

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**C.R. No. 36 of 2018**

1. Smt. Shakuntala Sharma, aged about 85 years, W/o Late Saral Kumar Sharma, R/o Vivekanand Nagar, Raipur, Tahsil and District Raipur (C.G.) through Power of Attorney holder – Sunil Kumar Ojha, aged about 46 years, S/o Late G.S. Ojha, R/o Near Dudhadhari Temple, Subhash Nagar, Raipur, Tahsil and District Raipur (C.G.)[Defendant No. 1]
----Petitioner / Applicant

Versus

1. Awadhesh Mishra, aged about 60 years, S/o Late Rajdev Mishra, R/o Pandaritari Raipur, Tahsil and District Raipur (C.G.)....[Plaintiff]
2. Devendra Mishra, aged about 44 years, S/o Late Kamlesh Mishra, R/o Pandaritari Raipur, Tahsil and District Raipur (C.G.)....[Plaintiff]
3. Ashutosh Mishra, aged about 31 years, S/o Late Brijesh Mishra, R/o Pandaritari Raipur, Tahsil and District Raipur (C.G.)....[Plaintiff]
4. M. K. Kesariya, Special – Duty – Officer, Diverted Land Office, Raipur, Tahsil and District Raipur (C.G.)
5. Special Duty Officer, Diverted Land Office, Raipur, Tahsil and District Raipur (C.G.)
6. Tahsildar, Raipur, Tahsil and District, Raipur (C.G.)
7. Collector, Raipur, Tahsil and District Raipur (C.G.)
8. State of C.G. Revenue Department, through Collector, Raipur, Tahsil and District Raipur (C.G.)
---- Respondents

For Petitioner /Applicant	:	Mr. Ankur Agrawal, Advocate.
For Respondents	:	Mr. B. D. Guru, Advocate.
For Respondents / State	:	Mr. Avinash Singh, P.L.

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****23/08/18**

1. In a suit filed by the respondents No. 1 to 3 / plaintiffs for declaration of title and permanent injunction on 05.08.2008, the petitioner / defendant No.1 has filed an application under Order 7 Rule 11 (d) of C.P.C. that the suit for

declaration of title and permanent injunction is based on adverse possession and is barred by Order 7 Rule 11 (d) of C.P.C. which has been rejected by the impugned order dated 19.02.2018 (Annexure – P/1).

2. Learned counsel for the petitioner submits that the impugned order is unsustainable and bad in law and the learned trial Court is absolutely unjustified in not rejecting the plaint.

3. On the other hand, learned counsel for the respondents would support the order impugned.

4. I have heard learned counsel for the parties.

5. The instant suit for declaration of title and permanent injunction was filed way back on 05.08.2008 and the written statements filed on 02.01.2010. No plea as to non-maintainability of suit has been raised by the defendant No. 1 and suit was allowed to be proceeded with, but now on 17.11.2016 an application under Order 7 Rule 11 (d) C.P.C. has been filed stating that suit for declaration of title and permanent injunction is not maintainable which was rejected by the trial Court by the impugned order.

6. Since, the suit is pending for last 16 years, in the considered opinion of this Court, it would be appropriate to direct the trial Court to frame an issue on question of maintainability of suit as raised and conclude the trial expeditiously by deciding all the issues.

7. Accordingly, the civil revision is disposed of with aforesaid direction. No order as to cost(s).

SD/-

(Sanjay K. Agrawal)
Judge