

HIGH COURT OF CHATTISGARH AT BILASPUR

Review Petition No.249/2019

Reserved on 27.01.2020

Pronounced on 31.01.2020

Sanjay Agrawal S/o. Late Shri Ramrasal Agrawal Aged About 62 Years R/o. Purani Basti, Baniyapara, Raipur Chhattisgarh (Non-applicant No.1-Plaintiff),

---- Applicant

Versus

1. Rajesh Kumar Agrawal S/o. Late Shri Ramrasal Agrawal Aged About 64 Years R/o. 602, Ahmedji Colony, Raipur, Chhattisgarh (Applicant - Defendant No. 10),
2. Asit Kumar Agrawal S/o. Late Sh. Ramrasal Agrawal Aged About 77 Years R/o Ahmedji Colony, Raipur, Chhattisgarh (Defendant No. 1(A) (Non-applicants - Defendants),
3. Mangal Vinod Agrawal S/o Late Sh. Ramrasal Agrawal Aged About 70 Years R/o Baniyapara, Raipur, Chhattisgarh. (Defendant No. 1(B)),
4. Smt. Kamal Agrawal D/o Late Sh. Ramrasal Agrawal Aged About 66 Years R/o Baniyapara, Raipur, Chhattisgarh. (Defendant No. 1(C),
5. Associated New Name S.K.F. Bearings The Director Agent Tsr Darshiv Limited, 6-10 Hajimusa Patrawala Industries, Mumbai. (Maharashtra). (Defendant No. 2),
6. Hindustan Lever Through Its Director, Agent Karvi Computer Share Pvt. Ltd. Plot No. 17-24, Vithal Rao Nagar, Madhapur, Hyderabad 500081 (Defendant No. 3),
7. Hindalco Industries Ltd. Ahura Centre B-Wing, 1st Floor, 82, Mahakali Caves Road, Andheri, Mumbai (Maharashtra) (Defendant No. 4),
8. Century Enka Ltd. Through Its Director, Agent In Time Spectrum Registry Ltd. C-13, Panna Lal Silk Mills Compound, L.B.S. Road, Bhandum, West Mumbai 78. (Defendant No. 5),
9. Indian Organic And Chemicals Pvt. Ltd. Through Its Director Agnet Futura Polyesters Ltd. Presently Satelite Corporate Services Pvt. Ltd. B-302, Soni Apartment, Opposite Saint Jude High School

Office Andheri Kurla Road, Jarimari Sakinaka Mumbai- 72.
(Defendant No. 6),

10. Strapproduct Ltd. Through Its Director, J.K. Corp. Ltd. Presently, J.K. Lakshmi Cement Ltd., Gulab Bhawan, Rear Wing, 3rd Floor, Bahadur Shah Zafar Road, New Delhi-2, Also At Nehru House, 4, Bahadur Shah Zafar Road, Post Box No. 7057 New Delhi 110002.
(Defendant No. 7),

11. Orrisa Cement Ltd. Through Its Director, Post Office Rajgangpur, Railway Station Pass, Sundargarh, Odisha. (Defendant No. 8),

12. National Insulated Cable Co. Ltd. Through Its Director New Nikouke Alliance Credit Ltd. Niko House, 2 Hair Street, Kolkata 700001.
(Defendant No. 9),

13. Smt. Kumud Agrawal W/o Late Shri Ramnivaran Agrawal Aged About 73 Years Address- Gram Ghoradi, Nadi Chowk, Mahasamund, Chhattisgarh. (Defendant No. 11),

---- Non-Applicants

For Applicant	:	Shri Varun Sharma, Advocate.
---------------	---	------------------------------

Hon'ble Shri Justice Sanjay S. Agrawal

C.A.V. Order / Judgment

1. This Review Petition has been preferred by the plaintiff under Order 47 Rule 1 of the Code of Civil Procedure, 1908 (hereinafter referred to as the CPC) questioning the legality and propriety of the Order dated 23.10.2019 passed by this Court in Civil Revision No. 20/2018 whereby the plaintiff's suit was held to be barred by time and accordingly rejected under Order 7 Rule 11 of CPC.

