

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 151 of 2017**

1. Shivram S/o Late Chhedilal Aged About 53 Years By Occupation Advocate, By Caste Chandra, R/o Village Pota, Tahsil Malkharoda, District Janjgir Champa, At Present R/o Jagannath Puram Colony, Sakti, Tahsil Saktim District Janjgir Champa Chhattisgarh.
2. Paluram S/o Late Chhedilal Aged About 49 Years R/o Village Pota, Tahsil Malkharoda, District Janjgir Champa Chhattisgarh (Plaintiff)

---- Petitioners**Versus**

1. Ishwardeen S/o Late Rabadsingh Aged About 54 Years By Occupation Agriculturist, By Caste Chandra, R/o Village Pota, Tahsil Malkharoda, District Janjgir Champa Chhattisgarh.
2. Sahodra Bai D/o Late Chhedilal Aged About 45 Years By Caste Chandra, R/o Village Katoda, Tahsil Dabhra, District Janjgir- Champa Chhattisgarh
3. State of Chhattisgarh through Collector, Janjgir Champa.

---- Respondents/Defendants

For Petitioners/Applicants	:	Shri Parag Kotecha, Advocate.
For Respondent No.3	:	Shri R.K.Jaiswal, P.L.

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****07/09/2017**

1. Heard on admission.
2. This is a revision preferred under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as the Code of 1908 in short) against the order dated 19.07.2017 passed by the Civil Judge, Class-2, Malkharoda, District Janjgir Champa in Civil Suit No. 21-A/2015, by which, the trial Court has rejected the plaintiff's application under Order 7 Rule 11 of the Code of 1908 for rejection of counter claim of defendant No.1.

3. Shri Parag Kotecha, counsel for the petitioners/plaintiffs submits that the subject matter involved in the suit instituted by the petitioners and the subject matter involved in the counter claim, as made by defendant No.1, are different with each other, and therefore, the counter claim, as made without mentioning specific cause of action is liable to be rejected under Order 7 Rule 11 of the Code of 1908.

4. The said application was contested by defendant No.1 stating therein that the suit property mentioned in the plaint is also the part of the suit property mentioned in the counter claim, therefore, subject matters are not different with each other, as alleged by the plaintiffs in their application under Order 7 Rule 11 of the Code of 1908. The defendant No.1 submits further that he has very specifically mentioned the cause of action in the counter claim, therefore, the application as made by the plaintiffs under Order 7 Rule 11 of the Code of 1908 for rejection of his counter claim deserves to be rejected.

5. After considering the application as filed by the plaintiffs under Order 7 Rule 11 of the Code of 1908 for rejection of the counter claim of defendant No.1, the trial Court has rejected the same by observing that the suit property mentioned in the plaint is prima facie the part of the suit property mentioned in the counter claim and that has to be established by defendant No.1 also. It was observed further by the trial Court that defendant No.1 while filing the counter claim has mentioned the cause of action also. As a consequence, the application was rejected by the trial Court by its impugned order dated 19.07.2017.

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

7. The plaintiffs have instituted a suit claiming declaration of title, possession and mesne profits with regard to the suit land bearing Kh.No. 180/2 admeasuring 0.190 hectares. Upon receiving the summons of the suit, defendant No.1 has submitted the written statement alongwith its counter claim by claiming partition by

submitting, inter alia, that the suit property, as mentioned in the plaint, is also the part of the suit property as mentioned by him in his counter claim. While filing the counter claim, defendant No.1 has also mentioned very specifically that the cause of action arose on 10.02.2015, i.e., after filing of the said suit. By taking into consideration all these materials, I do not find any infirmity in the order impugned passed by the trial Court rejecting the plaintiffs' application filed under Order 7 Rule 11 of the Code of 1908 for rejection of counter claim preferred by defendant No.1.

8. Accordingly, this revision, being devoid of merit, is dismissed at the admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge