

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 161 of 2017**

- Dr. Basant Pahare S/o Shri Ramavtar Pahare Aged About 59 Years R/o Tala Para, Near Indu Chowk, Magarpara Road, Bilaspur, Chhattisgarh, Present R/o Manav Seva Kendra, Near Rajiv Gandhi Chowk, Raipur Road, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh. **---- Petitioner**

Versus

1. Harnath Prasad Pahare S/o Shri Ramavtar Pahare Aged About 63 Years R/o Talapara, Near Indu Chowk, Magarpara Road, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh.
2. Gaurav Kumar Pahare S/o Harnath Pahare Aged About 34 Years R/o Talapara, Near Indu Chowk, Magarpara Road, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh.
3. Rahul Kumar Pahare S/o Harnath Pahare Aged About 31 Years R/o Talapara, Near Indu Chowk, Magarpara Road, Bilaspur, Tahsil & District Bilaspur, Chhattisgarh.
4. Hemant Pahare S/o Shri Ramavtar Pahare Aged About 57 Years R/o E-15, Shanti Nagar, Irrigation Colony, Shankar Nagar Road, Raipur, Tahsil & District Raipur, Chhattisgarh. 492001.

---- Respondents

For Petitioner	:-	Mr. Upendra Bharat, Adv.
For Respondents No.1 to 3	:-	Mr. Ratnesh Kumar Agrawal, Adv.

Hon'ble Shri Justice Sanjay S. Agrawal
Order On Board By

27/02/2020

1. This revision petition has been preferred by Defendant No.1 – Dr.

Basant Pahare, under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred as 'CPC') questioning the legality and propriety of the order dated 05.08.2017, whereby the learned Trial Court has refused to reject the Plaint under order 7 Rule 11 of CPC.

2. Briefly stated the facts of the case are that a suit has been instituted by the Plaintiffs claiming declaration of title, injunction and possession with regard to the property constructed with a house as described in Plaint para 1 by alleging *inter alia* that the suit land bearing Khasara No.14/2 admeasuring 0.018 hectares constructed with a two storeyed building was acquired by him (Plaintiff No.1) under the registered deed of gift dated 31.03.2005 executed in his favour by Defendant No.1, while Khasra No.14/8 admeasuring 0.014 hectares acquired by Plaintiffs No. 2 & 3 under the registered deed of gift dated 26.04.2005 executed in their favour by Defendant No.1. It is pleaded in the plaint that in pursuance of the alleged gift deeds, the possession thereof was delivered to them. According to the further averments made in the plaint, Defendant No.1 is in occupation as a licensee over the suit property since January, 2016, as per their permission, who, however refused to vacate the same when demand was made by Plaintiff No.1 after his retirement from his government job in 2015, giving rise to the institution of the suit in the instant nature.
3. Defendants have contested the aforesaid claim by submitting their written statements and moved an application for the rejection of the plaint under Order 7 Rule 11 of CPC by alleging

that the suit has neither been valued properly nor the requisite Court fee has been paid and, is barred by time as well, as it was filed beyond the period of limitation as prescribed under Article 58 of the Indian Limitation Act, 1963 (hereinafter referred as the 'Act of 1963'). Defendant No.1 has also moved an application under Order 7 Rule 10 of CPC seeking return of the plaint as it was filed in relation to the different properties as depicted in the alleged registered deed of gifts dated 31.03.2005 and 26.04.2005.

4. The aforesaid applications have been opposed by the plaintiffs and the Trial Court after considering the same has rejected both the applications on finding that since the claim for possession has been made only with regard to the house constructed on the ground floor and, therefore, the suit cannot be held to be valued improperly, as alleged by Defendant No.1. It observed further that since the question of limitation is a mixed question of law and fact and could be determined at the time of trial. In consequence, refused to reject the plaint in exercise of the powers under Order 7 Rule 11 of CPC.
5. Considering the averments made in the plaint, it cannot be held that the suit as framed is barred by time under Article 58 of the Act of 1963 as it could be determined only after considering the evidence led by the parties. The Trial Court has, therefore, not committed any illegality in keeping the said issue in abeyance for its decision at the time of trial.
6. In so far as the finding given with regard to the valuation of the suit is concerned, in my opinion, it also appears to be a mixed

question of law and facts and therefore, the Trial Court ought to have declined to decide the same prior to recording the evidence of the parties. The said finding of the Trial Court as recorded is rather pre-matured and, thus, liable to be and is hereby set aside keeping it open for its decision along with other issues.

7. As far as, the part of the order impugned rejecting the application filed under Order 7 Rule 10 of CPC is concerned, the applicant/Defendant No.1 may assail the same in an alternative remedy as provided under the law as the same cannot be assailed in this revisional jurisdiction.
8. For the aforesaid observations, the Revision Petition is accordingly disposed of. No order to costs.

Sd/-

(Sanjay S. Agrawal)
Judge

Ankit/vivek