

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No. 20 of 2018****Reserved on 01.10.2019****Pronounced on 23.10.2019**

- Rajesh Kumar Agrawal S/o Late Sh. Ramrasal Agrawal Aged About 63 Years R/o 602, Ahmedji Colony, Raipur, Chhattisgarh (Defendant No.10), **---- Applicant**

Versus

1. Sanjay Agrawal S/o Late Sh. Ramrasal Agrawal Aged About 61 Years R/o Purani Basti, Baniyapara, Raipur, Chhattisgarh (Plaintiff),
2. Asit Kumar Agrawal S/o Late Sh. Ramrasal Agrawal Aged About 77 Years R/o Ahmedji Colony, Raipur, Chhattisgarh (Defendant No.1(A))
3. Mangal Vinod Agrawal S/o Late Sh. Ramrasal Agrawal Aged About 70 Years R/o Baniyapara, Raipur, Chhattisgarh (Defendant No.1(B)),
4. Smt. Kamal Agrawal D/o Late Sh. Ramrasal Agrawal Aged About 66 Years R/o Baniyapara, Raipur, Chhattisgarh (Defendant No.1(C)).
5. Associated New Name S.K.F. Bearings The Director Agent TSR, Darshiv Limited, 6-10 Hajimusa Patrawala Industries, Mumbai (M.H.) (Defendant No.2)
6. Hindustan Lever Through Its Director, Agent Karvi Computer Share Pvt. Ltd. Plot No. 17-24, Vithal Rao Nagar, Madhapur, Hyderabad 500081 (Defendant No.3)
7. Hindalco Industries Ltd. Ahura Centre, B-Wing, 1st Floor, 82, Mahakali Caves Road, Andheri, Mumbai (M.H.) (Defendant No.4),
8. Century Enka Ltd. Through Its Director, Agent In Time Spectrum Registry Ltd. C-13, Panna Lal Silk Mills Compound, L.B.S. Road, Bhandum, West Mumbai 78 (Defendant No.5),
9. Indian Organic And Chemicals Pvt. Ltd. Through Its Director Agent-Futura Polyesters Ltd. Presently Satelite Corporate Services Pvt. Ltd. B-302, Soni Apartment, Opposite Saint Jude High School Office Andheri Kurla Road, Jarimari Sakinaka Mumbai- 72 (Defendant No.6),
10. Strapproduct Ltd. Through Its Director, J.K.Corp.Ltd. Presently, J.K.Lakshmi Cement Ltd., Gulab Bhawan, Rear Wing, 3rd Floor, Bahadur Shah Zafar Road, New Delhi-2, Also At Nehru House, 4, Bahadur Shah Zafar Road, Post Box No. 7057 New Delhi 110002 (Defendant No.7),
11. Orissa Cement Ltd. Through Its Director, Post Office Rajgangpur, Railway Station Pass, Sundargarh, Odisha (Defendant No.8),
12. National Insulated Cable Co. Ltd. Through Its Director New Nikouke Alliance Credit Ltd. Niko House, 2 Hair Street, Kolkata 700001 (Defendant No.9),
13. Smt. Kumud Agrawal W/o Late Shri Ramnivarman Agrawal

Aged About 73 Years Address- Gram Ghoradi, Nadi Chowk,
Mahasamund, Chhattisgarh (Defendant No.11) ---- **Non-applicants**

For Applicant: Shri Abhishek Vinod Deshmukh, Advocate.
For Non-applicant No.1: Shri Sanjay Agrawal, Advocate.

Single Bench:Hon'ble Shri Sanjay Agrawal, J

CAV Order/Judgment

1. This Revision Petition has been preferred by Defendant No.10 Rajesh Kumar Agrawal under Section 115 of the Code of Civil Procedure, 1908 ((hereinafter referred to as the 'CPC') questioning the legality and propriety of the order dated 15.01.2018 passed by the Third Civil Judge Class-I, Raipur (C.G.) in Civil Suit No.15A/12, by which, the application filed under Order 7 Rule 11 (b) & (d) read with Section 151 of CPC has been rejected.

