

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No.23 of 2019****Reserved on 06.02.2020****Pronounced on 14.02.2020**

1. Smt. Savita Dubey, Wd/o Late Sutikshan Dubey, Aged About 43 Years, R/o 16 Dharamprakash Chaal, Near Shefar School Bilaspur, Police Station Civil Line, Tahsil, Civil & Revenue District Bilaspur, Chhattisgarh, At Present 89C/02, Shri Krishan Apartment, Mova Raipur, Police Station Mova, Tahsil, Civil & Revenue District Raipur, Chhattisgarh (Defendant).
2. Ku. Suvigya Dubey, D/o Late Sutikshan Dubey, Aged About 19 Years, R/o 16 Dharamprakash Chaal, Near Shefar School Bilaspur, Police Station Civil Line, Tahsil, Civil & Revenue District Bilaspur, Chhattisgarh, At Present 89C/02, Shri Krishan Apartment, Mova Raipur, Police Station Mova, Tahsil, Civil & Revenue District Raipur, Chhattisgarh (Defendant).
3. Satyajit Dubey, S/o Late Sutikshan Dubey, Aged About 23 Years, R/o 16 Dharamprakash Chaal, Near Shefar School Bilaspur, Police Station Civil Line, Tahsil, Civil & Revenue District Bilaspur, Chhattisgarh, At Present 89C/02, Shri Krishan Apartment, Mova Raipur, Police Station Mova, Tahsil, Civil & Revenue District Raipur, Chhattisgarh (Defendant).
4. Ku.Shailja Dubey, D/o Late Ravi Batra, Aged About 22 Years, R/o 16 Dharamprakash Chaal, Near Shefar School Bilaspur, Police Station Civil Line, Tahsil, Civil & Revenue District Bilaspur, Chhattisgarh, At Present 89C/02, Shri Krishan Apartment, Mova

Raipur, Police Station Mova, Tahsil, Civil & Revenue District Raipur, Chhattisgarh (Defendant).

5. Smt. Swechchha, D/o Late Koteswar Prasad Dubey, Aged About 43 Years, R/o 16 Dharamprakash Chaal, Near Shefar School Bilaspur, Police Station Civil Line, Tahsil, Civil & Revenue District Bilaspur, Chhattisgarh, At Present 89C/02, Shri Krishan Apartment, Mova Raipur, Police Station Mova, Tahsil, Civil & Revenue District Raipur, Chhattisgarh (Defendant).
6. Ram Khedia, S/o Late Purushottam Das Khedia, Aged About 47 Years, R/o Rishabh Kunj, Vikas Nagar Bilaspur, Police Station Civil Line, Tahsil, Civil And Revenue District Bilaspur, Chhattisgarh (Power of Attorney Holder No.1 to 5) (Defendant).
7. Kailash Khushalani, S/o Jeevatram Khushalani, Aged About 50 Years, (Wrongly mentioned Jeevanram), Director K.D. Resources Private Limited, R/o Sarkanda, Bilaspur, Police Station Sarkanda, Tahsil, Civil & Revenue District Bilaspur, Chhattisgarh (Defendants).

---- Applicants

Versus

1. Avinash Dubey, S/o V.P. Dubey, Aged About 53 Years, R/o 18/1, Maharshi Devendra Road, 8th Floor, Kolkata, (West Bengal) - 700007 (Plaintiff).
2. Mohammad Altaf, S/o Mohammad Nooh, Aged About 38 Years, R/o in front of Mission Hospital Bilaspur, Police Station-Civil Line, Tahsil, Civil & Revenue District Bilaspur, Chhattisgarh (Defendant).

3. Mohammad Aaftab, S/o Mohammad Nooh, Aged About 38 Years,
R/o in front of Mission Hospital Bilaspur, Police Station-Civil Line,
Tahsil, Civil & Revenue District Bilaspur, Chhattisgarh
(Defendant).
4. State of Chhattisgarh, Through Collector Bilaspur, Tahsil, Civil &
Revenue District Bilaspur, Chhattisgarh (Defendant).
5. Commissioner, Municipal Corporation Bilaspur, Tahsil, Civil &
Revenue, District Bilaspur, Chhattisgarh (Defendant).
6. District Registrar, Registry Office Composite Building Bilaspur,
Police Station Civil Line, Tahsil, Civil & Revenue District Bilaspur,
Chhattisgarh (Defendant).
7. District Excise Officer, Excise Office Bilaspur, Tahsil, Civil &
Revenue District Bilaspur, Chhattisgarh (Defendant).
8. Nazul Officer, Nazul Office, Collectorate Compound Bilaspur,
Tahsil, Civil And Revenue District Bilaspur, Chhattisgarh
(Defendant).

