

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 135 OF 2017**

1. Shyam Bihari Sharma S/o Late Baban Sharma, Aged About 60 Years R/o Sardar Vallabh Bhai Patel Nagar, Korba, Tehsil Katghora, District Korba, Chhattisgarh
2. Suresh Sharma S/o Late Baban Sharma, Aged About 52 Years R/o Laluram Colony, Korba, Tehsil And District Korba, Chhattisgarh
3. Awadhesh Kumar Sharma S/o Late Baban Sharma, Aged About 48 Years, Sardar Vallabh Bhai Patel Nagar, Korba, Tehsil Katghora, District Korba, Chhattisgarh

---- Applicants**Versus**

1. Rajesh Sharma S/o Late Jenalar Prasad Sharma, Aged About 42 Years R/o Power House Road, Korba, Tehsil And District Korba, Chhattisgarh
2. Dharmendra Sharma S/o Late Jenalar Prasad Sharma, Aged About 36 Years R/o Power House Road, Korba, Tehsil And District Korba, Chhattisgarh
3. Banti Sharma S/o Late Jenalar Prasad Sharma, Aged About 34 Years R/o Power House Road, Korba, Tehsil And District Korba, Chhattisgarh
4. Smt. Babita Sharma W/o Sanjay Sharma, Aged About 38 Years D/o Late Jenalar Prasad Sharma, R/o Power House Road, Korba, Tehsil And District Korba, Chhattisgarh
5. Smt. Shobha Sharma W/o Pawan Sharma, Aged About 37 Years (D/o Late Jenalar Prasad Sharma, R/o Power House Road, Korba, Tehsil And District Korba, Chhattisgarh
6. Smt. Meena Sharma W/o Late Jenalar Prasad Sharma, Aged About 60 Years R/o Power House Road, Korba, Tehsil And District Korba, Chhattisgarh
7. Lalan Sharma S/o Late Manik Chandra Sharma, Aged About 72 Years R/o Lalu Ram Colony, Tehsil And District Korba, Chhattisgarh
8. Dadan Sharma S/o Late Manik Chandra Sharma, Aged About 65 Years R/o Lalu Ram Colony, Tehsil And District Korba, Chhattisgarh
9. Ram Sinhasan Sharma S/o Late Shri Manik Chandra Sharma, Aged About 72 Years R/o Power House Road, Korba, Tehsil And District Korba, Chhattisgarh
10. Tehsildar, Korba Tehsil & District Korba, Chhattisgarh
11. State Of Chhattisgarh, Through Collector, Korba, District Korba, Chhattisgarh

---- Non-applicants

For Applicants	:	Mr. Sanjay Patel, Advocate
For State	:	Ms. Shobha Kashyap, Dy. Govt. Advocate

Hon'ble Shri Sanjay Agrawal, J.

Order on Board

03/08/2017

1. Heard on admission.
2. This is the revision preferred under Section 115 of the Code of Civil Procedure, 1908 (hereinafter called as 'CPC') questioning the propriety of the order dated 03/07/2017 passed by the Second Civil Judge Class-1, District Korba (C.G.), by which, the trial Court has rejected the applicants' application filed under Order 7 Rule 11 of the CPC.
3. Mr. Sanjay Patel, learned counsel for the applicants submits that the order impugned as passed by the trial Court while referring to Section 17 of the CPC is not at all sustainable. He submits further that by virtue of Section 16(d) of the CPC, the suit was apparently barred by jurisdiction with regard to the property situated within the jurisdiction of Katghora. In support, he placed his reliance upon the decisions rendered by the Hon'ble Supreme Court in the matters of **Harshad Chiman Lal Modi v. D.L.F., Universal Ltd. and another** reported in **AIR 2005 SC 4446** and **Begum Sabiha Sultan v. Nawab Mohd. Mansur Ali Khan and others** reported in **(2007) 4 SCC 343**.
4. I have heard learned counsel appearing for the applicants and perused the entire record carefully.
5. This is the case where the plaintiffs have instituted a suit for declaration of title and permanent injunction with regard to the immovable property situated within the jurisdiction of Korba as well as Katghora by submitting *inter alia*, that

these suit properties have fallen in their share by way of oral partition and with this premises, the suit in the instant nature has been filed.

