

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 192 OF 2017**

1. Kaushal Kishore Dubey S/o Ramkumar Dubey Aged About 50 Years Now Age 63 Years, Advocate Notari, Near State Bank Colony, Dantewada, Tahsil And District Dantewada, Chhattisgarh.
2. Ramkumar Dubey, S/o Ishwar Dutt Dubey, Aged About 68 Years Now Age 84 Years, R/o Near State Bank Colony, Dantewada, Tahsil And District Dantewada, Chhattisgarh.

---- Applicants**Versus**

1. Shivram Mishra S/o Mukund Mishra, Aged About 60 Years R/o Handidhar, Pursottampara, District Ganjam (Orissa), (Died), Through LRs.
 1. (1) Basant Kumar Mishra, Aged about 50 Years S/o Shivram Mishra, R/o Kirandul, Post- Kirandul, District South Bastar- Dantewada, Chhattisgarh.
 1. (2) Sharad Kumar Mishra, Aged about 44 Years S/o Shivram Mishra R/o Kirandul, Post- Kirandul, District South Bastar- Dantewada, Chhattisgarh.
 1. (3) Ramkrishna Mishra, Aged about 38 Years S/o Shivram Mishra, R/o Kirandul, Post- Kirandul, District South Bastar- Dantewada, Chhattisgarh.
 1. (4) Smt. Nishamani, Aged about 48 Years W/o Dinbandhurath, R/o Post Jagdalpur, Brahmanpara, Tahsil- Jagdalpur, District Bastar, Chhattisgarh.
 1. (5) Smt. Ushamani, Aged about 46 Years W/o Shri Harihar Patra, R/o Post Ganjam, District Ganjam, (Orissa).
2. State of Chhattisgarh, Through Collector- Dantewada, District South Bastar- Dantewada, Chhattisgarh.
3. Smt. Vimla Devi Chouhan, W/o Late Gopal Singh Chouhan, Aged About 60 Years R/o Main Road Dantewada, Tahsil And District Dantewada, Chhattisgarh. (Died) Through LRs.
 - 3 . A Devi Prakash Singh Chouhan, Aged about 57 Years S/o Late Gopal Singh Chouhan R/o Main Road, Dantewada, District South Bastar- Dantewada, Chhattisgarh.
 - 3 . B Durgaprakash Singh Chouhan Aged about 47 Years S/o Late Gopal Singh Chouhan R/o Main Road, Dantewada, District South Bastar- Dantewada, Chhattisgarh.
 - 3 . C Amitprakash Singh Chouhan, Aged about 37 Years S/o Late Gopal Singh Chouhan R/o Main Road, Dantewada, District South Bastar- Dantewada,

Chhattisgarh.

4. Ramkumar Singh Chouhan, S/o Late Indra Bahadoor Singh Chouhan, R/o Nakulnar, Tahsil And District Dantewada, Madhya Pradesh Now Chhattisgarh. (Died) Through LRs
 4. A Smt. Vijaylaxmi Chouhan, Aged about 78 Years W/o Late Ram Kumar Singh Chouhan, Now Age 84 Years, R/o Nakulnar, District South Bastar- Dantewada, Chhattisgarh. Present Address- Village Sahjor, Tehsil Gurubakasganj, District Raibaleli, Uttar Pradesh.
 4. B Bhanu Prakash Singh Chouhan, Aged about 60 Years S/o Late Shri Ramkumar Chouhan, R/o Nakulnar, District South Bastar- Dantewada, Chhattisgarh.
 4. C Suryaprakash Singh Chouhan Aged about 60 Years S/o Late Ram Singh Chouhan (Died) Through Lrs.
 4. C(i) Smt. Savita Singh, Aged about 49 Years W/o Late Suryaprakash Singh R/o Nakulnar, District South Bastar- Dantewada, Chhattisgarh.
 4. C(ii) Ku. Swati, Aged about 25 Years D/o Late Suryaprakash Singh Chouhan R/o Nakulnar, District South Bastar- Dantewada, Chhattisgarh.
 4. C(iii) Ku. Harshita, Aged about 24 Years D/o Late Suryaprakash Singh Chouhan R/o Nakulnar, District South Bastar- Dantewada, Chhattisgarh.
 4. C(iv) Harsh Singh Chouhan Aged about 24 Years S/o Late Suryaprakash Singh Chouhan R/o Nakulnar, District South Bastar- Dantewada, Chhattisgarh.
5. Hemant Kumar Mishra, S/o Shivram Mishra, Aged About 42 Years R/o Post Kirandul, Tahsil Bade Bacheli, District South Bastar- Dantewada, Chhattisgarh.

