

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 173 OF 2017**

1. Narbadiya Bai W/o Shri Pande Ram, Aged About 75 Years Caste Satnami, R/o Village- Harinchhapra, Police Station And Tahsil- Bodla, District Kabirdham, Chhattisgarh.
2. Devcharan S/o Shri Pande Ram, Aged About 50 Years Caste Satnami, R/o Village- Harinchhapra, Police Station And Tahsil- Bodla, District Kabirdham, Chhattisgarh.
3. Anand Das, S/o Shri Pande Ram, Aged About 42 Years Caste Satnami, R/o Village- Harinchhapra, Police Station And Tahsil- Bodla, District Kabirdham, Chhattisgarh.
4. Mutana Bai D/o Shri Pande Ram, Aged About 48 Years Caste Satnami, R/o Village- Harinchhapra, Police Station And Tahsil- Bodla, District Kabirdham, Chhattisgarh.
5. Chameli Bai, D/o Shri Pande Ram, Aged About 45 Years Caste Satnami, R/o Village- Harinchhapra, Police Station And Tahsil- Bodla, District Kabirdham, Chhattisgarh.
6. Bai, D/o Shri Jaggu, Aged About 70 Years Caste Satnami, R/o Village- Harinchhapra, Police Station And Tahsil- Bodla, District Kabirdham, Chhattisgarh.
7. Gauri Bai, D/o Shri Jaggu, Aged About 50 Years Caste Satnami, R/o Village- Harinchhapra, Police Station And Tahsil- Bodla, District Kabirdham, Chhattisgarh.

---- Applicants**Versus**

1. Bahoran Baghel S/o Shri Thagguram, Aged About 60 Years Caste Satnami, R/o Village Harinchhapra, Police Station Kawardha, Tahsil Bodla, District Kabirdham, Chhattisgarh. Presently Resided At Village Dumaraha, Tahsil Lormi, District Mungeli, Chhattisgarh.
2. State Of Chhattisgarh, Through The District Collector, District Kabirdham, Chhattisgarh.

---- Non-applicants

For Applicants	:	Mr. Pushpendra Kumar Patel, Advocate
For Non-applicant No. 2/State	:	Mr. Sanjeev Pandey, Govt. Advocate

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****31/10/2017**

1. This is a civil revision preferred by the defendants/applicants under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as

'CPC') against the order dated 09/10/2017 passed by the Third Civil Judge, Class-I, Kabirdham, Kawardha in Civil Suit No.24-A of 2016, by which, the trial Court has rejected the defendants' application filed under Order 7 Rule 11 of the CPC.

2. The undisputed facts of the case, are that, the plaintiff Bahoran Baghel instituted a suit claiming declaration of title, partition and also for separate possession by submitting *inter alia* that the plaint Schedule- B property be declared as ancestral property, in which, he has a half share. It is pleaded in the plaint that being son of Thaggu, son of Chainu alias Chaitu, the plaintiff- Bahoran Baghel is entitled to claim the said share with regard to the plaint Schedule- B property. The said suit was registered as Civil Suit No. 24-A of 2016.

3. The aforesaid claim was contested by the defendants by filing their written statement and denying the claim of the plaintiff by submitting *inter alia* that since the plaintiff is not the son of said Thaggu, therefore, he is not entitled to claim any share as such and the suit as framed and instituted is liable to be rejected.

4. During the pendency of the suit, the defendants have moved an application as per the provisions prescribed under Order 7 Rule 11 of the CPC praying for rejection of the plaint on the ground that since the plaintiff is not the son of Thaggu and even without assigning any cause of action, the suit has been filed and, therefore, it deserves to be rejected as not maintainable. The said application was contested by the plaintiff stating *inter alia* that the said application has been filed just to linger on the matter.

5. After considering the aforesaid application filed under Order 7 Rule 11 of the CPC, the trial Court has rejected the same by holding that the grounds as raised by the defendants are not sustainable and accordingly, the said application is rejected.

6. Being aggrieved, the defendants have preferred this revision.

7. Mr. Pushpendra Kumar Patel, Advocate appears for the applicants submits that the order impugned is not at all sustainable as the same has been passed without considering the said application properly. He submits further that while passing the order impugned, the trial Court ought to have considered the status of the plaintiff that whether he is a son of Thaggu or not. However, without considering the same in its proper perspective, the trial Court has erred in rejecting the said application.

8. I have heard the learned counsel appearing for the applicants and perused the entire documents annexed with the revision carefully.

9. The plaintiff has instituted a suit claiming declaration of title, partition and for separate possession on the ground that the plaint Schedule- B property is the ancestral property and after the death of Thaggu, he is entitled to claim half share over it. The plaint averment shows further that the cause of action arose on 21/01/2014, when the concerned Sub-Divisional Officer has set aside the mutation order dated 15/04/2000, which was passed in his favour.

10. It is settled principle of law that while entertaining the application under Order 7 Rule 11 of the CPC, the plaint averments alone are required to be taken into consideration. From perusal of the same, it is clear that the cause of action arose on 21/01/2014, when the mutation order dated 15/04/2000 passed in favour of the plaintiff was reversed in appeal preferred by the defendants by the Sub-Divisional Officer in Revenue Appeal No. 19/A-6/2012-13. Besides, the main contention as raised by the defendants in their application Under Order 7 Rule 11 of the CPC that since the plaintiff is not the son of Thaggu, therefore, the plaintiff's suit is liable to be dismissed, however, the said fact could be determined only by examining the evidence of both the parties. Even otherwise, the said contention does not come within the purview of any of the clauses as

mentioned in Order 7 Rule 11 of the CPC, therefore, the application is liable to be and is hereby rejected.

11. In view of the aforesaid discussion, I do not find any substance in this revision. Accordingly, the same deserves to be and is hereby dismissed at the admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge