

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 189 of 2017**

Sewak Ram Pandey S/o Late Shri G. R. Pandey, Aged About 65 Years R/o Rohinipuram, Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. Jitendra Goyal S/o Late Shri Ratanlal Goyal, Aged About 49 Years R/o Ratan Villa, Silver Spring, Gayatri Nagar, Raipur, Tehsil And District Raipur, Chhattisgarh.
2. R. K. Dubey, S/o R. S. Dubey, Aged About 48 Years R/o H No. 393, Sector 2, Bajaj Colony, Tehsil And District Raipur, Chhattisgarh.
3. State of Chhattisgarh, Through Collector, Raipur, Chhattisgarh.

---- Respondents

For Applicant	:	Mr. Abhishek Vinod Deshmukh, Advocate
For Non-applicant No. 1	:	Mr. Ankur Agrawal, Advocate appears on caveat.
for Non-applicant No. 3/State	:	Ms. Shobha Kashyap, Dy. Govt. Advocate

Hon'ble Shri Sanjay Agrawal, J.**Order On Board****21/11/2017**

Heard on admission.

1. This is a civil revision preferred by defendant No. 1- Sewak Ram Pandey under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') by questioning the propriety of order dated 23/09/2017 passed by the District Judge, Raipur (C.G.) in Civil Suit No. 31-A/2017, by which, the trial Court has rejected his application filed under Order 7 Rule 11 of CPC.

2. The undisputed facts of the case, are that, the plaintiff- Jitendra Goyal instituted a suit claiming declaration of title, permanent injunction and also for declaration that the *ex parte* judgment and decree dated 27/10/2010 as passed in Civil Suit No. 21-A/2009 be declared as null and void. According to the plaintiff, he had purchased the suit property described in plaint para-1 by virtue of a registered deed of sale, dated 20/12/2005 and as such, had acquired his interest over it. It is pleaded further that since he had already purchased the suit property in the year 2005, therefore, the Civil Suit No. 21-A/2009 for specific performance of contract based upon an agreement to sale executed on 30/07/2008 by his vendor namely R. K. Dubey in favour of defendant No. 1- Sewak Ram Pandey and the judgment and decree delivered pursuant thereto, is apparently obtained by playing fraud upon him.

3. Upon receiving the summons of the suit, defendant No. 1- Sewak Ram Pandey has filed an application as per the provision prescribed under Order 7 Rule 11 of CPC praying that the suit as framed by the plaintiff is apparently barred by law and liable to be rejected. It is pleaded further in the application that the *ex parte* judgment and decree was passed by the competent Court and the application for its setting aside under Order 9 Rule 13 of CPC was also refused and by efflux of time, the said judgment and decree has attained its finality, and as such the suit as framed and instituted is not sustainable. It is pleaded further that the part of the suit property, bearing Kh. Nos. 383/2 and 402 have already been acquired by the Land Acquisition Officer for widening up the National Highway, therefore, the suit as framed and instituted cannot be held to be validly instituted before the Court and therefore, liable to be rejected.

4. Respondent No. 1/plaintiff has submitted his reply with regard to the aforesaid application by reiterating the contentions made in the plaint and praying for the rejection of the said application.

5. After considering the submissions made by the parties, the trial Court has rejected the said application by observing that the question raised by defendant No. 1 could be determined at the time of trial and the Civil Court has wider jurisdiction to consider the issues involved in the matter by virtue of Section 9 of CPC and it cannot be held that the suit is barred by any law. In consequence, the trial Court has refused to reject the plaint while exercising the powers enumerated under Order 7 Rule 11 of CPC.

6. Being aggrieved, defendant No. 1 has preferred this revision. Mr. Abhishek Vinod Deshmukh, learned counsel for the applicant submits that the order impugned rejecting the application filed by him under Order 7 Rule 11 of CPC is apparently contrary to law. He submits that since the judgment and decree passed in a suit for specific performance of the contract has already attained its finality by efflux of time, therefore, the instant suit questioning the propriety of the said decree is not at all sustainable. He submits further that the part of the suit property has already been acquired by the Land Acquisition Officer for widening up the National Highway, therefore, under such circumstances, the suit cannot be held to be maintainable and without considering the said *prima facie* material fact in its proper perspective, the trial Court has erred in rejecting the said application by way of its order impugned dated 23/09/2017.

7. I have heard learned counsel appearing for the applicant and perused the entire relevant papers annexed with this revision.

8. It is settled principle of law that while entertaining the application filed under Order 7 Rule 11 of CPC, the plaint averments alone are required to be considered. According to the plaint averments, it is evident that the plaintiff-Jitendra Goyal on the strength of the registered deed of sale dated 20/12/2005, purported to have been executed by defendant No. 2- R. K. Dubey in his favour,

has instituted a suit claiming declaration of title, permanent injunction and also for declaration that the *ex parte* judgment and decree dated 27/10/2010 passed in Civil Suit No. 21-A/2009 be declared as null and void. It is alleged in the plaint that since the suit property had already purchased by him on 20/12/2005 much prior to the execution of alleged agreement to sale dated 30/07/2008, said to have been executed by defendant No. 2- R. K. Dubey in favour of defendant No. 1- Sewak Ram Pandey therefore, the said suit, being Civil Suit No. 21-A/2009, for specific performance of contract and the said *ex parte* decree passed in pursuance thereto without impleading him as a party defendant, is apparently obtained by said defendant No. 1- Sewak Ram Pandey by suppressing the said material facts and has, thus, obtained the same by playing fraud upon him. In view of this fact, it is evident on the face of the record that much prior to the execution of the alleged agreement to sale, the plaintiff had already acquired his interest over the property in question. Under such circumstances, *prima facie*, defendant No. 2- R. K. Dubey was not at all competent to execute the alleged agreement to sale in favour of defendant No. 1- Sewak Ram Pandey. Consequently, the judgment and decree as delivered on the basis of the alleged agreement to sale cannot be held *prima facie* to be passed properly as per the averments made by the plaintiff and the same can be assailed in filing the instant suit. From perusal of the entire plaint averments, it cannot be said *prima facie* that the suit as framed and instituted is barred by any law so as to hold that the plaint is liable to be rejected.

9. Thus, after examining the entire plaint averments, I do not find that the suit as framed is barred by any law and liable to be rejected under clause (d) of Order 7 Rule 11 of CPC. Consequently, the finding as recorded by the trial Court while rejecting the said application filed under Order 7 Rule 11 of CPC does not call for any interference and the same deserves to be and is hereby affirmed.

10. In view of the forgoing discussions, the revision being devoid of merits is accordingly dismissed. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge

Yogesh