

**HIGH COURT OF CHHATTISGARH, BILASPUR**  
**C.R. No.13 of 2020**

Narayan Prasad S/o Dalganj Soni Aged About 61 Years R/o Village Mudpar At Present Residing At Nawagarh Tahsil Nawagarh, District Janjgir Champa Chhattisgarh...(Defendant No. 01)

----Applicant

**Versus**

1. Veshchand @ Bala S/o Rameshwar Soni Aged About 58 Years R/o Village Durapa, Tahsil Nawagarh , District Janjgir Champa Chhattisgarh...(Plaintiff)
2. Krishna Chand S/o Rameshwar Soni Aged About 50 Years R/o Village Durapa, Tahsil Nawagarh , District Janjgir Champa Chhattisgarh.
3. Ramchand S/o Rameshwar Soni Aged About 45 Years R/o Village Durapa, Tahsil Nawagarh , District Janjgir Champa Chhattisgarh.
4. State Of Chhattisgarh Through Collector Janjgir, District Janjgir Champa Chhattisgarh..(Defendants)

----Non-Applicants

---

|                               |                                           |
|-------------------------------|-------------------------------------------|
| For Applicant:                | Shri Ashok Kumar Swarnakar, Advocate.     |
| For State/Non-Applciant No.4: | Shri Vimlesh Bajpai, Government Advocate. |

---

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

**05.03.2020**

1. This Revision Petition has been preferred by Defendant No.1-Narayan Prasad under Section 115 of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the legality and propriety of the order dated 16.12.2019 passed by the First Civil Judge, Class-I, Janjgir, District Janjgir-Champa in Civil Suit No.46-A/2018, whereby the suit has been held prima facie to be maintainable. The parties to this Appeal shall be referred hereinafter as per their description in the Court below.
2. Shri Swarnakar, learned Counsel for the Applicant submits that the trial

Court has committed an illegality in holding that the suit as framed is maintainable and erred further in keeping the said issue regarding its maintainability in abeyance for its decision at the time of trial. While inviting attention to the averments made in the Plaint, it is contended that in an earlier occasion, a suit was instituted by Defendant No.1, Narayan Prasad against the Plaintiff and his brothers, Defendants No.2 & 3, Krishna Chand and Ramchand respectively with regard to the property in question claiming declaration of title and injunction. The said suit was dismissed by the trial Court vide judgment and decree dated 31.08.2000 and the Appeal preferred against the same was also dismissed for non prosecution on 17.12.2008 and which has attained its finality by efflux of time, therefore, the suit as framed is hit by the principles of *res judicata* and is not at all maintainable. However, without considering the said fact in its proper manner, the Court below has erred in holding that the suit as framed, appears to be maintainable.

3. I have heard learned Counsel for the Applicant and perused the entire documents annexed with this Petition carefully.
4. A suit for declaration of title and injunction has been made by the Plaintiff-Veshchand alleging *inter alia* that the property in question bearing Khasra No.1456 admeasuring 0.06 acres situated at village Durpa, Tahsil Nawagarh was purchased by his father Rameshwar Soni prior to 1957 from one Visheshar, the erstwhile owner of the property in question for consideration of Rs.60/- and obtained the possession thereof. It is pleaded further that after the death of father, the property purchased by him was divided amongst him and his brothers (Defendants No.2 & 3) and the suit property has fallen in his share and since then, he is in possession

continuously and thus, has prescribed his right, title and interest by way of adverse possession as well.

5. The main contention of the learned counsel for the Applicant herein is that the suit as framed and instituted is hit by the principles of *res judicata* as provided under Section 11 of C.P.C. However, as reflected from the order impugned, the Applicant has failed to produce the pleadings of the earlier instituted suit, i.e., Civil Suit No.194-A/96 and the findings recorded therein. In absence thereof, it cannot be held that the suit is barred by the principles of *res judicata*, as it involves a mixed question of law and fact and could be determined only upon the examination of the pleadings and the findings recorded in the said suit. It appears further that for considering the objection raised by the Defendant, a preliminary issue was framed by the trial Court as to “whether the suit is legally maintainable or not” and while considering the same, it was observed that none of the parties have produced any evidence in this aspect. As such, the Court below has rightly observed that the suit, *prima facie*, appears to be maintainable while keeping the said issue in abeyance for its decision at the time of trial.
6. In view of above, I do not find any infirmity in the order impugned. The Revision Petition is accordingly dismissed at the admission stage itself. No order as to costs.

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