

HIGH COURT OF CHHATTISGARH, BILASPUR

CR No. 176 of 2016

1. Narayan Sahu S/o Late Shri Salik Ram Sahu, aged about 48 years, R/o Village- Kachna, Post Office Saddu, Police Station Vidhan Sabha, Tahsil & District Raipur, Chhattisgarh
2. Tikeshwar Sahu S/o Shri Narayan Sahu, aged about 17 years, Minor Through Mother Smt. Keshari Bai W/o Shri Narayan Sahu, R/o Village- Kachna, Post Office Saddu, Police Station Vidhan Sabha, Tahsil & District Raipur, Chhattisgarh(Defendants)

---- Petitioners

Versus

1. Smt. Thagiya Bai Sahu W/o Shri Bodhi Ram Sahu, aged about 50 years R/o V.I.P. Road, Village- Dharampura, P.O. Krishak Nagar, P.S. Mana Camp, Tahsil & District Raipur, Chhattisgarh
2. Smt. Khediya Bai Sahu W/o Shri Suklal Sahu, aged about 52 years, R/o V.I.P. Road, Village- Dharampura, P.O. Krishak Nagar, P.S. Mana Camp, Tahsil & District Raipur, Chhattisgarh. (Plaintiffs)
3. The State Of Chhattisgarh, Through Collector, Raipur, Chhattisgarh

---- Respondents

For Petitioners	:	Shri H.C. Shukla, Advocate
For Respondent No.3	:	Shri V.A. Goverdhan, Panel Lawyer

Hon'ble Shri Justice Pritinker Diwaker

Order On Board

20/12/2016

1. Heard on admission.

2. Challenge in this revision is to the order dated 16.9.2016 passed by the 5th Additional Judge to the Court of 1st Civil Judge Class-2, Raipur in Civil Suit No.262A/2015 dismissing the application filed by the petitioners herein under Order 7 Rule 11 CPC for dismissal of the suit.
3. From the facts it appears that the plaintiff/respondents No.1 & 2 herein filed a suit for permanent injunction, possession and declaration that the sale deed dated 26.3.2007 is null and void. During the pendency of suit , the petitioners herein filed an application under Order 7 Rule 11 CPC seeking rejection of the plaint on the ground of being barred by limitation; for affixing inadequate court fee and that the suit does not disclose any cause of action against them.
4. The trial Judge vide impugned order rejected the application filed by the defendants/ petitioners under Order 7 Rule 11 C.P.C. by holding that since the suit is for declaration of sale deed dated 25.3.2007 as null & void and consequential relief of permanent injunction and possession, therefore the question of paying ad-valorem court fee on the sale price did not arise. The plaintiffs have properly valued their claim and paid the proper Court fee. It has been further held by the trial Court that whether the sale deed has been executed by way of fraud or forgery is a matter of evidence and it can be decided only thereafter. The trial Court has also refused to dismiss the suit being barred by limitation by holding that on reading of the plaint it is evident that the plaintiffs have come to know about the sale deed dated 25.3.2007 in the month of February - March, 2015 and thereafter the suit has been filed on 6.10.2015 after serving legal notice on the defendants. Thus, the plaint does not appear to be barred by limitation as it has been filed within a period of three years from when cause of action accrued to the plaintiffs.

5. Heard counsel for the parties and perused the impugned order.
6. On perusal of the order impugned passed by the trial Court, this Court finds that the trial Court has analysed the facts in detail and declined to exercise the power under Order VII Rule 11 CPC. There appears to be no illegality or perversity in the order impugned passed by the trial court warranting interference by this Court in exercise of its revisional jurisdiction.
7. Accordingly, the revision is dismissed at the admission stage. However, the Court below is directed to make an endeavour to conclude the trial expeditiously.

Sd/-
(Pritinker Diwaker)
Judge

roshan