

**HIGH COURT OF CHHATTISGARH AT BILASPUR****Second Appeal No. 53 of 2009**

Sampat Ram, S/o Sheetal Kurmi, Aged about 72 years, R/o Village Pendri, Tahsil Janjgir, Distt. Janjgir-Champa, Chhattisgarh. Through Power of Attorney Holder Vishnu Charan Kashyap, S/o Samund Ram Kurmi, R/o Munund, Tahsil Janjgir, Distt. Janjgir-Champa, Chhattisgarh.

**---Appellant/Plaintiff**

**Versus**

1. Ex-Tahsildar A.K. Bajpayee, Janjgir, Presently posted as Deputy Collector, Durg, Chhattisgarh.
2. Patwari, P.H. No. 41, Janjgir (Deleted).
3. Revenue Inspector, Janjgir (Shri G.P. Dheewar) Seepat, N.T.P.C., Distt. Bilaspur, Chhattisgarh.
4. State of Chhattisgarh, Through Collector, Janjgir-Champa.

**---- Respondents/Defendants**

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| For Appellant | : | Mr. Abhijeet Mishra, Advocate               |
| For State     | : | Mr. Ravi Bhagat, Deputy Government Advocate |

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**Hon'ble Shri Justice Sanjay K. Agrawal**  
**Order on Board**

**20/09/2019**

1. Heard on admission and formulation of substantial question of law in this second appeal preferred by the plaintiff under Section 100 of the CPC.
2. Mr. Abhijeet Mishra, learned counsel for the plaintiff/appellant herein would submit that both the Courts below have erred in rejecting the

plaint by invoking Order 7 Rule 11 (d) of the CPC by recording a finding that for want of notice under Section 80 (1) of the CPC or for want of leave of the Court under Section 80 (2) of the CPC, which finding being perverse and contrary to record, gives rise to substantial question of law for determination and the second appeal deserves to be admitted for hearing.

3. Plaintiff filed a civil suit for declaration of title stating *inter alia* that the order dated 30/04/2007 passed by defendants No. 1/Tahsildar holding him to be encroacher upon the suit land and imposing a penalty upon him under Section 248 of the Chhattisgarh Land Revenue Code, 1959 is bad in law. Before filing of the civil suit, notice under Section 80 of the CPC was served to defendant No. 4/State on 06/06/2007 and then the civil suit was eventually instituted on 12/06/2007 without waiting for completion of period of two months.
4. Learned trial Court held that neither notice has been served to the State in compliance of Section 80 (1) of the CPC nor leave has been granted by the Court under Section 80 (2) of the CPC, therefore, the civil suit filed by the plaintiff is not maintainable and the trial Court rejected the plaint by invoking Order 7 Rule 11 (d) of the CPC which was upheld by the first appellate Court in the appeal preferred by the plaintiff under Section 96 of the CPC.
5. In order to maintain the civil suit against the order in question passed by defendant No. 1/Tahsildar, two courses were available to the plaintiff, either to serve notice to the State under Section 80 (1) of the CPC and file the civil suit after the expiry of statutory period of two months or the plaintiff could have instituted the civil suit by obtaining leave of the Court as per Section 80 (2) of the CPC, but neither the

civil suit was filed after expiry of statutory period of two months as the notice is said to have been served on 06/06/2007 and the suit was filed on 12/06/2007 nor leave was granted by the Court to the plaintiff under Section 80 (2) of the CPC for instituting the civil suit without complying with the provisions contained under Section 80 (1) of the CPC.

6. It has already held by their Lordships of the Supreme Court that the provisions contained under Section 80 (1) of the CPC is mandatory in nature for instituting a suit against the State, as such, both the Courts below have rightly rejected the plaint filed by the plaintiff by invoking Order 7 rule 11 (d) of the CPC for non-compliance of provisions contained under Section 80 (1) of the CPC in which I do not find any perversity or illegality much less any substantial question of law for determination.
7. The second appeal deserves to be and is accordingly dismissed *in limine* without notice to the other side. No order as to cost(s).

**Sd/-**  
**(Sanjay K. Agrawal)**  
**Judge**

Harneet