

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 5 of 2018**

- Santosh Rathiya S/o Budhsingh Rathiya Aged About 34 Years R/o Village Baihamuda, Tahsil Gharghoda, District Raigarh, Civil And Revenue District Raigarh, Chhattisgarh (Defendant No.1) ---- **Petitioner**

Versus

1. Ratiram S/o Bodhiram Kanwar Aged About 65 Years R/o Village Baihamuda, Tahsil And P.S. Gharghoda, District Raigarh, Chhattisgarh (Plaintiff).
2. State Of Chhattisgarh Through Collector Raigarh, District Raigarh, Chhattisgarh (Defendant No.2). ---- **Respondent**

For Applicant	:Shri Ashutosh Mishra, Advocate
For Respondent No.1	:Shri Rakesh Behara, Advocate.
For Respondent No.2	:Shri V.B.Singh, Panel Lawyer

Hon'ble Shri Justice Sanjay Agrawal**Order On Board****17.07.2018**

1. Heard on I.A.No. 01/2018, an application for condonation of delay of 11 days in filing this revision petition.
2. On due consideration, the application is allowed and the delay of 11 days is accordingly condoned.
3. Heard on admission.
4. This revision petition has been preferred by defendant No.1 Santosh Rathiya questioning the order dated 27.09.2017 passed by the Civil Judge, Class-1, Gharghoda, District Raigarh in Civil Suit No. 40-A/2017, by which, the trial Court has rejected the application filed under Order 7 Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (for short, the C.P.C.)
5. Shri Ashutosh Mishra, counsel for the applicant submits that the order impugned as passed by the trial Court is apparently contrary to law. He submits that the plaintiff's suit for declaration of title and confirmation of possession is not

maintainable for want of cause of action, identification of property in question and also for non-issuance of notice, as required mandatorily under Section 80 of the C.P.C. The trial Court, without considering these material facts in its proper manner, has committed an illegality in rejecting his application for rejection of plaint.

6. I have heard learned counsel for the applicant and perused the entire relevant papers carefully.

7. The plaintiff has instituted a suit claiming declaration of title and confirmation of possession by submitting, inter alia, that he is in possession for over thirty years and defendant No.1 has entered into his property on 03.08.2017 and thereby started interfering in his peaceful possession, therefore, he has been constrained in filing the suit in the instant nature. Based upon the said fact, it is disclosed by the plaintiff that the cause of action arose on 03.08.2017 when defendant No.1 started interfering in his peaceful possession by entering his suit land illegally. Further examination of the plaint-map annexed with the plaint would show that the property is identified by its boundaries and since the claim as made by the plaintiff is not against the State Government, therefore, no prior notice is required to be issued under Section 80 of C.P.C. Besides, none of the clauses, as provided under Order 7 Rule 11 is attracted so as to hold that the plaintiff's suit is liable to be rejected while entertaining the application under Order 7 Rule 11 of C.P.C.

8. In view of the foregoing discussion, I do not find any illegality in the order impugned. The order impugned, therefore, deserves to be and is hereby affirmed. The revision petition is accordingly dismissed. No order as to costs.

Sd/-
(Sanjay Agrawal)
Judge