

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (227) No. 445 of 2019**

- Shri Vinod Kumar Gupta S/o Late Chunnu Gupta Aged About 26 Years R/o Nehru Nagar, Near The Substation, Sector - 5, Balco Nagar, District Korba, Chhattisgarh.

---- Petitioner**Versus**

1. Smt. Baby Sharma W/o Shri Mahesh Sharma Aged About 37 Years Caste Lohar, R/o Ward No. 31, House No. 1744, Nehru Nagar, P.O. Balco Nagar, District Korba Chhattisgarh, Through The Power of Attorney Holder Rajendra Sharma S/o Late Narayan Sharma, R/o Balco Nagar, Korba, Chhattisgarh.
2. Smt. Sujan Sharma W/o Shri Rajendra Sharma Aged About 56 Years R/o Ward No. 31, House No. 1744, Nehru Nagar, P.O. Balco Nagar, District Korba Chhattisgarh, Through The Power Of Attorney Holder Rajendra Sharma S/o Late Narayan Sharma, R/o Balco Nagar, Korba, Chhattisgarh.
3. Smt. Hemlata Soni W/o Shri Shashikant Soni Aged About 61 Years Caste Sonar, R/o In-Front Of New Hanuman Mandir Budapara Karmachari Bhawan (General Store) Raipur, District Raipur, Chhattisgarh.
4. Shri Dilip Kumar Gupta S/o Late Chunnu Gupta Aged About 35 Years R/o Nehru Nagar, Near The Substation, Sector-5, Balco Nagar, District Korba, Chhattisgarh.
5. Smt. Lalmati Gupta W/o Late Chunnu Gupta R/o Nehru Nagar, Near The Substation, Sector-5, Balco Nagar, District Korba, Chhattisgarh.
6. Collector, State of Chhattisgarh Office, Collector Korba, Chhattisgarh.

---- Respondents

For Petitioner : Shri Suresh Kumar Verma, Advocate.

Hon'ble Shri Justice Sanjay Agarwal
Order on Board

22.05.2019

1. Heard on I.A. Nos. 1 and 2. These are the applications for urgent hearing of this matter during vacation. On due consideration and for the reasons assigned therein, I am inclined to allow the same. The applications are accordingly allowed.

2. Heard on admission.
3. Learned counsel for the applicant submits that the order impugned as passed by the trial Court rejecting the application filed under Section 151 of CPC is apparently contrary to law. He submits that the plaintiffs have already instituted a suit for arrears of rent and for eviction which was decreed by the trial Court. It was however, reversed in appeal and the Second Appeal preferred there against is pending before this Court. He, therefore, submits that because of the earlier instituted suit, the present suit is not maintainable. According to his further contention, since the suit is filed in the year 2015 beyond the prescribed period of 3 years by questioning the agreement to sale dated 18.10.2006, therefore, it is apparently barred by time. Without considering the same, the trial Court has committed an illegality in rejecting the application filed under Section 151 of CPC.
4. The plaintiffs have filed the suit for declaration of title, possession, permanent injunction and also praying for declaration to the effect that the alleged agreement to sale dated 18.10.2006 be declared as null & void. During the pendency of the suit, an application was made under Section 151 of CPC praying for rejection of the suit on the ground that since the earlier suit for eviction was dismissed, therefore, the instant suit is not maintainable and liable to be rejected.
5. From perusal of the record, it appears that the earlier suit which was instituted was for eviction, registered as Civil Suit No. 20-A/2009. The said suit was decreed by the concerned trial Court by judgment and decree dated 22.06.2012. It was however, reversed in appeal preferred by the defendant vide judgment and decree dated 18.09.2014 and the appeal preferred there against before this Court was under consideration in Second Appeal No. 400/2014. During the course of the argument, it was pointed out by the learned counsel for the applicant that earlier an application was made under Order 7 Rule 11 of

CPC praying for rejection of the plaint which was rejected by the trial Court vide its order dated 09.08.2018. Be that as it may, the nature of earlier instituted suit and present suit is entirely on different footing and therefore, it cannot be said that the present suit is liable to be rejected. Even otherwise, in absence of any specific bar, I am not inclined to entertain the application filed by the applicant under Section 151 of CPC for rejection of the plaint. As far as question of limitation is concerned, the same is also liable to be rejected as the same involves the mixed question of law and fact and could be decided only by framing the issue.

6. In view of the above discussion, I do not find any infirmity in the order impugned passed by the trial Court. The petition being devoid of merit is therefore, liable to be and is hereby dismissed at admission stage itself.

No order as to costs.

Sd/-
(Sanjay Agarwal)
Vacation Judge