---- Non-Applicants

For Applicants	:	Shri Ratnesh Kumar Agrawal, Advocate.
For Non-Applicant No.1	:	Shri Amit Sharma, Advocate.
For Non-Applicant Nos.2 & 3	:	None, though served.
For State/Non-Applicants No.4, 6 to 8	:	Shri Shakti Singh Thakur, P. L.
For Non-Applicant No.5	:	Shri Pankaj Agrawal, Advocate.

Hon'ble Shri Justice Sanjay S. Agrawal**CAV Order**

1. This revision petition has been preferred by the Defendants under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') questioning the legality and propriety of the order dated 11.01.2019 passed by the 2nd Additional District Judge, Bilaspur (C.G.), whereby the trial Court has refused to reject the plaint under Order 7 Rule 11 of CPC. The parties to this Revision Petition shall be referred hereinafter as per their description in the Court below.
2. Briefly stated the facts of the case are that the suit for declaration has been instituted to the effect that the registered deeds of sale, executed by Defendant Nos.1 to 6 and Late Satyadev Dubey in the year 2010 without informing the plaintiff, be declared as null and void claiming further the relief of injunction, restraining the Defendants from creating any alteration and/or creating any third party interest with regard to the property in question.
3. According to the averments made in the plaint, the Plaintiff was running a '*Talkies*' known as '*Shyam Talkies*' over the property in question obtained by his father on lease. It is alleged further that despite several requests being made to the Defendant Nos.1 to 6 and Late Satyadev Dubey, it was not sold to him and instead sold to others by executing registered deeds of sale, out of it, two have been made on 04.06.2010, while other on 08.06.2010. It is pleaded further that the earlier suit, being Civil Suit No.54-A/2010, was instituted for damages, when the

instruments/apparatus of the Talkies were damaged illegally by the Defendants and the purchasers of it.

4. The Defendant Nos.1 to 6 and Late Satyadev Dubey moved an application enumerated under Order 7 Rule 11 of CPC praying for rejection of the plaint as it was instituted without paying the requisite Court fee and that too without disclosing the cause of action. It is alleged further therein that the suit as framed is barred by the provisions prescribed under Order 2 Rule 2 of CPC.
5. The aforesaid application has been objected by the Plaintiff and the trial Court vide its order impugned rejected the same by observing *inter alia* that none of the grounds are attracted in order to reject the plaint, as alleged by the Defendants, under Order 7 Rule 11 of CPC.
6. Being aggrieved, the Defendants have preferred this revision petition. Learned counsel for the Applicants (Defendants) submits that the trial Court ought to have seen that the suit as framed and instituted for declaration and injunction without paying the requisite Court fee and/or without disclosing the cause of action against the present Defendants is not maintainable and is even otherwise barred by the provisions as prescribed under Order 2 Rule 2 of CPC. The suit is, therefore, liable to be rejected.
7. Shri Amit Sharma, learned counsel for Non-Applicant No.1/Plaintiff while supporting the order impugned, submits that since the plaintiff was not a party to the alleged transactions, therefore, the Court fee has properly been made while disclosing

the cause of action and submits further that the suit in the instant nature cannot be held to be barred by the said provision, as the suit has been instituted on the basis of different cause of action.

8. I have heard learned counsel for the parties and perused the entire relevant papers annexed with this revision petition carefully.
9. Admittedly, the Plaintiff was not a party to the alleged sales nor the present suit was instituted on the same cause of action as reflected from a bare perusal of the averments made in the plaint. As such, neither the *ad-valorem* Court fee was required to be paid nor the suit could be held to be hit by the provision prescribed under Order 2 Rule 2 of CPC, as the earlier suit being Civil Suit No.54-A/2010 appears to be instituted when instruments and the apparatus of the said talkies was damaged by the Defendants. Thus, the said suit was instituted based upon the different cause of action. It appears further that the instant suit has been filed while disclosing the cause of action as evidenced by para 13 of the plaint, and therefore, it cannot be rejected in exercise of the powers enumerated under Order 7 Rule 11 of CPC. The trial Court, has therefore, rightly refused to reject the plaint under Order 7 Rule 11 of CPC.
10. Consequently, I do not find any substance in this revision petition, which is liable to be and is hereby dismissed. No order as to costs.

Sd/-

(Sanjay S. Agrawal)
Judge