

HIGH COURT OF CHHATTISGARH, BILASPURCR No. 97 of 2019

1. Dayanidhi S/o Late Shri Rameshwar Singh Chouhan, Caste Gada, Aged About 50 Years Agriculturist, R/o Village Kokdi Tarai, Tehsil And District Raigarh Chhattisgarh.
2. Kartikram S/o Late Shri Rameshwar Singh Chouhan Aged About 44 Years By Caste Gada, Agriculturist, R/o Village Kokdi Tarai, Tehsil And District Raigarh Chhattisgarh.
3. Shrawan S/o Late Shri Rameshwar Singh Chouhan Aged About 38 Years By Caste Gada, Agriculturist, R/o Village Kokdi Tarai, Tehsil And District Raigarh Chhattisgarh.

---- Applicants

Versus

1. Markandey S/o Late Sukhru Aged About 55 Years By Caste - Bhaina, Agriculturist, R/o Village Kokdi Tarai, Tehsil And District Raigarh Chhattisgarh.
2. Suritlal S/o Late Sukhru Aged About 58 Years By Caste - Bhaina, Agriculturist, R/o Village Kokdi Tarai, Tehsil And District Raigarh Chhattisgarh.
3. Gouri Bai Wd/o Late Jethuram Aged About 48 Years By Caste Bhaina, Agriculturist And Housewife, R/o Village Kokdi Tarai, Tehsil And District Raigarh Chhattisgarh.
4. Harimati Wd/o Late Kirit Lal Aged About 45 Years By Caste - Bhaina, Agriculturist And Housewife, R/o Village Kokdi Tarai, Tehsil And District Raigarh Chhattisgarh.
5. Anil S/o Late Kirit Lal Aged About 30 Years By Caste Bhaina, Agriculturist And Labour, R/o Village Kokdi Tarai, Tehsil And District Raigarh Chhattisgarh.
6. Bhagirathi S/o Late Kirit Lal Aged About 35 Years By Caste - Bahina, Agriculturist And Labour, R/o Village Kokdi Tarai, Tehsil And District Raigarh Chhattisgarh.
7. Deleted (Lakshmin) As Per Honble Court Order Dated 16-03-2020
8. State Of Chhattisgarh Through The Collector, Raigarh Chhattisgarh. (Defendant No. 2)
9. Nanhi S/o Late Shri Rameshwar Aged About 46 Years R/o Village Kokdi Tarai, Tehsil And District Raigarh Chhattisgarh.
10. Smt. Shanti D/o Late Shri Rameshwar Aged About 48 Years R/o Village Ankaripali, Tahsil Kharsiya, District Raigarh Chhattisgarh.
11. Smt. Kanta D/o Late Shri Rameshwar Aged About 40 Years R/o Village Kahamariya, Up Tahsil Baradwar, Tahsil Shakti, District Janjgir Champa Chhattisgarh.

---- Non-Applicants

For Applicants:	: Shri Bhaskar Payashi, Advocate.
For Non-Applicants No. 1 to 6:	: Shri Manoj Kumar Jaiswal, Advocate.
For Non-Applicant No. 7.	: Deleted.
For the State/Non-Applicant No. 8.	: Shri Alok Nigam, Government Advocate.
For Non-Applicants No. 9 & 11	: None, though served.
For Non-Applicant No. 10.	: Dispensed with.

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

16.07.2020

1. This Revision Petition has been preferred by the legal representatives of deceased Defendant No.1 – Rameshwar Singh Chouhan, under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred as 'CPC'), questioning the legality and propriety of the order dated 04.09.2018, passed by First Civil Judge, Class-II, Raigarh in Civil Suit No. 59-A/2014, whereby the application filed under Order 7 Rule 11 of C.P.C. has been rejected. 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 plaintiffs have claimed their ownership with regard to the agricultural lands bearing Khasra No.95/1 and 98/1 admeasuring respectively as 1.303 and 0.142 hectares of land, situated at Village Kokdi Tarai, Tahsil and District Raigarh. Out of the said properties, Khasra No. 98/1 described in Plaint Schedule "A", is the suit property, for which, a proceeding was initiated by them under section 170-B of the Chhattisgarh Land Revenue Code, 1959 (hereinafter referred to as the 'Code of 1959'), claiming reversion of the land in question registered as Revenue Case No. 6/A-23/2003-04. In the said proceeding, an order for reversion of land in question was passed on 01.10.2004 by the Sub Divisional Officer, Raigarh and during the execution of the said order, it was found by the Tahsildar,

