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HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 785 of 2015**

{Arising out of Order dated 08.07.2015 passed in Misc. Civil Appeal No. 59 of 2013 by the Additional District Judge, Dhamtari, District Dhamtari}

1. Jamuna Bai D/o Shri Ram Gopal Gupta, W/o Satyanarayan Gupta, Aged about 66 years, R/o Rambag, PS Dhamtari, Civil and Revenue District Dhamtari Chhattisgarh.
2. Ganga Bai D/o Shri Ramgopal Gupta W/o Shri Rameshwar Gupta, aged about 64 years, R/o Durga Chowk, Baloudabajar, PS Baloudabajar, Civil and Revenue District Baloudabajar Bhatapara, Chhattisgarh.
3. Bhagwatia D/o Shri Ramgopal Gupta W/o Shri Rajkumar Gupta, aged about 62 years, Rampur Ward Dhamtari, PS Dhamtari, Civil and Revenue District Dhamtari, Chhattisgarh.
4. Prabha Bai D/o Shri Ramgopal Gupta W/o Shri Kamla Prasad Soni, aged about 60 years, R/o village Bamhanidih, PS Champa, District Janjgir-Champa, Chhattisgarh.

---- Petitioners**Versus**

1. Lakhan Lal S/o Shri Ramgopal Gupta, aged about 62 years.
2. Smt. Durga W/o Lakhan Soni, aged about 54 years.
3. Satyendra S/o Lakhan Soni, aged about 36 years.
4. Prakash S/o Lakhan Soni aged about 33 years.
5. Ramkrishna S/o Lakhan Soni, aged about 29 years.
6. Suraj S/o Lakhan Soni, aged about 25 years.

1 to 6 are residents of Sadar Dakshin Ward, Near Halwadi Rambag, Dhamtari, PS and Tahsil Dhamtari, Civil and Revenue District Dhamtari, Chhattisgarh.

7. Nandkishore (Dead) Through LRs Smt. Laxmi Gupta W/o Nandkishore Gupta, aged about 60 years, R/o Rambag Dhamtari, at present resident of Bajrang Chowk, Tikrapara, PS Tikrapara, Civil and Revenue District Raipur, Chhattisgarh.
8. Jagdish S/o Ramgopal Gupta, aged about 56 years, R/o Near BTI School, Nagari, PS Nagari, Civil and Revenue District Dhamtari, Chhattisgarh.
9. Krishna Kumar S/o Ramgopa Gupta (Soni) aged about 43 years, R/o village Awadhiyapara Raipur, Civil and Revenue District Raipur, Chhattisgarh.
10. Narayan S/o Ramgopal Gupta, aged about 46 years, R/o Rambag, Dhamtari, PS and Tahsil Dhamtari, Civil and Revenue District Dhamtari, Chhattisgarh.
11. State of Chhattisgarh, Through The Collector, Dhamtari, District Dhamtari, Chhattisgarh.

---- Respondents

For Petitioners	: Shri Sunil Sahu, Advocate.
For Respondents No.1 to 6	: Shri Keshav Dewangan and Shri Mayank Chandrakar, Advocates.
For Respondent/State	: Shri UNS Deo, Government Advocate.

Hon'ble Shri Thottathil B. Radhakrishnan, Chief Justice

Order on Board

09/03/2018

1. The Plaintiffs in a suit for declaration of title, permanent injunction and for cancellation of entry made in the revenue record are the Petitioners in this application under Article 227 of the Constitution of India. They challenge an order by which the plaint has been rejected in exercise of authority under Order 7 Rule 11 of the Code of Civil Procedure, 1908; for short 'CPC'; on the basis of an application filed by the contesting Defendants invoking that provision of law.

2. The substance of the issues which would gain immediate attention is that there was a prior suit in which the Plaintiffs and some of the Defendants had joined. That suit is stated to have been dismissed for default under Order 9 Rule 8 CPC. The effect of such dismissal is referable to Order 9 Rule 9(1) CPC. As to whether the subject matter of that suit and the cause of action for that suit are the same as that of the present suit, is a matter for decision when that earlier *ex parte* decree is put in defence. This is because the first sentence of sub-rule 1 of Order 9 Rule 9 CPC itself clearly says that the Plaintiff shall be precluded from bringing a fresh suit in respect of the same cause of action. Therefore, the identity of the cause of action is relevant to decide a bar to fresh suit under Order 9 Rule 9 CPC. If there is a decree which would fall under consideration for the purpose of *res judicata* in terms of Section 11 CPC, matters would have to be considered from that view.

3. However, Order 7 Rule 11 CPC provides the power for rejection of the plaint on enumerated grounds provided in that provision. That is a power of drastic nature as has been noticed by the Hon'ble Supreme Court in **P.V.Guru Raj Reddy v. P. Neeradha Reddy** {(2015) 8 SCC 331}. The power of rejection cannot be exercised based on the stand taken by the Defendants in the written statement or in the application for rejection of the plaint. Such pleading of the Defendants is totally immaterial at the stage of considering whether the the plaint has to be treated as rejected in terms of Order 9 Rule 9 CPC.
4. The well settled proposition is that the pleadings in the plaint would alone be taken into consideration for deciding application for rejection of plaint. There are also situations where documents relied on by the Plaintiff and produced alongwith the plaint may also be considered in certain situations, particularly if we notice that there is a bar to suit and other grounds which may squarely fall under Order 7 Rule 11 CPC. Otherwise, the power under Order 7 Rule 11 is not to be exercised.
5. The impugned order is passed in exercise of Order 7 Rule 11 CPC. It is contrary to the law laid by the Apex Court in **P.V.Guru Raj Reddy** (supra). Therefore, the impugned order is set aside and the trial Court is directed to consider all the contentions of the parties, including the effect of the earlier *ex-parte* dismissal of suit. All these will be done as part of adjudication during trial and final hearing and all issues will be decided by the Court below in accordance with law. The contesting Defendants will be at liberty to make a separate application for framing appropriate issues which also would be answered at trial.
6. The writ petition is ordered accordingly.

Sd/-
(Thottathil B. Radhakrishnan)
CHIEF JUSTICE