

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Civil Revision No.140 of 2017

Govind Prasad Pandey, son of Late Ayodhya Prasad Pandey, aged about 88 years, resident of House No.294, Sunder Nagar, Raipur, Chhattisgarh through his power of attorney holder Shri Abhay Kumar Pandey, son of Shri Govind Prasad Pandey, aged about 62 years, resident of House No.173, Near Trimurti Chowk, Sunder Nagar, Raipur, Chhattisgarh

---- Revisioner

versus

1. Sandeep Tiwari, son of Late Parmanand Tiwari, aged about 39 years,
2. Sumit Tiwari, son of Late Parmanand Tiwari, aged about 29 years,
3. Smt. Madhuri Tiwari, widow of Late Parmanand Tiwari, aged about 60 years,
4. Samim Sharma, daughter of Late Parmanand Tiwari, aged about 37 years,
5. Sarika Sharma (Wrongly mentioned as 'Tarika' in the cause title of court below), daughter of Late Parmanand Tiwari, aged about 36 years,

(No.2 to 6 are legal heirs of deceased plaintiff No.1-Parmanand Tiwari)

6. Smt. Kunti Devi, widow of Late Nathmal Tiwari, aged about 74 years,
7. Srikant Tiwari, son of Late Nathmal Tiwari, aged about 52 years,
- (No.6 and 7 are legal heirs of deceased plaintiff No.2-Nathmal Tiwari)
8. Baldau Prasad Tiwari, son of Late Sharda Prasad Tiwari, aged about 69 years,
9. Prasann Kumar Sharma (Tiwari), son of Late Gajanand Sharma, aged about 64 years,

No.1 to 9 are residents of Village Darba, Tahsil Aarang, District Raipur

10. Sushil Kumar Sharma, son of Late Khomlal Sharma, aged about 40 years,
11. Smt. Shanti Sharma, widow of Late Khomlal Sharma, aged about 72 years,
12. Smt. Sunita Sharma, widow of Late Sharad Sharma, aged about 38 years,
13. Aditi Sharma, daughter of Late Sharad Sharma, aged about 8 years,
14. Anisha Sharma, daughter of Late Sharad Sharma, aged about 6 years,

No.13 and 14 are minors through their natural guardian mother Smt. Sunita Sharma, widow of Late Sharad Sharma,

No.10 to 14 are residents of Village Darba, Tahsil Aarang, District Raipur,

15. State of Chhattisgarh, through the Collector, Raipur

--- Respondents

For Revisioner	:	Shri B.P. Sharma, Advocate
For Respondents No.1 to 9	:	Shri T.K. Jha, Advocate
For Respondents No.10 to 14	:	Shri R.K. Tiwari, Advocate
For State/Respondent No.15	:	Shri Sumit Jhanwar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel

Order on Board

5.1.2018

1. The revision is listed for hearing on admission, however, with the consent of Learned Counsel appearing for the parties, it is heard finally.
2. By the instant revision preferred under Section 115 of the Code of Civil Procedure, 1908 (henceforth 'CPC'), Defendant No.1 has impugned sustainability of the order dated 27.7.2017 passed by the 3rd Additional Judge to the Court of 1st Additional District Judge, Raipur in Civil Suit No.1A of 2012 rejecting his application filed under Order VII Rule 11 CPC seeking rejection of the plaint.
3. Facts, in brief, are that the Respondents/Plaintiffs filed a suit, being Civil Suit No.1A of 2012 for declaration of two sale-deeds executed for sale consideration of Rs.31,70,625/- and Rs.42,75,000/- both dated 19.12.2011 to be null and void and not binding upon them. The suit was also preferred for reliefs of declaration of the order of mutation passed on the basis of the two sale-deeds to be void, declaration of their title over the suit lands, declaration of effect of the order dated 20.3.2012 passed by the Additional Tahsildar, Mandir Hasaud in Revenue Case No.46A-6/2011-12 to be null and void and for declaration that they are in joint possession of the suit lands.
4. An application under Order VII Rule 11 CPC was filed by the

Revisioner/Defendant No.1 on the ground that the Respondents/Plaintiffs have only prayed for declaration of the two sale-deeds dated 19.12.2011 to be null and void, while cancellation of those sale-deeds are also required as a consequential relief and, therefore, ad valorem Court-fee is required to be paid by the Plaintiffs. The suit suffers from an infirmity of mis-joinder/non-joinder of a necessary party and the suit is barred by limitation. The said application under Order VII Rule 11 CPC was rejected by the order under challenge before this Court.