2. Briefly stated the facts of the case are that a suit for declaration and injunction was made by the plaintiff on 26.04.2008 seeking ownership with regard to the shares as described in plaint Schedule 'A' by alleging inter alia that the alleged shares, which were obtained by him in partition effected in 1965, were provided to his step mother as per the request of

his father, who was impleaded as defendant No.1 in the suit. According to the plaintiff, his brother Rajesh Kumar Agrawal (defendant No.10) had initiated the proceedings under Section 372 of the Indian Succession Act, 1925 (for short, the Act of 1925) after the death of mother claiming grant of succession certificate with regard to the alleged shares. According to the plaintiff, his said brother, being step son, was not entitled to obtain such a certificate.

3. The aforesaid claim was objected by defendant No.10 Rajesh Kumar Agrawal by moving an application under Order 7 Rule 11 of CPC on the ground that the suit as framed much beyond the prescribed period of three years from the date of cause of action first accrued to him is barred by time under Article 58 of the Indian Limitation Act, 1963 (for brevity, the Act of 1963). The said application was opposed by the plaintiff and the trial Court, vide its order dated 15.01.2018, had rejected the same by holding that the alleged question involving a mixed question of law and fact could be decided only at the time of trial. It was, however, reversed by this Court vide order impugned wherein it has been held that the cause of action first accrued to the plaintiff was on 20.05.1998 when his step mother expired and/or in the year 1998 when the alleged proceeding was initiated by his brother (Rajesh Kumar Agrawal) under the Act of 1925 claiming certificate with regard to the alleged shares in the year 1998.

4. Learned counsel for the applicant/plaintiff submits while furnishing a chart at paragraph 1.12 of the petition that the shares claimed by the said brother, i.e., Rajesh Kumar Agrawal, defendant No.10 in the said proceedings, were different from the shares claimed by the plaintiff; that the suit will be governed by the Article 54 of the Act of 1963 and not by Article 58 of the said Act as it was a suit for specific performance of the

contract; and since the plaintiff was permitted by the trial Court to claim his right with regard to the alleged shares on the basis of the Will alleged to have been executed by his father (though the date of Will was not mentioned in the plaint), therefore, the suit cannot be rejected under Order 7 Rule 11 of CPC.

5. Based upon the aforesaid ground, the order impugned is sought to be reviewed.

6. At the outset, it has to be noted that none of the aforesaid grounds were raised at the time of hearing of the said Revision Petition. Even otherwise, it is difficult to hold by bare perusal of the plaint averments that the shares claimed by his brother in the said proceedings under Section 372 of the Act of 1925 are different from that of the shares in question, nor was it countered or opposed as such by the plaintiff in his reply to the said application for the rejection of the plaint, or could it be held that the suit was instituted for specific performance of contract. It appears that all these grounds have been raised for the first time by the plaintiff by engaging a new counsel. The grounds so raised by the plaintiff as such, however, cannot be permitted to be raised under the guise of Review Petition.

7. In the matter of *Parsion Devi and others* vs. *Sumitri Devi and others* reported in (1997) 8 SCC 715, it has been observed by the Supreme Court at paragraph 9, which reads as under:-

“9. Under Order 47 Rule 1 CPC a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning, can hardly be said to be an error apparent on the face of the record justifying the court to exercise its power of review under Order 47 Rule 1 CPC. In exercise of the jurisdiction under

Order 47 Rule 1 CPC it is not permissible for an erroneous decision to be “reheard and corrected”. A review petition, it must be remembered has a limited purpose and cannot be allowed to be “an appeal in disguise”.

8. Considering further the facts and circumstances of the case, by applying the principles laid down in the above referred matter to the case in hand, I do not find any mistake or error in the order impugned apparent on the face of the record so as to call for any interference in this review jurisdiction. Review Petition is accordingly dismissed.

9. No order as to costs.

Sd/-
Sanjay S. Agrawal
Judge