2. Briefly stated the facts of the case are that a suit for declaration and injunction has been made by the Plaintiff alleging *inter alia* that the shares in dispute described in plaint Schedule 'A', allotted to him in partition effected in 1965, were transferred to his step mother Smt. Indu Agrawal in 1982-84 as per the instructions of his father. According to the Plaintiff, his step mother expired on 20.05.1998 and the alleged shares were obtained by his father (Defendant No.1) based upon the Will executed by her on 05.07.1997. It is pleaded further in the plaint that despite the assurance given by his father to return those shares by executing an affidavit on 03.05.2005, it was not returned, therefore, he has been constrained to institute a suit on 26.04.2008 in the instant nature.

3. During pendency of the aforesaid suit, an application enumerated under Order 7 Rule 11(b) & (d) read with Section 151 of CPC has been

made by Defendant No.10 alleging therein that the suit as instituted much beyond the period of 3 years after the death of his step mother and also from the date of initiation of proceedings by him under Section 372 of the Indian Succession Act, 1925 (hereinafter referred to as ' the Act, 1925') is not only barred by time but is under valued as well. The claim as made is, therefore, liable to be rejected. The said application has been contested by the Plaintiff and after considering the averments made in the plaint, it was rejected by the trial Court by observing *inter alia* that the question as raised by Defendant No.10 involves a mixed question of law and fact and could be determined only at the time of trial on the basis of evidence adduced by the parties. This is the order which has been impugned by way of this Revision Petition.

4. Shri Abhishek Vinod Deshmukh, learned counsel for the Applicant submits that the order impugned rejecting the application for rejection of plaint by holding that the question so raised could be determined at the time of trial, is apparently contrary of law. According to him, the suit has been instituted on 26.04.2008 much beyond the period of 3 years as provided under Article 58 of the Indian Limitation Act, 1963 (hereinafter referred to as ' the Act, 1963') by claiming ownership over the shares in question held by his step mother upon her death on 20.05.1998 and also from the initiation of the proceedings by his brother, i.e., present Applicant Rajesh Kumar Agrawal in the year 1998 seeking grant of succession certificate for alleged shares, is apparently barred by time. It is contested further that the value of the shares in question on the date of institution of the suit is Rs.1,03,41,233/-, therefore, valuing the suit at Rs.41,890/- is under valued. The claim is, therefore, liable to be rejected.

5. On the other hand, Shri Agrawal, learned counsel for Non-applicant No.1/Plaintiff, while supporting the order impugned submits that the question of limitation as raised by the Applicant is a mixed question of law and fact and for which evidence is required to be led by the parties. As such, the trial Court has not committed any illegality in rejecting the said application filed under Order 7 Rule 11 (b) & (d) read with Section 151 of CPC for rejection of the plaint.

6. I have heard learned Counsel for the parties and perused the entire relevant papers annexed with this petition carefully.

7. In order to entertain the application filed under Order 7 Rule 11 of CPC, I have examined the averments made in the plaint and from its bare perusal, it appears that a suit for declaration and injunction has been made by the Plaintiff on 26.04.2008 seeking ownership with regard to the shares in question described in plaint Schedule 'A' by alleging that the alleged shares obtained by him in partition effected in 1965 were given by him to his step mother Smt. Indu Agrawal as per the request of his father. It appears further that his brother Rajesh Kumar Agrawal (Defendant No.10) after the death of Smt. Indu Agrawal, who expired on 20.05.1998, initiated the proceedings under Section 372 of the Act, 1925 praying for grant of succession certificate with regard to the alleged shares. According to the Plaintiff, his brother, being a step son, is not entitled to obtain such a certificate. In the said proceeding, Ramrasal Agrawal (Defendant No.1) the father had pleaded that he succeeded those shares on the strength of the deed of Will dated 05.07.1997 purported to have been executed by said Smt. Indu Agrawal in his favour. It, thus, appears that the cause of action arose to the Plaintiff immediately upon the death of his step mother as well

as from the initiation of the said proceedings by his brother under Section 372 of the Act, 1925.