5. Shri B.P. Sharma, Learned Counsel appearing for the Revisioner/Defendant No.1 submits that the Trial Court has rejected the application under Order VII Rule 11 CPC moved by Defendant No.1 only on the ground that the same will be decided on merits. The Supreme Court as also various other Courts of law have laid down a law while dealing with Order VII Rule 11 CPC that the words “at this stage” under Order VII Rule 11 CPC do not contemplate that its adjudication will be made on merits if the plaint is liable to be rejected at the threshold, the decision on the same cannot be deferred on the ground that the objections will be decided on merits. Reliance has been placed on **(2016) 14 SCC 275 (R.K. Roja v. U.S. Rayudu)**.
6. On the contrary, Shri T.K. Jha, Learned Counsel appearing for the Respondents/Plaintiffs, supporting the impugned order, submits that since the Respondents/Plaintiffs are not parties to the sale-deeds in question, they are not required to pay any ad valorem Court-fee. The question of limitation is a mixed question of fact and law, therefore, the view of the Trial Court that the question of limitation can be decided only on merits is flawless. Hence, there

is no infirmity in the impugned order. Reliance has been placed on **(2015) 5 SCC 674 (Satti Paradesi Samadhi and Pillayar Temple v. M. Sankuntala (Dead) Through Legal Representatives), AIR 2010 SC 2807 (Suhrid Singh @ Sardool Singh v. Randhir Singh), AIR 2015 Chhattisgarh 94 (Smt. Urvashi Bai Sharma v. Smt. Indumati Sharma) and MPWN 1999 (II) Note 136 (Bhikam Chandra v. Ghichi Bai).**

7. I have heard Learned Counsel appearing for the parties and perused the material available on record with utmost circumspection.
8. Order VII Rule 11 CPC runs thus:

“O. VII, R. 11: Rejection of plaint.—The plaint shall be rejected in the following cases:—

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite

stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

9. A bare perusal of the impugned order dated 27.7.2017 makes it clear that earlier also an application under Order VII Rule 11 CPC was filed by the Revisioner/Defendant No.1 on the ground of valuation of the suit and the same was rejected by the Trial Court. In the subject civil suit, the Respondents/Plaintiffs have prayed for relief of declaration of the sale-deeds to be null and void. Since the Plaintiffs are not parties to the sale-deeds, they are not required to pay any ad valorem Court-fee. The objection raised by Defendant No.1 that the Plaintiffs are required to pay ad valorem Court-fee has rightly been rejected by the Trial Court.
10. While dealing with the issue of limitation, in **Satti Paradesi Samadhi case** (supra), the Supreme Court has observed thus:

“14. In *Ramesh B. Desai v. Bipin Vadilal Mehta*, (2006) 5 SCC 638, while dealing with the issue of limitation, the Court opined that: (SCC p. 652, para 19)

“19. A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact.”

The Court further proceeded to state that a plea of limitation is a mixed question of fact and law. On a plain consideration of the language employed in sub-rule (2) of Order 14 it can be stated with certitude that when an issue requires an inquiry into facts it cannot be tried as a preliminary issue. In the said judgment the Court opined as follows: (*Ramesh B. Desai case*, SCC p. 650, para 13)

“13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be

disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in *Major S.S. Khanna v. Brig. F.J. Dillon*, AIR 1964 SC 497 and it was held as under: (AIR pp. 502-03, para 18 : SCR p. 421)

'18. Under Order 14 Rule 2 of the Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.'

Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the abovequoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue."

11. In the instant case also, the Trial Court has arrived at a finding that the question of limitation is a mixed question of fact and law and, therefore, it will be decided on merits. This finding, in the light of above observation of the Supreme Court in **Satti Paradesi Samadhi case** (supra), is impeccable.

12. The ground raised by the Revisioner/Defendant No.1 that the suit suffers from an infirmity of mis-joinder/non-joinder of a necessary party could not be entertained as the same is not available under Order VII Rule 11 CPC and, therefore, the finding of the Trial Court in this regard is correct.

13. In **R.K. Roja case** (supra), the Supreme Court has observed thus:

“5. Once an application is filed under Order 7 Rule 11 CPC, the court has to dispose of the same before proceeding with the trial. There is no point or sense in proceeding with the trial of the case, in case the plaint (election petition in the present case) is only to be rejected at the threshold. Therefore, the defendant is entitled to file the application for rejection before filing his written statement. In case the application is rejected, the defendant is entitled to file his written statement thereafter (see *Saleem Bhai v. State of Maharashtra*, (2003) 1 SCC 557. But once an application for rejection is filed, the court has to dispose of the same before proceeding with the trial court. To quote the relevant portion from para 20 of *Sopan Sukhdeo Sable v. Charity Commr.*, (2004) 3 SCC 137 (SCC pp. 148-49)

“20. Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objection can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word “shall” is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant.”

14. **R.K. Roja case** (supra) does not help to the Revisioner/Defendant No.1 because in the said case the application under Order VII Rule 11 CPC was kept pending, while in the instant case, the application

under Order VII Rule 11 CPC was not kept pending and was decided by the Trial Court by the well-reasoned impugned order and in view of the foregoing, I do not find any infirmity in the impugned order.

- 15.** Consequently, the revision is dismissed. The order under challenge before this Court is affirmed.

Sd/-
(Arvind Singh Chandel)
Judge