

HIGH COURT OF CHHATTISGARH, BILASPUR**C.R. No.8 of 2020**

1. Chitranjan Prasad Tiwari S/o Late Chandulal Tiwari Aged About 86 Years Resident Of Tiwaripara, Khraud, Post Khraud, Tahsil Pamgarh, District- Janjgir-Champa Chhattisgarh
2. Harshvardhan Sharma S/o Late Jawaharlal Sharma Aged About 69 Years Resident Of- In Front Of Shri N.M. Agrawal (C.A.), Vidya Nagar, Bilaspur, Tahsil And District- Bilaspur Chhattisgarh

---- Applicants**Versus**

1. Abhishek Gauraha S/o Late Narayan Prasad Gauraha Aged About 40 Years Resident Of Rudra Vihar Colony, Ashok Nagar, Bilaspur, Tahsil And District- Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh
2. Ankit Gauraha S/o Late Narayan Prasad Gauraha Aged About 32 Years Resident Of Rudra Vihar Colony, Ashok Nagar, Bilaspur, Tahsil And District- Bilaspur Chhattisgarh
3. (Deleted) Smt. Madhu Gauraha As Per Honble Court Order Dated 27-01-2020.
4. Trisha Gauraha D/o Late Narayan Prasad Gauraha Aged About 25 Years Resident Of Rudra Vihar Colony, Ashok Nagar, Bilaspur, Tahsil And District- Bilaspur Chhattisgarh
5. Smt. Devkumari W/o Shivkumar Shukla Aged About 69 Years Resident Of- In Front Of Bansant Complex, Seepat Road, Sarkanda, Bilaspur, Tahsil And District- Bilaspur Chhattisgarh,
6. Sushila Dwivedi W/o Jeevan Lal Aged About 49 Years Resident Of Imli Duggi, Korba, Tahsil And District- Korba Chhattisgarh
7. Vedbhushan Dwivedi S/o Bhopal Prasad Dwivedi Aged About 48 Years Resident Of Imli Duggi, Korba, Tahsil And District- Korba Chhattisgarh
8. Shashibhushan Dwivedi S/o Bhopal Prasad Dwivedi Aged About 45 Years Resident Of Imli Duggi, Korba, Tahsil And District- Korba Chhattisgarh
9. Vibhuti Bhushan Dwivedi S/o Bhopal Prasad Dwivedi Aged About 43 Years Resident Of Imli Duggi, Korba, Tahsil And District- Korba Chhattisgarh
10. Smt. Jyoti Pandey W/o Chandra Kishore Pandey Aged About 52 Years Resident Of Bhavani Temple, Kohadiya Darri, Tahsil And District- Korba Chhattisgarh,
11. State Of Chhattisgarh Through- Collector, Janjgir, District- Janjgir-Champa Chhattisgarh

-----Non-Applicants

For Applicants: Shri Ravindra Agrawal, Advocate.
For Non-Applicant No.11/State: Shri Shakti Singh Thakur, Panel Lawyer.

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

17.02.2020

1. This Revision has been preferred by Defendants No.1 & 2 under Section 115 of Code of Civil Procedure, 1908 (for short 'the CPC') questioning the legality and propriety of the order dated 04.10.2019 passed by Civil Judge, Class-II, Pamgarh, District Janjgir-Champa (CG) by which, the application preferred by the Defendants under Order 7 Rule 11 of the CPC has been rejected.

2. From perusal of the plaint averment, it appears that a suit has been instituted by the Plaintiffs claiming declaration of title, partition, separate possession and also for injunction by submitting *inter alia* that the property in question was originally held by their predecessor in interest namely Shobhnath Tiwari and upon his death, it was inherited by his two sons namely Kalicharan and Chandulal. It is pleaded further that after the death of said Kalicharan, legal representatives of him were jointly recorded in the revenue papers along with his brother Chandulal and the same was recorded in pursuance to the order dated 17.03.1972 passed by the Sub Divisional Officer, Janjgir. It is pleaded further that the order as passed by the Sub Divisional Officer was questioned by said Chandulal before the Commissioner and during the pendency of the said proceeding, a

compromise has arrived at on 11.05.1972 without the knowledge of Rahi Bai, the daughter of Kalicharan and based upon the alleged compromise, no share was provided to the Plaintiffs, who are thus constrained to file a suit in the instant nature. It is pointed out during the course of the arguments that some of the Defendants have submitted their written statements and the issues are yet to be framed.

3. After the filing of the written statements by Defendants No.1 & 2/Applicants, an application enumerated under Order 7 Rule 11 read with Section 151 of the CPC has been moved praying for rejection of the Plaint on the ground that since the alleged compromise has already arrived at on 11.05.1972 in which, Rahi Bai, the predecessor in interest of the Plaintiffs, has relinquished her right through her counsel, and therefore, the suit as framed much after the said period is apparently barred by time.

4. The aforesaid application has been opposed by the Plaintiffs and the trial Court, after considering the same, has arrived at a conclusion that the said question involved a mixed question of law and fact and could be decided at the time of trial. The approach of the trial Court appears to be just and proper, particularly when the alleged compromise has been disputed specifically by the Plaintiffs as reflected from a bare perusal of the averments made in the Plaint.

5. 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 S. Agrawal)
JUDGE