

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 131 of 2018**

1. Smt. Ekta Shukla W/o Late Rohit Shukla Aged About 40 Years R/o A-50, Amrpali Grih Nirman Sahkari Samiti, Pachpedi Naka Raipur Chhattisgarh.
2. (Minor) Ananya D/o Late Rohit Shukla Aged About 14 Years Through Mother Smt. Ekta Shukla, R/o A-50, Amrpali Grih Nirman Sahkari Samiti, Pachpedi Naka Raipur Chhattisgarh.

---- Applicants**Versus**

1. Virendra Kumar Shukla S/o Late Ramawtar Shukla Aged About 67 Years R/o Tatibandh Colony, Raipur, Tahsil And District Raipur Chhattisgarh. (Plaintiff)
2. Shyamsundar Sharma S/o Dr. Brijlal Sharma Aged About 50 Years R/o Jamunetri, Budhapara, Raipur Chhattisgarh. (Defendant No. 3)
3. State Of Chhattisgarh Through Collector Raipur Chhattisgarh. (Defendant No. 4)

---- Non-Applicants

For Applicants:	: Shri Varun Sharma, Advocate.
For Non-Applicant No.1	: Ms. Uma Sahi, Advocate.
For Non-Applicant No. 2	: None, though served.
For the State/Non-Applicant No. 3:	: Shri Shakti Singh Thakur, P.L.

Single Bench: Hon'ble Shri Sanjay Agrawal, J**Order On Board****29.08.2019**

1. This Revision Petition has been preferred by Defendants No. 1 and 2, under Section 115 of Code of Civil Procedure, 1908 (hereinafter referred to as 'the C.P.C.') questioning the legality and propriety of the order dated 30.08.2018 passed by the 9th Civil Judge Class II Raipur, in Civil Suit No. 67A/2018 by which, the application filed by them under Order 7 Rule 11 (d) of the C.P.C has been rejected.
2. Shri Varun Sharma, learned counsel for the Applicants submits that the order impugned as passed by the Court below rejecting the application

preferred by Defendants No. 1 and 2 under Order 7 Rule 11 of C.P.C. is apparently contrary to law. While inviting attention to paragraph-17 of the plaint averments, it is submitted by him that the right to file the suit was accrued to the plaintiff in the year 1982 and thereafter, in 1990, however, it was filed much beyond the period of limitation as prescribed under Article 58 of the Indian Limitation Act, 1963 (for short referred to as 'the Act of 1963'). The suit as framed was, therefore, liable to be rejected, however, without considering the said fact in its proper manner, the Court below has committed an illegality in rejecting the said application.

3. On the other hand, Ms. Uma Sahi, learned Counsel for Non-Applicant No.1/plaintiff, while supporting the order impugned submits that while entertaining the application filed under order 7 Rule 11 of C.P.C., the plaint averments alone are required to be seen and after considering the same, the trial Court has rightly rejected the said application by observing that the question of limitation is a mixed question of law and fact and could be determined only at the time of trial. The order impugned is, therefore, not liable to be interfered.
4. I have heard learned counsel for the parties and perused the entire record carefully.
5. A suit for declaration of title and injunction has been made by the plaintiff- Virendra Kumar Shukla on 23.02.2018 by submitting *inter-alia* that the property in question bearing Khasra No.185/17 admeasuring 4.67 acres situated at village Dumartarai of Raipur District, was purchased by one Jitendra Kumar Shukla from his mother under the registered deed of sale dated 28.02.1971. It is pleaded in the plaint that

after the death of Jitendra Kumar on 17.06.1982, it was inherited by his mother Brijrani Bai, who expired in 1990 and after her death, it was inherited by him. It is pleaded further that without any right, title and interest, Defendant No. 2 has entered into an agreement to sale with regard to the suit property with Defendant No. 3-Shyam Sundar Sharma in the month of January, 2018 and pleaded further that he came to know that Defendant No. 1 has applied for obtaining the revenue papers mutated in her name on 07.02.2018 before the Revenue Authorities. Therefore, he has been constrained to file the suit in the instant nature.

6. During the pendency of the aforesaid claim, an application enumerated under Order 7 Rule 11 (d) of the C.P.C. was made by Defendants No. 1 and 2-the present Applicants alleging therein that the suit as framed is apparently barred by time under Article 58 of the Act of 1963, as the cause of action accrued to the plaintiff for filing the suit for the first time in 1982, however, it was filed on 23.02.2018. Therefore, the suit as framed is apparently barred by time.
7. The aforesaid application is contested by the plaintiff by saying that the cause of action arose to the plaintiff only in the months of January and February 2018 when he came to know regarding the said fact that Defendant No. 2 has not only tried for alienating the property in question to Defendant No. 3 but Defendant No. 1, the mother of Defendant No. 2, has applied for obtaining the revenue papers mutated in her name. As such, it cannot be said that suit as framed is barred by time and, therefore, the application is liable to be rejected.
8. After considering the said application, it has been rejected by the trial

Court by observing that the question of limitation, as alleged by the Applicants, is a mixed question of law and fact and in absence of the evidence being recorded, it cannot be rejected. This is the order which has been impugned by way of this petition.

9. From perusal of the record, it appears that plaintiff- Virendra Kumar Shukla has claimed his ownership by way of inheritance upon the death of his mother, who expired in the year 1990. According to the plaint averments, plaintiff came to know that Defendant No. 2 has not only tried to alienate the property in question to Defendant No. 3 in the month of January 2018, but his mother (Defendant No. 1) has applied for obtaining the revenue papers mutated in her name in the month of February 2018. In the said factual scenario, as reflected from the averments made in the plaint, it is difficult to hold at this stage that the suit as framed is barred by time. In any case, it is the settled principles of law that question of limitation is a mixed question of law and fact and could be decided only by considering the evidence of the parties. Thus, from stretch of any imagination, it cannot be held at this stage that suit as framed is liable to be rejected in exercise of the powers enumerated under Order 7 Rule 11 of C.P.C.
10. Consequently, I do not find any substance in this petition. The Revision Petition is, therefore, liable to be and is hereby dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay Agrawal)
JUDGE