Raigarh that a land admeasuring 100'x56'= 5600 square feet, is in illegal possession of said defendant Rameshwar Singh Chouhan, where the ostensible possession of it has been delivered to the plaintiffs.

3. According to the further averments made in the plaint, a proceeding under section 250 of the Code of 1959 has been initiated thereafter, seeking possession of the land encroached illegally by said defendant. In the said proceeding, the Sub Divisional Officer, Raigarh vide its order dated 08.11.2007 in Revenue Case No. 12/A-70/2006-07 has directed for restoration of the same, however, in the meantime, defendant No.1, Rameshwar Singh Chouhan has constructed a residential house and shops as described in Plaint Schedule "B". It is pleaded further that a proceeding, which was initiated for obtaining the possession in pursuance of order dated 08.11.2007, was, however, stayed by the Tahsildar, Raigarh vide its order dated 06.06.2011, affirmed further by the Additional Collector, Raigarh vide order dated 28.06.2011, therefore, they have been constrained to file the suit in the instant nature claiming declaration of title, possession, injunction in a mandatory form and also for mesne profits, instituted on or about 24.06.2014.
4. While contesting the aforesaid claim, the defendants have raised an objection under Order 7 Rule 11 of C.P.C. for maintainability of the suit alleging therein that the claim as made is barred by the provisions prescribed under section 257 of the Code of 1959 and, therefore, liable to be rejected.
5. After considering the said application, it has been observed by the trial Court that since the plaintiffs have claimed their ownership over the

property in question along with its possession upon the removal of super-structure raised by the defendants, therefore, it cannot be held to be barred by Section 257 of the Code of 1959. In consequence, rejected the application filed under Order 7 Rule 11 of C.P.C., which has been impugned by way of this Revision Petition.

6. Shri Bhaskar Payashi, learned counsel appearing for the Applicants/ (Legal representatives of deceased Defendant No. 1), while referring to the averments made in the plaint and inviting further the orders passed by the Revenue Authorities, submits that since the orders have already been passed in the said proceedings and its execution proceedings are still pending before the concerned Revenue Authorities, therefore, the claim as made is specifically barred by Section 257 of the Code of 1959. Having failed to consider the same in its proper perspective, the Court below has committed an illegality in refusing to reject the plaint.
7. On the other hand, learned counsels for the Non-Applicants have supported the order impugned as passed by the trial Court.
8. I have heard learned counsel for the parties and perused the entire papers annexed with this petition carefully.
9. True it is, as reflected from the averments made in the plaint, that the Revenue Authorities have passed the orders under Section 170-B and 250 of the Code of 1959 and the execution of it is pending before the concerned Revenue Authorities, but merely on the basis of it, the plaint cannot be held to be barred by the provisions prescribed under Section 257 of the Code of 1959, particularly, when the plaintiffs have claimed not only their ownership over the property in question but have claimed the further reliefs of injunction in a mandatory form and also for the

mesne profits and which could be granted only by the Civil Court. That apart, the scope as provided under those provisions of the Code of 1959 and the nature of the suit as framed are entirely on different footing.

10. Having considered the averments made in the plaint, as observed herein above, it cannot be said that the trial Court has committed any illegality in refusing to reject the plaint under Order 7 Rule 11 of C.P.C.
11. The Revision Petition, being devoid of merit, is accordingly dismissed at admission stage itself. No order as to costs.

Sd/-
(Sanjay S.Agrawal)
JUDGE

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