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HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 79 of 2019**

- Smt. Bhagwati Bai D/o Late Anant Ram Aged About 56 Years R/o Village Garka, Tahsil Keshkal, District Kondagaon, Chhattisgarh, Defendant No.1

---- Petitioner/Applicant**Versus**

1. Smt. Sushila D/o Late Anant Ram Aged About 56 Years R/o Village Bade Dongar, Tahsil Farasgaon, District Kondagaon, Chhattisgarh.,
2. Shyama D/o Late Anant Ram Aged About 58 Years R/o Village Garka, Tahsil Keshkal, District Kondagaon, Chhattisgarh.,
3. Rajuram S/o Late Homlal Aged About 50 Years R/o Village Garka, Tahsil Keshkal, District Kondagaon, Chhattisgarh.,
4. Kumari Bai D/o Late Basant Lal Aged About 36 Years R/o Village Badedongar, Tahsil Farasgaon, District Kondagaon, Chhattisgarh.,
5. Foko Bai D/o Late Basant Lal Aged About 56 Years R/o Village Marangpuri, Tahsil Baderajpur, District Kondagaon, Chhattisgarh.,
6. Sumit Bai D/o Late Basant Lal Aged About 45 Years R/o Jagdalpur, Tahsil Jagdalpur, District Bastar, Chhattisgarh.,
7. Janki Bai D/o Late Homlal Aged About 56 Years R/o Village Erragaon, Tahsil Keshkal, District Kondagaon, Chhattisgarh.,
8. Shiv Prasad S/o Late Basant Lal Aged About 56 Years R/o Village Bedma, Tahsil Keshkal, District Kondagaon, Chhattisgarh.,
9. Indra Prasad S/o Late Basant Lal Aged About 56 Years R/o Village Garka, Tahsil Keshkal, District Kondagaon, Chhattisgarh., District : Kondagaon, Chhattisgarh
10. Sanjay S/o Late Basant Lal Aged About 56 Years R/o Village Marka, Tahsil Keshkal, District Kondagaon, Chhattisgarh. (All Are Plaintiffs), District : Kondagaon, Chhattisgarh
11. Kaushilya D/o Late Anant Ram Aged About 56 Years R/o Village Garka, Tahsil Keshkal, District Kondagaon, Chhattisgarh, (Defendant No. 2),
12. State Of Chhattisgarh Through Collector Kondagaon, District Kondagaon, Chhattisgarh, (Defendant No. 3),

---- Respondents

For Applicant	:	Shri Pravin Tulsyan, Advocate
For Respondent/non-applicant 12:		Shri Vikas Bhaskar, P.L.

Hon'ble Shri Justice Sanjay Agrawal

Order On Board

29.08.2019

1. This Revision Petition has been preferred by defendant No.1/Smt. Bhagwati Bai questioning the legality and validity of the Order dated 28.06.2019 passed by the Civil Judge, Class-II, Keshkal, District Kondagaon, in Civil Suit No.03-A/2019, by which, the application filed her under Section 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) has been rejected. The parties to this Revision Petition shall be referred hereinafter as per their description in the Court below.

2. Shri Pravin Tulsyan, learned counsel for the applicant submits that the order impugned as passed by the Court below holding that the present suit is not hit by the principles of res judicata provided under Section 11 of CPC is apparently contrary to law. According to him, defendant No.2 Kaushilya Bai earlier instituted a suit claiming ownership based upon the deed of Will dated 01.12.2000 executed by her mother, which was dismissed and after the dismissal of the said suit, the instant suit has been filed by the plaintiffs claiming their titles over the suit land. Therefore, under such circumstances, it ought to have been held by the Court below that the present suit is specifically barred by the principles of res judicata under the said provision. Without considering the said fact in its proper manner, the Court below has erred in rejecting the said application.

3. I have heard learned counsel for the applicant and perused the entire papers annexed therewith carefully.

4. A suit was instituted by the plaintiffs claiming declaration of title,

injunction, partition and separate possession and praying further that the orders passed by the Revenue Authorities under Section 178 of the Chhattisgarh Land Revenue Code, 1959 (henceforth, the Code of 1959) be declared as null and void. It is pleaded in the plaint that after the dismissal of the said suit being Civil Suit No.01-A/2016 instituted by defendant No.2 Kaushilya Bai on 13.01.2017, an application was made by defendant No.1 before the Revenue Authorities seeking partition without impleading them, therefore, they have been constrained to file the suit in the instant nature.

5. From perusal of the record, it appears that the earlier suit, which was instituted by defendant No.2 Kaushilya Bai was based upon the deed of Will alleged to have been executed by her mother Jugo Bai in her favour on 01.12.2000. The said suit was ultimately dismissed by the said Court vide its judgment and decree dated 13.01.2017 and has attained its finality by efflux of time. It appears further that after the dismissal of the said suit, an application was made by defendant No.1/Smt. Bhagwati Bai before the Revenue Authorities claiming partition without impleading the plaintiffs. The plaintiffs have, therefore, been constrained to file the suit in the instant nature claiming their ownership as the property is the ancestral property. In view of the said fact, it is apparent that the subject matter involved in an earlier instituted suit and the present suit is distinct with each other. As such, the Court below has not committed any illegality in rejecting the application holding that the principles of res judicata provided under Section 11 of CPC are not attracted.

6. Consequently, I do not find any substance in this Revision Petition. The Revision Petition is accordingly dismissed at the admission stage itself. No order as to costs.

Sd/-

(Sanjay Agrawal)
Judge