

HIGH COURT OF CHHATTISGARH, BILASPURCivil Revision No.44 of 2019

Ali Hussain S/o – Fatte Mohammed, Aged about 38 years, R/o
Bajinpali, Raigarh, Tahsil & District – Raigarh (CG)

--- Applicant

Versus

1. Abida Bi W/o Late Fakir Mohammed, Aged about 49 years,
2. Mohammed Ali S/o late Fakir Mohammed, Aged about 45 years
3. Hammed Khan S/o Mohammed Ali Khan, aged about 49 years,
4. Rasheed Khan S/o Mohammed Ali Khan, aged about 27 years
5. Naseer Khan S/o Mohammed Ali Khan, aged about 27 years
All R/o – Bajinpali, Raigarh, Tehsil & District – Raigarh (CG)
6. State of Chhattisgarh, through Collector, Raigarh (CG)

--- Respondents

For Applicant:	Mr.Amit Sharma, Advocate
For Respondent No.6/State:	Mr.Ravi Kumar Bhagat, Dy.Govt.Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

17/06/2019

1. Heard on question of admission of civil revision.
2. Feeling aggrieved against the order dated 31.1.2019 passed by the
First Civil Judge Class-II, Raigarh in Civil Suit No.A/39/2016
rejecting the application filed by the applicant under Section 11 of
the CPC, this civil revision has been preferred.
3. Learned counsel for the applicant would submit that the instant suit
is barred by principle of res-judicata and therefore, it ought to have
rejected by the trial Court, but the trial Court has committed legal
error by holding that a plea of res-judicata is a mixed question of
law and fact. He would further submit that the trial Court is
absolutely unjustified in rejecting the application as the suit is

apparently barred by principle of res-judicata as contained in Section 11 of the CPC.

4. I have heard learned counsel for the applicant, considered his submission made hereinabove and went through the records with utmost circumspection.
5. The trial Court has clearly held that plea of res-judicata is a mixed question of law and fact, which can be decided after framing the issue along with other issues.
6. The Supreme Court in the matter of **Vaish Aggarwal Panchayat v. Inder Kumar & others**¹ has clearly held that question of plea of res-judicata is a mixed question of law and fact, which can not be decided while considering the application under Order 7 Rule 11(d) of the CPC.
7. Since the trial Court has rightly held that issue of plea of res-judicata is a mixed question of law and fact, I do not find any illegality in the said order.
8. Accordingly, the civil revision deserves to be and is hereby dismissed at the stage of admission itself, without notice to other side. However, the applicant is at liberty to raise a plea of res-judicata in his written statement. If such a plea is raised, the trial Court shall frame the issue on such point. A copy of this order be sent to the concerned trial Court by E-mail/fax.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-

¹ AIR 2015 SC 3357