

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Civil Revision No.47 of 2017

Kashmir Singh S/o Shri Jogender Singh, Aged About 34 Years R/o Gurunanak Steel Industries, D.D.M. Road Korba, Tehsil & Distt. Korba, Chhattisgarh(Defendant No.1)

----Applicant

Versus

1. Amar Nath Sahu S/o Shri Netram Sahu, Aged About 30 Years R/o Purani Basti Road, Korba, Tehsil & Distt. Korba, Chhattisgarh(Plaintiff)
2. State Of Chhattisgarh, Through Collector, Korba, Distt. Korba, Chhattisgarh
3. Rajendra Kumar Mehta S/o Late Ganpat Singh, Aged About 47 Years R/o Darogapara Civil Lines Raigarh, Tehsil & Distt. Raigarh, Chhattisgarh
4. Ajay Kumar Mehta S/o Late Ganpat Singh, Aged About 44 Years R/o Darogapara Civil Lines Raigarh, Tehsil & Distt. Raigarh, Chhattisgarh
5. Vijay Kumar S/o Late Ganpat Singh, Aged About 44 Years R/o Darogapara Civil Lines Raigarh, Tehsil & Distt. Raigarh, Chhattisgarh
6. Smt. Savita Taank W/o Girish Kumar, Aged About 39 Years R/o Darogapara Gujrati Para, Raigarh, Tehsil & Distt. Raigarh, Chhattisgarh
7. Smt. Nishu Sanwariya W/o Mukesh Kumar, Aged About 37 Years Darogapara Gujrati Para, Raigarh, Tehsil & Distt. Raigarh, Chhattisgarh(Defendants)

-----Non-Applicants

For Applicant: Shri Sanjay Patel, Advocate.
 For Non-Applicant No.2/State: Shri Vijay Bahadur Singh, Panel Lawyer.

Single Bench: Hon'ble Shri Sanjay Agrawal, J
Order On Board

28.3.2017

1. Heard on admission.
2. This is a Revision filed against the order dated 02.02.2017 passed by the Civil Judge, Class-2, Link Court, Korba in Civil Suit No.28-A/2014 by which the trial Court has rejected the Applicant/Defendant's application filed under Order 7 Rule 11 of the Code of Civil Procedure, 1908.

3. The undisputed facts of the case are that the Plaintiff-Amar Nath Sahu has instituted a suit for declaration of title and possession with regard to the property in question bearing Khasra No.635/1, area 11½ decimals on the basis of a Will-deed executed by one Shyama Bai in his favour in the year 1999 and prayed further that the registered deed of sale executed on 15.05.2005 be declared as null and void and the same is not binding upon him.

4. Defendant No.1/Applicant has appeared before the trial Court and submitted his written statement as well and during the pendency of the suit, he moved an application under Order 7 Rule 11 CPC and prayed for rejection of the Plaint on the ground that the Plaintiff Amar Nath Sahu has already obtained the order of restoration of his possession by Tahsildar under Section 250 of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as 'the Code of 1959') and therefore, under such circumstances, the suit as framed is barred by law as per the provisions prescribed under Section 257 of the Code of 1959.

5. Upon due consideration of the said application, the trial Court has rejected the same by observing *inter alia* that while entertaining the application filed under Order 7 Rule 11 of CPC, the Plaint averment alone is required to be examined and after examining the same, has observed that the issue as involved in the matter could be determined only by examining the evidence of the parties. In consequence, the trial Court has rejected the said application filed under Order 7 Rule 11 CPC.

6. Being dissatisfied with the aforesaid order, the instant Revision has been preferred by the Petitioner/Defendant No.1. Shri Patel, learned Counsel for the Applicant submits that the order impugned deserves to be set aside as the suit is barred by virtue of Section 257 of the Code of 1959.

7. I have considered the submissions of learned Counsel for the Applicants and have perused the entire record carefully.

8. From perusal of the Plaint averments, it is evident that the Plaintiff has instituted a suit for declaration of title and possession based on the registered deed of Will executed in his favour in the year 1999 by one Shyama Bai and pleaded further that the registered deed of sale as obtained by Defendant No.1 on 15.5.2005 be declared as null and void. It is settled principles of law that while entertaining the application filed under Order 7 Rule 11 CPC, the Plaint averments alone are required to be seen. The entire averments made in the Plaint would reveal that the issue involved in the matter could be determined only by the Civil Court by examining the evidence of the parties and therefore, the submissions as made by the Applicant in his application under Order 7 Rule 11 CPC cannot be accepted.

9. In view of the above, the trial Court has rightly rejected the application and therefore, the same deserves to be and is hereby affirmed. The instant Revision, being devoid of merits is accordingly rejected. There shall be no order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE