

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 41 of 2020**

1. Nitesh S/o Late Jagdev Turkane, Aged About 30 Years R/o Mahamai Para (Near Yadav Bhavan) Purani Basti, Raipur, Tahsil And District Raipur Chhattisgarh.
2. Nupur D/o Late Jagdev Turkane, Aged About 25 Years R/o Mahamai Para (Near Yadav Bhavan) Purani Basti, Raipur, Tahsil And District Raipur Chhattisgarh.
3. Nidhi D/o Late Jagdev Turkane, Aged About 20 Years R/o Mahamai Para (Near Yadav Bhavan) Purani Basti, Raipur, Tahsil And District Raipur Chhattisgarh.
4. Smt. Hemlata Wd/o Late Jagdev Turkane, Aged About 50 Years R/o Mahamai Para (Near Yadav Bhavan) Purani Basti, Raipur, Tahsil And District Raipur Chhattisgarh.
5. Gaurav S/o Late Jagat Narayan Turkane, Aged About 16 Years Minor Represented Through Mother Smt. Uma Applicant No. -07, R/o Kukari Para, Subhash Nagar Raipur, Tahsil And District Raipur Chhattisgarh.
6. Munu S/o Late Jagat Narayan Turkane, Aged About 13 Years Minor Represented Through Mother Smt. Uma Applicant No. -07, R/o Kukari Para, Subhash Nagar Raipur, Tahsil And District Raipur Chhattisgarh.
7. Smt. Uma Wd/o Late Jagat Narayan Turkane Aged About 45 Years R/o Kukari Para, Subhash Nagar Raipur, Tahsil And District Raipur Chhattisgarh.
8. Smt. Jaya D/o Late Kanglu Ram Turkane, Aged About 49 Years R/o Sector 06 Bhilai, Tahsil And District Durg Chhattisgarh.

---- Applicants**Versus**

1. Jageshwar Prasad S/o Late Jhanglu Ram Turkane, Aged About 69 Years, R/o 76/1, Maitri Nagar, Rasili Bai, Bhilai, District Durg Chhattisgarh.
2. Ashwani S/o Late Jagdish Prasad Turkane, Aged About 38 Years, R/o Kukrai Para, Shubhash Nagar Raipur, Tahsil And District Raipur Chhattisgarh.
3. Kamal S/o Late Jagdish Prasad Turkane, Aged About 30 Years R/o Kukrai Para, Shubhash Nagar Raipur, Tahsil And District Raipur Chhattisgarh.
4. Deepti D/o Late Jagdish Prasad Turkane, Aged About 25 Years R/o Rishali Sector, Bhilai, Tahsil And District Durg Chhattisgarh.
5. State Of Chhattisgarh, Through The Collector Raipur, Tahsil And District Raipur Chhattisgarh.

---- Non-Applicants

For Applicants: : Shri Sourabh Sharma appears along
with Shri Shailesh Tiwari, Advocate.

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

06.08.2020

1. This Revision Petition has been preferred by Defendants No.1 to 8, under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'), questioning the legality and propriety of the order dated 14.02.2020, passed by the 7th Additional Judge to the Court of First Civil Judge, Class-II, Raipur in Civil Suit No. 79-A/2019, whereby, the trial Court has refused to reject the plaint under Order 7 Rule 11 of C.P.C. The parties to this petition shall be referred hereinafter as per their description in the Court below.
2. Briefly stated the facts of the case are that the plaintiff/Jageshwar Prasad, instituted a suit claiming declaration of title and injunction with regard to the house, being House No. 530, situated at Amin Para, Raipur, which was originally held by one Ramdayal Turkane, and upon his death, it was inherited by his legal representatives namely, Manglu Ram, Jhanglu Ram Turkane, Kanglu Ram, Puran and Pancho Bai, the predecessors-in-interest of the parties. According to the plaintiff, the alleged suit property was never put in partition and after the sad demise of said Ramdayal Turkane, it was recorded in the name of Manglu Ram and others in the Assessment Register for the year 1950-51, but was recorded thereafter only in the name of Kanglu Ram, the predecessor-in-interest of Defendants No.1 to 8, and based upon which, they are denying his (plaintiff's) undivided interest over the same, giving rise to

the institution of the suit in the instant nature.

3. Defendants No.1 to 8, have submitted their written statements, while denying the claim and during trial, moved an application enumerated under Order 7 Rule 11 of C.P.C., seeking rejection of the plaint by alleging *inter alia* that the suit as framed without describing the particulars of the property in question, as required under Order 7 Rule 3 of C.P.C.; and without seeking the consequential reliefs of partition and possession is barred by virtue of proviso to Section 34 of the Specific Relief Act, 1963 (hereinafter referred to as the 'Act of 1963').
4. The plaintiff has denied the aforesaid application and the trial Court after hearing the parties has rejected the same on finding that being one of the co-owners, claim as made by him, seeking co-ownership over the property in question cannot be held to be hit by virtue of proviso to Section 34 of the Act of 1963. It observed further, after considering the averments made in the plaint that the property in question has been shown sufficiently and, therefore, it cannot be rejected under Order 7 Rule 11 of C.P.C. This is the order which has been impugned by way of this petition.
5. Shri Sourabh Sharma, learned counsel appearing for the Applicants/Defendants No.1 to 8, submits that the plaintiff, who is not in possession, over the property in question ought to have claimed the further relief of possession and, a mere suit for declaration of title and injunction as made by him is, therefore, specifically barred by Section 34 of the Act of 1963. It is contended further that the suit as framed without disclosing the identity of the alleged immovable property is not maintainable and was liable to be rejected.

6. In order to consider the said application, the plaint averments alone are required to be seen and a bare perusal of it, would show that the suit house, being House No.530, situated at Amin Para, Raipur, was originally owned by one Ramdayal Turkane, and upon his death, it was inherited by his heirs, who were admittedly the predecessors-in-interest of the parties. The description of the said property which has been described as such was never put in partition according to the plaintiff and being one of the co-owners, it cannot be said that he is not in possession. Therefore, the claim as made by the plaintiff cannot be held to be barred by virtue of proviso to Section 34 of the Act of 1963 and the trial Court has, therefore, rightly refused to reject the plaint under Order 7 Rule 11 of C.P.C.
7. The Revision Petition, being devoid of merit, is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay S.Agrawal)
JUDGE