

**HIGH COURT OF CHHATTISGARH, BILASPUR****CR No. 63 of 2019**

Vidyanand Dubey S/o Late Ramashanker Dubey Aged About 73 Years  
R/o Old Sarkanda Near Matachaura, Bilaspur, Tahsil And District  
Bilaspur, Chhattisgarh.

---- Applicant

**Versus**

1. Premlata Updhyay W/o Shri Ashok Upadhyay Aged About 55 Years  
R/o Rajendra Nagar, Near Shara Tent House, Bilaspur, Chhattisgarh.
2. Luvkesh Tiwari S/o Late Laxmi Prasad Tiwari Aged About 50 Years R/o  
Ward No. 13, Brahmanpara, Nagar Panchayat Sakri, Tahsil Takhatpur,  
District Bilaspur, Chhattisgarh.
3. Durgesh Nandini Sharma D/o Late Laxmi Prasad Tiwari Aged About 45  
Years W/o Anil Sharma, R/o Shikshank Colony, Mangla, Bilaspur,  
Chhattisgarh.
4. Karuna Shukla D/o Late Laxmi Prasad Tiwari W/o Narendra Shukla,  
aged about 44 years, R/o Village Karhi, District- Mungeli, Chhattisgarh.
5. Umesh Tiwari S/o Late Laxmi Prasad Tiwari Aged About 41 Years R/o  
Ward No. 13, Brahmanpara, Nagar Panchayat Sakri, District- Bilaspur,  
Chhattisgarh.
6. Prabhat Mishra Aged About 75 Years R/o 50/3, Beninandan Street,  
Bhawanipur, Near Police Hospital, Kolkata ( West Bengal ).
7. Shivanu Mishra S/o Prabhat Mishra Aged About 35 Years R/o 50/3,  
Beninandan Street, Bhawanipur, Near Police Hospital, Kolkata ( West  
Bengal ).
8. Smt. Archana Sharma D/o Dr. Ajay Kumar Mishra Aged About 42 Years  
W/o Shri Rajeshdhar Sharma, R/o 59, Shri Niketan Apartment,  
Vasundhra Enclave, Maharan Agrasen College, Delhi 96.
9. Smt. Anjali Tiwari D/o Dr. A.K. Mishra Aged About 41 Years W/o Shri  
Paresh Rao, R/o HIG 01, Sector 1 Near Harishankar College, Shankar  
Nagar, Raipur, Tahsil And District Raipur, Chhattisgarh.
10. Devanand Dubey S/o Late Ramashanker Dubey Aged About 60 Years  
R/o Old Sarkanda, Near Matachaura, Bilaspur, Tahsil And District  
Bilaspur, Chhattisgarh.
11. Dayanand Dubey S/o Ramashanker Dubey Aged About 58 Years R/o  
Old Sarkanda, Near Matachaura, Bilaspur, Tahsil And District Bilaspur,  
Chhattisgarh.

---- Non-applicants

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For Applicant:

Shri Upendra Bharat, Learned Senior  
Advocate.

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

**22.07.2019**

1. This Revision Petition has been preferred by Defendant No. 1 Vidyanand Dubey questioning the propriety of the order dated 24.06.2019 passed by the Second Additional Civil Judge to the Court of First Civil Judge Class-I, Bilaspur in Civil Suit No. 111/2019, by which the application preferred by said defendant under Order 7 Rule 11 read with Section 151 of Code of Civil Procedure (hereinafter referred to as the 'C.P.C.') has been rejected.
2. Briefly stated the facts of the case are that a suit for declaration of title and injunction has been made on 07.05.2019 by alleging *inter alia* that the suit property described in plaint paragraph 3 was earlier obtained by their grand father Ram Dulare in partition effected on 01.02.1966 between him and his brother and after his sad demise, it was inherited by father Ramashanker Dubey. It is pleaded further that on the basis of forged deed of Will dated 01.01.2005, the Defendants No. 1 and 2 have approached the Revenue Authorities for obtaining the revenue papers mutated in their names, where the Tahsildar vide its order dated 03.12.2016 directed for mutation in their names and based upon which, the defendants are trying to alienate the property in question to Defendant No. 4, giving rise to file the suit in the instant nature claiming joint ownership over the suit land along with the defendants, with further relief of injuction.
3. Upon receiving the summons of the suit, the defendants instead of filing

the written statement have moved an application enumerated under Order 7 Rule 11 read with Section 151 of C.P.C. seeking rejection of the plaint mainly on the ground that the plaintiffs were aware regarding the execution of the alleged registered deed of Will when proceedings were initiated before the Revenue Authorities. As such, the plaintiffs should have instituted the suit within a period of 3 years immediately thereafter. Having failed so, the suit as framed and instituted much beyond the prescribed period of 3 years as required under Article 58 of Indian Limitation Act, 1963 (for Short the Act of 1963) is apparently barred by time. It is alleged further in the application that the suit as framed without seeking the relief of possession is barred by proviso to Section 34 of the Act of 1963.

4. The aforesaid application has been objected by the plaintiffs by saying that the question as raised regarding the point of limitation is a mixed question of law and fact, therefore, the plaint cannot be rejected in absence of recording the evidence. It is contested further on the ground that since they have inherited the property after the death of their father Ramashanker Dubey, therefore, the suit cannot be held to be barred by law as per said provision.
5. After considering the submission of the parties, the trial Court has rejected the said application by observing *inter alia* that the question of limitation is a mixed question of law and fact and the same could be decided only by recording the evidence of the parties. It observed further that the plaintiffs have properly paid the court fees as required under Schedule-II of the Courts Fees Act, 1870 and the suit as framed cannot be held to be barred by law. As a consequence, the application

is rejected vide its order dated 24.06.2019.

6. Being aggrieved, the defendant No. 1 has preferred this revision. Shri Upendra Bharat, learned counsel for the Applicant submits that the order impugned as passed by the trial Court rejecting the application under Order 7 Rule 11 read with Section 151 of C.P.C. is apparently contrary to law. According to him, the plaintiffs have questioned the registered deed of Will dated 01.01.2005 by way of filing the suit on 07.05.2019, therefore, it is apparently barred by time under Article 58 of the Indian Limitation Act. However, without considering the said facts in its proper manner, the Court below has erred in rejecting the same by holding inter alia, that the same is a mixed question of law and fact and could not be decided without recording the evidence of the parties. He submits further that plaintiffs are not in possession, therefore, the suit, as framed without seeking the relief of possession, is not maintainable by virtue of proviso to Section 34 of the Act of 1963. He, therefore, submits that the order impugned deserves to be set aside.
7. I have heard learned counsel for the Applicant and perused the entire relevant papers annexed with this petition carefully.
8. From perusal of record, it is evident that a suit for declaration of title and injunction was made on the ground that no Will as such was ever executed by their father Ramashanker Dubey in favour of Defendants No. 1 and 2. According to the plaint averments, the defendants No. 1 and 2 have succeeded to get the revenue papers mutated in their favour on 03.12.2016 and trying to alienate the same to defendant No. 4, therefore, they have been constrained to file the suit as such.
9. In order to entertain the application filed under Order 7 Rule 11 of

C.P.C., the plaint averments alone are required to be seen and a bare perusal of it, the plaint cannot be rejected on the point of limitation as it involves a mixed question of law and fact and without recording the statements of the parties, it cannot be held that suit as framed is barred by time. Further, in the instant matter, the defendants have yet to file their written statements and in absence of pleadings, issues and evidence, the question of limitation as raised is rather pre-matured to be decided and the suit cannot be rejected at this stage, as contended by learned counsel for the Applicant. It is settled principles of law that while entertaining the application under Order 7 Rule 11 of C.P.C., the Court has to get a decision looking to the pleadings of the plaintiffs alone and not on the rebuttal made by the defendants or any other materials produced by them.

10. At this juncture, the principles laid down in the matter of ***Kamala and others Vs. K. T. Eshwara SA and others*** reported in (2008) 12 SCC 661 are to be seen. In the said matter, the trial judge has allowed an application for rejection of the Plaint in a suit for partition of family properties and the same was affirmed by the High Court as well. An appeal against the order of the High Court was filed before the Supreme Court and after examining the scope, ambit and exercise of powers under Order 7 Rule 11 of CPC, it has been observed therein at paragraphs 21 and 22 as under:-

21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed

up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.

11. By applying the aforesaid principles laid down in the above referred decision to the case at hand and in view of the pleadings made in the plaint, it is difficult to hold that the plaint as framed and instituted is either barred by time or hit by the provision prescribed under proviso to Section 34 of the Act of 1963, as contended by the applicant. Accordingly, I do not find any infirmity in the order impugned so as to call for any interference at this stage.
12. Consequently, the petition being devoid of merit is hereby dismissed at admission stage itself . No order as to costs.

Sd/-  
(Sanjay Agrawal)  
**JUDGE**