---- Non-applicants

For Applicants	:	Mr. Shrawan Agrawal, Advocate
For Non-applicant No. 2/State	:	Ms. Shobha Kashyap, Dy. Govt. Advocate

Hon'ble Shri Sanjay Agrawal, J.

Order On Board

28/11/2017

Heard on admission.

1. This civil revision has been preferred by defendants No. 1 and 2 under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') by questioning the order dated 13/11/2017 passed by the Additional

District Judge, Dantewada, District South Bastar Dantewada (C.G.) in Civil Suit No.19-A/2014, by which, the trial Court has rejected the application filed by defendant No. 2 under Order 7 Rule 11 read with Section 151 of CPC.

2. The undisputed facts of the case, are that, the plaintiff Shivram Mishra (since deceased now represented by his legal representatives) has instituted a suit claiming declaration that three registered deeds of sale, all executed on 12/08/1999, in favour of defendants No. 2 to 4 be declared as null and void and also for confirmation of their possession and injunction by submitting *inter alia* that the alleged sales were executed by defendant No. 1, namely, Kaushal Kishore Dubey as his power of attorney holder without following the terms and conditions stipulated in the said power of attorney. It is pleaded further in the plaint that the alleged power of attorney was executed on 14/11/1995 and the same was cancelled on 19/08/1998, therefore, defendant No. 1 at the relevant time was not competent to execute the registered deeds of sale as such in favour of the defendants. It is pleaded further that since the defendants are claiming their right, title and interest by way of the alleged sales, therefore, the plaintiff has been constrained to file the suit in the instant nature, instituted on 19/07/2000.

3. Upon receiving the summons of the aforesaid suit, defendants have submitted their written statements. After filing the written statements, an application enumerated under Order 7 Rule 11 read with Section 151 of CPC has been made by defendant No. 2 on 13/11/2017 praying for rejection of the plaint as it was filed without impleading the Deputy Registrar, Dantewada as a party defendant and without following the procedure prescribed under Section 80 of CPC, therefore, the suit as framed and instituted deserves to be rejected.

4. After considering the averments made in the plaint *vis a vis* the grounds raised in the said application, the trial Court has rejected the same by its order

impugned dated 13/11/2017 by observing that neither the Deputy Registrar, Dantewada is a necessary party nor notice under Section 80 of CPC is required to be issued as no relief has been claimed against the State Government. As a consequence, the trial Court has rejected the said application.

5. Mr. Shrawan Agrawal, learned counsel for the applicants submits that the order impugned as passed by the trial Court is apparently contrary to law. He submits that the registered deeds of sale were executed by the attorney of the plaintiff before the Deputy Registrar, Dantewada, therefore, he was a necessary party and without impleading him as a party defendant, the suit is liable to be rejected. He submits further that without following the provision prescribed under Section 80 of CPC, the suit itself cannot be held to be maintainable. He, therefore, submits that the suit as framed, is liable to be rejected under Order 7 Rule 11 read with Section 151 of CPC.

6. I have heard learned counsel appearing for the applicants and perused the entire relevant papers annexed with this revision carefully.

7. It is settled principles of law that while entertaining the application filed under Order 7 Rule 11 read with Section 151 of CPC, the plaint averments alone are required to be seen. According to the plaint averments, it is clear that the plaintiff's suit is essentially based on the ground that since the power of attorney holder, namely, Kaushal Kishore Dubey was not competent to execute the sale at the time of execution of registered deeds of sale, therefore, no right, title or interest would confer upon the transferee/defendants No. 2 to 4 on the basis of the alleged sales. Perusal of the plaint averments would show further that since the alleged sale deeds were executed without following the terms and conditions as stipulated in the alleged power of attorney, therefore, the defendants would not acquire any right or interest whatsoever on the basis of the alleged sales. Thus, the entire plaint averments would therefore, show that no relief either

against the Deputy Registrar, Dantewada or the State Government has been claimed. Besides, the objection raised in the application without disclosing the fact as to how the suit is barred by law and in absence of such a specific ground the plaint as filed in the year 2000 cannot be rejected on the basis of the said application filed 17 years after filing of the suit. In view of the said fact, the trial Court has not committed any illegality in passing the order impugned rejecting the application filed under Order 7 Rule 11 read with Section 151 of CPC, therefore, the same deserves to be and is hereby affirmed.

8. In view of the forgoing discussions, I do not find any substance in this revision. Accordingly, the revision being devoid of merits is liable to be and is hereby dismissed at admission stage itself. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

Yogesh