

HIGH COURT OF CHHATTISGARH, BILASPUR**MA No. 21 of 2016**

1. Ramprasad Dead Through Legal Representatives
 1(A) - Smt. Sonmati Wd/o Late Shri Ramprasad, Aged About 60 Years R/o Village Koraja, Police Station And Tahsil Lakhanpur, District Sarguja Chhattisgarh.....Respondent No. 01 A
 1(B) - Smt. Kalawati D/o Late Shri Ramprasad, W/o Shri Mohan Ram, Aged About 35 Years R/o Village Baroudhi, Bhatgaon, District Surajpur Chhattisgarh.....Respondent No. 01 B
 1(C) - Smt. Indrawati D/o Late Shri Ramprasad, W/o Shri Balbir Rajwade, Aged About 30 Years R/o Village Bhitthikala, Police Station And Tahsil Ambikapur, District Sarguja Chhattisgarh.....Respondent No. 1 C
 1(D) - Smt. Khemwati D/o Late Shri Ramprasad, W/o Shri Parasnath, Aged About 27 Years R/o Village Koraja, Police Station And Tahsil Lakhanpur, District Sarguja Chhattisgarh.....Respondent No. 1 D
2. Lorago S/o Late Shri Jageshwar, Aged About 57 Years Occupation Agriculture, R/o Village Koraja, Police Station And Tahsil Lakhanpur, District Sarguja Chhattisgarh.....Respondent No. 02
3. Nandlal (Shwon As Nandal In The Impugned Order Dated 23.10.2015) S/o Shri Jageshwar, Aged About 42 Years Occupation Agriculture, R/o Village Koraja, Police Station And Tahsil Lakhanpur, District Sarguja Chhattisgarh.....Respondent No. 03

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1. Rajnath Yadav S/o Late Shri Shivratan Aged About 62 Years Wrongly Mentioned As Shivrajan In The Impugned Order Dated 23.10.2015 R/o Village Koraja, Police Station And Tahsil Lakhanpur, District Sarguja Chhattisgarh.....Appellant No. 01 / Plaintiff No. 01, Chhattisgarh
2. State Of Chhattisgarh Through The Collector Sarguja Ambikapur Chhattisgarh.....Defendant No. 04

---- Respondents

For Appellants	:	Shri Rishi Rahul Soni, Advocate
For Respondent/State	:	Shri RK Jaiswal, PL for the State

Hon'ble Shri Justice Goutam Bhaduri**Order On Board****07/09/2018**

1. Heard.
2. The present appeal is against the order dated 23.10.2015, whereby learned appellate Court in an appeal remanded the case for fresh adjudication to the trial Court. Initially before the trial Court an application under Order 7 Rule 11 CPC was allowed, which was moved by the defendants. The same having been challenged in the appellate Court, the appellate Court found that the property in question in an earlier suit as also in the subsequent suit, the cause of action is different and claim of the property is confined to certain part of the land, which was not subject part of the earlier suit, therefore, the remand was made.
3. Learned counsel for the appellants would submit that the plaintiffs themselves have admitted the fact that earlier in respect of the same suit property a civil suit was filed, which was adjudicated and the rights of the parties were decided, as such in respect of the same property, subsequent suit was hit by Section 11 of the CPC, therefore, the order impugned is completely illegal.
4. Perused the order of the Court below. The learned appellate Court while evaluating the facts has held that the earlier civil suit was filed by Shivratan and Shambhu, wherein the claim was made that the property was a joint undivided property and it was stated that Jageshwar and his brothers have the same and equal right, therefore, it can be partitioned and half share of the land shall be

given. The Court below held that the subsequent suit which is filed by the legal heirs of one of the holders namely Shivratan and only claim is confined to 2 acres of land, the cause of action was arose in the subsequent suit claimed to be on the basis of a panchnama dated 22.06.2000 which was executed on that date, therefore, the cause of action and the claim was held to be different. Perusal of the order, therefore, shows that prima facie the appellate Court found it that the claim and the cause of action in respect of the suit property by the plaintiff in the subsequent suit was different. Considering the nature of pleading, whether the suit cannot be adjudicated only on the mere say of the appellants herein that the rights in respect of the property have already been adjudicated. Since in the subsequent suit only a part of land of 2 acres have been claimed. It is a mixed question of law and fact. Unless the facts are corroborated and placed before the Court no finding can be given and it can only be adjudicated during the time of evidence. No presumption can be prima facie be drawn in respect of the suit property that in the earlier suit the rights have been adjudicated. Therefore, I do not find any merit in the appeal.

5. Accordingly, the appeal is dismissed.

Sd/-

Goutam Bhaduri
Judge

Ashu