

HIGH COURT OF CHHATTISGARH, BILASPUR

Judgment reserved on 11-7-2018

Judgment delivered on 24- 7-2018

FA No. 220 of 2011

- Shatruhan Soni S/o Late Bhagwan Singh, R/o Torwa Bilaspur

---- Appellant

Versus

1. Hasmukh Rai S/o Late Shri Balaram Soni, S/o Late Shri Balaram Soni, R/o Jabdapara Ward , Bilaspur
2. Rajkumar S/o Late Shri Balaram Soni, S/o Late Shri Balaram Soni, R/o Jabdapara Ward , Bilaspur
3. Nandini Wd/o Late Shri Balaram Soni, S/o Late Shri Balaram Soni, R/o Jabdapara Ward , Bilaspur
4. State Of C.G. Through Honble Collector, Bilaspur
5. Onkar Late Shri Balaram Soni, S/o Late Shri Balaram Soni, R/o Jabdapara Ward , Bilaspur
6. Baliram Soni S/o Buddoolajii Soni, R/o Mungeli Tahsil , Dist. Bilaspur
7. Shrawan Kumar Soni S/o Late Bhagwan Singh Soni, R/o Kilaward Bilaspur
8. Ram Saran Soni S/o Late Bhagwan Singh Soni, R/o Kilaward Bilaspur
9. Nand Kumar Soni S/o Late Bhagwan Singh Soni, R/o Gayatri Mnandir Bilaspur
10. Rajoo Late Shri Balaram Soni, S/o Late Shri Balaram Soni, R/o Jabdapara Ward , Bilaspur

---- Respondents

For appellant	:	Mr. Asgar Ali, Advocate.
For respondent No.1	:	Mr. Parag Kotecha, Advocate
For respondent No.4/State	:	Mr. Sanjeev Pandey, G.A.

SB: Hon'ble Shri Justice Ram Prasanna Sharma

CAV JUDGMENT

1. The appellant has preferred this appeal under Order 41 Rule 1 read with Section 96 of Code of Civil Procedure against the order dated 3-12-2010 passed by the 2nd Additional District Judge, Bilaspur (CG) in Civil Suit No. 68-A/2008 (Shatruhan Soni vs. Hasmukh Rai and others) wherein the said court dismissed the suit filed under Order 7 Rule 11 of the CPC on the principle of *res judicata*.
2. As per appellant, he filed a suit along with respondent No.9 which is Civil Suit No. 100-A/1994 before the First Civil Judge, Class II, Bilaspur, against the respondent No. 1 who was defendant No.3 in the said suit along with Kamlesh Kumari Tuteja and Jyoti Tuteja for declaration and permanent injunction on the ground that the land bearing Khasra No. 7/4 which is situated at Torwa Ward of Bilaspur was purchased by Bhagwan Singh, who was the father of the appellant. After death of Bhagwan Singh, appellant came into possession. Respondent No.1 along with Maniram Tuteja were disturbing the possession of the suit land of the plaintiff, therefore, he filed the suit in which a decree of injunction has been passed, but issue of title was not

decided for the reason that five brothers of the appellant were not made party. Owing to the circumstances, the appellant again filed a Civil Suit No. 68-A/2008 impleading respondent No.1 and all his brothers namely Ramsharan Soni, Shrawan Kumar Soni, Nand Kumar Soni who were the legal representatives of deceased Balram Soni. In the said suit, an application under Order 7 Rule 11 of CPC was filed by the respondent which was allowed by the trial Court contrary to law. As the issue of title was not decided in earlier suit, principle of *res judicata* as provided in Section 11 of CPC has no application in the facts of the case, therefore, the same is liable to be reversed.

3. I have heard learned counsel for the parties and perused the record of the court below with utmost circumspection.
4. Principle of *res judicata* is embodied in Section 11 of the Code of Civil Procedure, 1908, which may be read as under:

“No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court”.

5. The trial Court opined that the decree passed by the court of First Civil Judge, Class II, Bilaspur in Civil Suit No. 100-A/1994 is final and the suit for declaration filed by the appellant in the present suit i.e., Civil Suit No. 68-A/2008 is barred by principle of *res judicata*, therefore, allowed the application under Order 7 Rule 11 (2) of CPC. The suit was filed by the applicant for declaration of title. The core issue in the present appeal is whether question of title is finally decided in previous suit.
6. From the judgment in previous suit No. 100A/1994, it is clearly mentioned in para 13 that for declaration of title five other brothers of the appellant are not made party and in absence of other claimants, it is not fair to decide the issue of title. It is clear from the judgment that the issue of title is not decided as necessary parties were not brought on record. It is not the case wherein the previous suit the trial Court provided opportunity to the appellant for bringing other claimants on record. It is only when the judgment is delivered, the trial Court did not touch the issue of title in absence of other claimants. When issue of title is not finally decided, principle of *res judicata* will not apply in the present suit No. 68-A/2008. In the present suit, the trial Court ought to have heard merits of the case, but the same is not heard and disposed of on the basis of misinterpretation of the principle of *res judicata* which is not sustainable.

7. Accordingly, the appeal is allowed and it is ordered that the trial Court will hear both sides on merits after providing opportunity of adducing oral and documentary evidence and will decide the matter afresh, in accordance with law.
8. Parties are directed to appear before the trial Court on 27-8-2018 for further proceedings.

Sd/-
(Ram Prasanna Sharma)
JUDGE

Raju