

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No.147 of 2017**

Smt.Kalpana Shrivastava, aged about 55 years, wife of Shri Narendra Kumar Shrivastava, resident of Sector-10, Quarter No.12 C, Street No.12, Bhilai, District Durg (CG)

---Applicant

Versus

1. Bhanu Dewangan, son of Chandrabhan Dewangan, aged about 37 years, resident of House No.431, Mukut Nagar, Titurdih, Durg, Tahsil and District Durg (CG) at present resident of Junior Engineer Railway Zone Bilaspur House No.B-53 Mahaveer City Rajkishore Nagar, Bilaspur, Tahsil and Distt. Bilaspur (CG)
2. State of Chhattisgarh, Through Collector, Durg (CG)

---Respondents

For Applicant	:	Mr.R.K.Gomasta, Advocate
For Respondent No.1	:	Mr.K.K.Dewangan, Advocate
For Respondent No.2	:	Mr.Arun Sao, Dy.A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

04/09/2018

1. In a suit filed by respondent No.1/plaintiff for declaration of title and permanent injunction, the petitioner herein/defendant No.1 has filed an application under Order 7 Rule 11(d) of the Code of Civil Procedure stating inter-alia that since the plaintiff is not in possession of the suit property, therefore, suit is barred by proviso to Section 34 of the Specific Relief Act, 1963 (hereinafter called as 'the Act of 1963'), which has been rejected by the trial Court finding no merit, against which, this writ petition has been filed by the petitioner herein.

2. Learned counsel for the petitioner would submit that since the

plaintiff is not in possession of the suit property, therefore, the suit is hit by proviso to Section 34 of the Act of 1963, as such, it is liable to be dismissed.

3. On the other hand, learned counsel for respondent No.1 would support the impugned order.

4. I have heard learned counsel for the parties and perused the impugned order.

5. The trial Court has clearly recorded a finding as to whether the plaintiff is in possession of the suit land is the question of fact which has to be decided after recording evidence and at this stage, this question cannot be decided.

6. In the considered opinion of this Court, the trial Court is absolutely justified in rejecting the application under Order 7 Rule 11(d) of the CPC as in order to decide the plea, recording of evidence is necessary. However, issue with regard to the fact of possession will be framed by the trial Court before proceeding further and that will be decided along with other issues.

7. With the aforesaid observation, the civil revision finally stands disposed of. No cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-