8. Although, it is pleaded in the plaint that he was assured by his father by way of an affidavit dated 03.05.2005 that the alleged shares will be returned to him and when it was not returned despite the alleged assurance, he has been constrained to file the suit in the instant nature while disclosing the cause of action to initiate the claim as 03.05.2005. However, from perusal of the averments made in the plaint, it is evident that the cause of action first accrued to the Plaintiff was on 20.05.1998 when his step mother expired and/or in the year 1998 when the proceeding under Section 372 of the Act, 1925 was initiated by his brother Rajesh Kumar Agrawal (Defendant No.10) claiming for grant of succession certificate with regard to the alleged shares. The act of Defendant No.10 would thus show specifically that he is trying to set up his claim over the shares in question in the year 1998 immediately after the death of said Smt. Indu Agrawal and despite the occurrence of the cause of action as such, no suit was made immediately thereafter within the period of 3 years as provided under Article 58 of the Act, 1963. The said provision is relevant for the purpose which reads as under:-

“THE SCHEDULE
PERIOD OF LIMITATION
[See Sections 2(j) and 3]
First Division---Suits

<i>Description of suit</i>			<i>Period of Limitation</i>	<i>Time from which period begins to run</i>
*			*	*
PART III--- Suits Relating To Declarations				
*			*	*
58.	To obtain any other declaration	Three years	When the right to sue first accrues.”	

9. According to third column of the aforesaid provision, time will begin to run from the day when the right to sue first accrues. The period of 3 years would, therefore, be counted from the date when the right to sue first accrues.

10. The aforesaid provision has been interpreted by the Supreme Court in the ***Khatri Hotels Private Limited and another v. Union of India and another*** reported in **(2011) 9 SCC 126** at paragraph 30 as under:-

30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The word “first” has been used between the words “sue” and “accrued”. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

11. Now, at this juncture, while considering the scope and ambit of the provision prescribed under Order 7 Rule 11 of CPC, few decisions of the Supreme Court are required to be referred to and considered.

12. In the case of ***Church of Christ Charitable Trust & Educational Charitable Society v. Ponniammam Educational Trust*** reported in **(2012) 8 SCC 706**, where the Supreme Court in para 13 has observed and held as under:-

“13. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the Plaintiff the right to relief against the Defendant. Every fact which is necessary for the Plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the

meaning of the words "cause of action". A cause of action must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue."

13. In ***A.B.C. Laminart Pvt. Ltd. v. A. P. Agencies*** reported in (1989) 2 **SCC 163**, where the Supreme Court explained the meaning of "cause of action" at paragraph 12 as under:-

"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

14. Yet, in the matter of ***Sopan Sukhdeo Sable v. Assistant Charity Commissioner*** reported in (2004) 3 **SCC 137**, it has been observed by the Supreme Court in paras 11 and 12 as under:-

"11. In *I.T.C. Ltd. v. Debts Recovery Appellate Tribunal* [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the

power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See *T. Arivandandam v. T.V. Satyapal* (1977) 4 SCC 467)."

15. By applying the aforesaid principles to the case in hand where despite the occurrence of first cause of action, as found herein above, yet no action was taken by the Plaintiff within the prescribed period of 3 years under Article 58 of the Act, 1963. The suit as framed and instituted on 26.04.2008, much beyond the period of 3 years, therefore, cannot be held to be instituted in time.

16. In view of the forgoing discussions, the Revision Petition is allowed and the order impugned passed by the trial Court on 15.01.2018 rejecting the application filed under Order 7 Rule 11 of CPC and thereby refusing to reject the plaint under the said provision is hereby set aside. It is, accordingly, held that the suit as framed and instituted is barred by time under Article 58 of the Act, 1963 and the plaint being Civil Suit No.15A/12 is hereby rejected. No order as to costs.

Sd/-

(Sanjay Agrawal)
JUDGE