

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WP227 No. 818 of 2017**

Gopal Murti Agrawal S/o Late Shri Krishna Sunder Agrawal, Aged about 62 years, R/o Professor Colony, Sector 03, Street No. 13, Panchwati Bhawan, Near Malsaya Pond, Raipur, District Raipur Chhattisgarh

---- Petitioner

Versus

Smt. Savitri Bai Agrawal Wd/o Late Shri Rasik Bihari Agrawal , Aged about 76 years, R/o House No. 102, Om Society, Sunder Nagar, Raipur, District Raipur Chhattisgarh

---- Respondent

For Petitioner : Mr. Jitendra Nath Nande, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****09/11/17**

1. By the impugned order dated 04.05.2017, the petitioner / defendant's application filed under Section 151 of the Code of Civil Procedure, 1908 (for short 'CPC') has been rejected by the trial Court against which this writ petition under Article 227 of the Constitution has been preferred by the petitioner.
2. Learned counsel appearing on behalf of petitioner would vehemently submit that the trial Court has committed jurisdictional error in rejecting petitioner / defendant's application filed under Section 151 of the CPC and as such the impugned order is liable to be set aside.
3. Learned counsel for the petitioner would further submit that the civil suit filed by the respondents / plaintiff for is barred by limitation and also the criminal proceeding is pending between the parties on the same cause of action therefore, the recovery suit filed by the respondent / plaintiff be also

set aside.

4. I have heard learned counsel for the petitioner and perused the impugned order with utmost circumspection.

5. The trial Court has rejected the petitioner / defendant's application filed under Section 151 of the CPC finding no merit and held that the objections raised in the said application involves mixed question of law and fact and can only be considered after recording the evidence. In the matter of **Vaish Aggarwal Panchayat v. Inder Kumar & Others**¹, their Lordships of the Supreme Court have held that the question which involves mixed question of law and fact requires not only examination of plaint but also other evidences, as such it cannot be a ground to reject plaint that squarely covers the fact of the case. Likewise, merely on the pendency of the criminal proceedings between the parties, the civil suit cannot be dismissed.

6. In view of the principle of law laid down in **Vaish Aggarwal** (supra), I am of the considered opinion that the trial Court is absolutely justified in rejecting the application under Section 151 of CPC and I do not find any jurisdictional error. However, the trial Court will frame the issue on limitation without being prejudice to the impugned order and the order passed by this Court and will do well to decide the same strictly in accordance with law.

7. Consequently, the writ petition deserves to be and is accordingly dismissed.

Sd/-

(Sanjay K. Agrawal)
Judge

¹ AIR 2015 SC 3357