

HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 53 of 2015

1. Somaru S/o Jhitru, aged about 60 years, R/o Deurgaon, Tahsil Jagdalpur District Bastar, C.G. Civil & Revenue District- Bastar, Chhattisgarh
2. Budru S/o Somaru, aged about 40 years, R/o Deurgaon, Tahsil Jagdalpur District Bastar, C.G. Civil & Revenue District- Bastar, Chhattisgarh
3. Samdu S/o Somaru, aged about 35 years, R/o Deurgaon, Tahsil Jagdalpur District Bastar, C.G. Civil & Revenue District- Bastar, Chhattisgarh
4. Laxman S/o Somaru, aged about 25 years, R/o Deurgaon, Tahsil Jagdalpur District Bastar, C.G. Civil & Revenue District- Bastar, Chhattisgarh
5. Jamavati S/o Somaru, aged about 20 years, R/o Deurgaon, Tahsil Jagdalpur District Bastar, C.G. Civil & Revenue District- Bastar, Chhattisgarh
6. Ratni W/o Late Loku, aged about 60 years, R/o Deurgaon, Tahsil Jagdalpur District Bastar, C.G. Civil & Revenue District- Bastar, Chhattisgarh

----Applicants/Petitioners

Versus

1. Sonu S/o Bhora, aged about 56 years, R/o Deurgaon, Tahsil Jagdalpur, District- Bastar, Chhattisgarh
2. Aaytu S/o Bhora, aged about 58 years, R/o Deurgaon, Tahsil -Jagdalpur District -Bastar, Chhattisgarh
3. Dhaniram S/o Late Tati, aged about 35 years, R/o Deurgaon, Tahsil -Jagdalpur District -Bastar, Chhattisgarh
4. Kanhai S/o Late Tati, aged about 32 years, R/o Deurgaon, Tahsil -Jagdalpur District -Bastar, Chhattisgarh
5. Chandan S/o Late Tati, aged about 30 years, R/o Deurgaon, Tahsil -Jagdalpur District -Bastar, Chhattisgarh
6. Bhushan S/o Late Tati, aged about 29 years, R/o Deurgaon, Tahsil -Jagdalpur District -Bastar, Chhattisgarh
7. Balram S/o Late Boga, aged about 27 years, R/o Deurgaon, Tahsil -Jagdalpur District -Bastar, Chhattisgarh
8. Ranshi W/o Late Boga, aged about 48 years, R/o Deurgaon, Tahsil -Jagdalpur District -Bastar, Chhattisgarh
9. Bhaktu S/o Late Libru, aged about 28 years, R/o Deurgaon, Tahsil -Jagdalpur District -Bastar, Chhattisgarh
10. Budhram S/o Late Libru, aged about 22 years, R/o Deurgaon, Tahsil -Jagdalpur District -Bastar, Chhattisgarh
11. Kursho S/o Late Sonadhar, aged about 58 years, R/o Deurgaon, Tahsil -Jagdalpur District -Bastar, Chhattisgarh

12. Laxman S/o Late Maahangu, aged about 60 years, R/o Deurgaon, Tahsil -Jagdalpur District -Bastar, Chhattisgarh
13. Mangtu S/o Late Musu, aged about 50 years, R/o Deurgaon, Tahsil -Jagdalpur District -Bastar, Chhattisgarh
14. Rajesh Nashine S.D.O. (Revenue), Tokapal Tah. Jagdalpur, District-Basatar, Chhattisgarh
15. State Of Chhattisgarh Through : Collector, District- Bastar, Chhattisgarh

---- Respondents/Non-applicants

For Applicants – Shri Vikash A. Shrivastava, Advocate.
For Respondents 1 and 2 – Shri Akash Pandey, Advocate.
For Respondent No. 15 – Shri S.C.Khakhariya, Deputy Advocate General.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

13/01/2016

Heard on I.A.No.4/2015 for dispensing from service of notice to respondents 9, 10 and 12.

It is submitted on behalf of the applicants that as the applicants are not seeking any relief from respondents 9, 10 and 12, they be dispensed from service of notice to the above respondents.

The application is supported by an affidavit.

On due consideration, as the applicants themselves are not seeking any relief and further prayed that they be dispensed with the service of respondents 9, 10 and 12, I.A.No.4/2015 is hereby allowed and the applicants are dispensed with the service of notice to respondents 9, 10 and also to proposed LRs. of respondent No.12, if any.

Heard the matter finally at the motion stage itself.

1. Learned counsel for the applicants would submit that as the present applicants have filed Civil Suit No.23A/06 in which the elder brother of respondents 1 and 2, i.e., Boga S/o Bhora was a contesting defendant. Vide judgment and decree dated 31-03-2008, the suit filed by the present applicants was dismissed. Against the said judgment and decree, they had filed first

appeal before the IIIrd Additional District Judge, Jagdalpur, C.G. The first appellate Court allowed the appeal setting aside the judgment and decree passed by the trial Court; against which Ransi and others had preferred second appeal before the High Court. This Court vide order dated 20-07-2011 passed in Second Appeal No.125/2011 dismissed the second appeal and held that no any substantial question of law is attracted for the hearing of the appeal on its merit. Thus, as the order passed, findings and the judgment and decree passed by the first appellate Court was affirmed, the same attains finality till the moment. In the proceeding before the trial Court, Sonu stood as witness for his elder brother Boga, hence he had knowledge for the pendency of the said suit No.23A/06, also Boga who had filed the written statement he also mentioned the name of his two other brothers, i.e., Sonu and Aayatu, hence, if Sonu and Aayatu wished they were having opportunity to file an application under Order 1 Rule 10 of the CPC and they may be impleaded as party. It is submitted that with this, Sonu and Aayatu had not filed any application for impleading them as party in that suit thereby though they were not party to that suit, the said knowledge of the proceeding of that civil suit operates as res judicata for the subsequent Civil Suit No.12A/14 filed by respondents 1 and 2 before the Vth Civil Judge Class-II, Bastar at Jagdalpur. Learned counsel submits that as the findings of this Court in Second Appeal No.125/2011 remains unchallenged, the said is res judicata for hearing of Civil Suit No.12A/14. Learned counsel further submits that as the Sonu was a witness in Civil Suit No.23A/06, he had knowledge for the litigation and as the present respondents 1 and 2 they were living jointly along with elder brother Boga, hence, by living together they had knowledge for the aforementioned civil suit and the dispute, therefore Civil Suit No.12A/14 is also barred by limitation. Learned counsel for the applicants placed reliance in the matter of **Damodar Prasad and another Vs. State of M.P.and others**¹. Learned counsel further submits that in the case law cited it

¹ 2001(1) M.P.H.T. 79

is held that since the matter was decided earlier, the other villagers cannot agitate the same matter again.

2. For the appreciation of arguments advanced on motion, the petition and record is hereby perused.

3. From close scrutiny of the facts, it emerges that undisputedly Sonu and Aayatu are not party in Civil Suit No.23A/06. As per settled law of, all the brothers, as with the present facts, they are separate legal person. Nothing could be inferred as they are living together, hence they had knowledge for the same. Also as per settled law, if other legal person files written statement, the filing of written statement cannot itself operates as knowledge to other legal person. Also if at all Sonu witnessed for his elder brother Boga, even then knowledge cannot be attributed simply by appearing as a witness to support some facts for his elder brother in a litigation. One fact also emerges that nothing prevented the applicants in the hearing of Civil Suit No.23A/06 to file interim application under Order 1 Rule 10 of the CPC to implead present respondents 1 and 2 as necessary party. Also the present applicants had also not prayed before in the first appeal and in the second appeal for impleadment of respondents 1 and 2 as necessary party. No satisfactory reason for this is demonstrated on behalf of the applicants before this Court.

Section 11 of the CPC titled as Res judicata reads as under :-

“11. Res judicata— No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.—The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II.—For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.—The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.—Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.—Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.—Where persons litigate bona fide in respect of public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.—The provisions of this section shall apply to a proceeding for the execution of a decree and reference in this section to any suit, issue or former suit shall be construed as references, respectively, to proceedings for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.—An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.”

Along with other limbs and ingredients of Section 11 of the CPC, it is required that suit or issue must be between the same parties, or between parties under whom they or any of them claim, litigating under the same title. In the present case, requirement of these ingredients is not attracted. The Court below vide detailed appreciation held that as the plaintiffs in Civil Suit No.12A/14 were not party of the earlier litigation and as they are independent legal person, Section 11 of the CPC is not attracted and hence the suit is maintainable. I do not see any reason to take a different view in the matter.

4. So far as cause of action is concerned, even as per provision of Order 7 Rule 11 of the CPC regarding the suit in question before the Court below, from perusal of entire pleadings it cannot be said that the suit is barred by limitation as the cause of action arose when the earlier aforementioned suit between the present applicants and Boga S/o Bhora has been tried; as the question of limitation and cause of action may be a mixed question of law and facts. Even apart this, the Court below held that as the plaintiffs in para 15 of their suit

shown the dates by which they had knowledge for the cause and thereby the Court held that the suit is within limitation. Even for the sake of argument, at all if Sonu is a witness, it cannot be said that the date of knowledge runs from the date he appeared in the witness box to support the cause of his elder brother. Also cause of action does not start even after filing of written statement by elder brother who is a different legal person; or cause of action even does not arise as all the three brothers are living together jointly under the same roof.

5. The case law cited is distinguishable as the facts are different as argued regarding rights of the other villagers as the very matter earlier decided in a forum, but in the present case, respondents 1 and 2 are having their alleged right and interest over the suit property, hence, are as individual capacity and necessary party there before the Court below. Hence, the case law cited is of no help to the applicants.

6. On due consideration, upon perusal of the entire facts and the petition, this Court is of the view that the trial Court has not committed any illegality or impropriety while dismissing the prayer made by the applicants under Order 7 Rule 11 read with Section 11, 151 of the CPC. In the considered view of this Court no interference is required for the order impugned. Consequently, the instant civil revision fails and the same is hereby dismissed accordingly.

7. The civil revision dismissed.

8. No order as to cost.

Sd/-
(Chandra Bhushan Bajpai)
JUDGE