

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**C.R. No. 92 of 2018**

1. Genda Bai D/o Ramhai Lodhi Aged About 48 Years R/o Village- Mungelidih, Tahsil, Kawardha, District- Kabirdham, Chhattisgarh.
2. Shrimati Sunita Kaushik W/o Puran Kaushik Aged About 26 Years Cast- Lodhi, R/o Village- Bamhani, Tahsil- Kawardha, District- Kabirdham, Chhattisgarh.
3. Shrimati Lalima Kaushik W/o Ramkishor Kaushik Aged About 23 Years Cast- Lodhi, R/o Village- Bamhani, Tahsil- Kawardha, District- Kabirdham, Chhattisgarh.

---- Applicants**Versus**

1. Bhagaiya Bai D/o Dhelu (W/o Anant Ram Kaushik), Cast-Lodhi Aged About 62 Years R/o Krishak Village Bamhani, Tahsil Kawardha, District- Kabirdham, Chhattisgarh.
2. Anant Ram S/o Samaru Kaushik Aged About 65 Years Cast- Lodhi, R/o Village- Bamhani, Tahsil- Kawardha, District- Kabirdham, Chhattisgarh.
3. State Of Chhattisgarh Through- The Collector, Kabirdham, Chhattisgarh.

---- Non-applicants

For Applicants:	Shri R. S. Baghel, Advocate.
For Non-applicant No. 3/ State:	Shri V. B. Singh, PL

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****08.08.2018**

1. Heard on admission.
2. This Revision Petition has been preferred by the defendants under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as the 'CPC') against the order dated 02.05.2018 passed by the First Civil Judge, Class-I, Kabirdham in Civil Suit No. 14-A/2015, by which, the trial Court has rejected the application filed under Order 7 Rule 11 of CPC.
3. Shri R. S. Baghel, learned counsel for the applicant submits that

while entertaining the application filed under Order 7 Rule 11 of CPC, the trial Court has erred in declining to consider the objections by observing that the same are mixed questions of law and fact and could be decided only at the time of trial. He submits further that the plaintiff is claiming her interest by virtue of the registered deed of sale dated 28.02.1973, however the suit has been filed only in the year 2016 and therefore, it is apparently barred by time. Without appreciating the said fact, the Courts below have committed an illegality in declining to entertain the same.

4. I have heard learned Counsel for the Applicant and perused the entire relevant papers annexed with this petition.

5. Perusal of the plaint averments would show that the plaintiff-Bhagaiya Bai instituted a suit claiming declaration of title to the effect that the order passed by the Sub Divisional Officer, Kawardha on 23.01.2012 in Revenue Appeal No. 50A/6 of 2010-11 be declared as null and void and praying further that the registered deed of sale as executed by Defendant No. 1 on 30.12.2014 in favour of Defendants No. 2 & 3 be declared as null and void as she had already acquired her valid title and interest over the suit property by virtue of the registered deed of sale dated 28.02.1973. While deciding the application under Order 7 Rule 11 of CPC, the plaint averments alone are required to be seen and in view of the averments as made therein, the Court below has rightly observed to decide the alleged objections at the time of trial. No prejudice is, therefore, going to be caused to the applicants.

6. In view of the above, I do not find any illegality in observing as such, as the trial Court has kept the said issues open and inclined to decide the same at the time of trial. Besides, I do not find any legal ground so as to

reject the plaint as per the provisions prescribed under Order 7 Rule 11 of CPC.

7. Consequently, the revision petition being devoid of merits is hereby dismissed at admission stage itself.

Sd/-

(Sanjay Agrawal)
JUDGE

Nikita