6. The applicants/defendants No. 4 to 6 have appeared and submitted an application under Order 7 Rule 11 of the CPC stating therein that the suit as framed with regard to immovable properties situated in different Courts of jurisdiction, is not at all maintainable for want of jurisdiction. The contention of Mr. Patel, in this regard is noted to be rejected, in view of the provisions prescribed under Section 17 of the CPC. The said provision is relevant for the purpose is reproduced herein as under :-

“17. Suits for immovable property situate within jurisdiction of different Courts.-Where a suit is to obtain relief respecting, or compensation for wrong to, immovable property situate within the jurisdiction of different Courts, the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the property is situate:

Provided that, in respect of the value of the subject-matter of the suit, the entire claim is cognizable by such Court.”

7. The aforesaid provision provides very specifically that if the suit is instituted for immovable property, which is situated within the jurisdiction of different Courts, then the suit may be instituted in any Court within the local limits of whose jurisdiction any portion of the said immovable property is situated. In view of the said fact, the instant suit is properly instituted in the light of the said provision and it cannot be held to be barred by jurisdiction by virtue of Clause (d) of Section 16 of the CPC.

8. In the matter of **Harshad Chiman Lal Modi** (supra), in which, Mr. Patel has placed his reliance, is noted to be rejected. That is the case, where a suit for specific performance of contract was instituted in relation to immovable property

which was situated at Gurgaon (Haryana) whereas the suit was instituted at Delhi by virtue of the terms and conditions stipulated in the agreement, which provides the jurisdiction of the Delhi Court. While dealing with this issue, it was held by the Supreme Court that parties by way of agreement can not oust the statutory jurisdiction provided under Section 16 of the CPC as the suit was in relation to immovable property situated admittedly in Gurgaon (Haryana) and therefore, the jurisdiction of the Gurgaon Court can not be ousted by way of the agreement. However, no such issue was involved in the instant case as this is the case where suit has been instituted for immovable properties which are situated within the jurisdiction of two different Courts and under such circumstances, the suit may be instituted in any Court within the local limits of whose jurisdiction where any portion of immovable property is situate by virtue of Section 17 of the CPC. Consequently, the principles laid down in the said decision is clearly distinguishable.

9. Likewise, the principles laid down in **Begum Sabiha Sultan** (supra), is also distinguishable from the facts involved in the present case. That is the case where a suit essentially was instituted seeking the relief of partition and declaration in respect of the properties which was situated in Gurgaon out side the jurisdiction of the Court at Delhi where the suit was filed. In that context, it was held that since the suit was one in relation to the immovable property situate out side the jurisdiction of the Court in Delhi and therefore, it was held that the plaint was presented in a Court having no jurisdiction to entertain the suit. In consequence, it was directed to be presented in the Court of jurisdiction of Haryana where the property was situated as per the provisions prescribed under Section 16 of the CPC. However, that is also not the situation here with regard to the facts involved in the instant case as analyzed in above paragraph.

10. In view of the above discussions, the contention of Mr. Patel based upon the aforesaid decisions can not be accepted.

11. Besides, by virtue of moving an application under Order 7 Rule 11 of the CPC, the applicants are basically questioning the territorial jurisdiction of the Court of Korba with regard to the properties situated within the jurisdiction of the Katghora Court, therefore, suit is liable to be rejected. However, the ground as made in the application does not come within the purview of clauses (a) to (d) of Order 7 Rule 11 of the CPC, therefore, the application praying for rejection of plaint is liable to be and is hereby rejected on this ground as well.

12. Be that as it may, if the contention as made in the application is to be seen and taken into consideration as one under Order 7 Rule 10 of the CPC, then also it is liable to be rejected in view of the observations made in the precedent paragraphs. Accordingly, the application is rightly rejected by the trial Court.

13. Consequently, I do not find any infirmity in the order impugned passed by the trial Court. The revision is accordingly dismissed. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge