such, proviso to Section 34 of the Act, 1963 is not attracted at all in the facts & circumstances of the present case; and since Section 34 of the Act, 1963 is not attracted, therefore, the suit is not hit by above stated provision of law and the trial Court is absolutely justified in answering the preliminary issue in favour of the plaintiffs and against the applicant/defendant.

(8) Accordingly, civil revision fails and is hereby dismissed leaving the parties to bear their own cost.

**Sd/-**

**(Sanjay K. Agrawal)**

**Judge**

D/-

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<sup>1</sup> (2012) 8 SCC 148

