

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****C.R. No.37 of 2021****Reserved on 21.10.2021**
Pronounced on 26.10.2021

Teejuram S/o Manoharlal Aged About 54 Years R/o Village Nahanda,
Tahsil Gunderdehi, District Balod (Chhattisgarh), District : Balod,
Chhattisgarh **---- Applicant**

Versus

1. Smt. Pushpa Bai D/o Manohar Lal (W/o Murlidhar) Aged About 58 Years
R/o Village Hathoud, Tahsil And District Balod (Chhattisgarh)
2. Smt. Saroj Bai, D/o Manohar Lal (W/o Kuleshwar) Aged About 50 Years
R/o Village Dudiya, Tahsil Gunderdehi, District Balod (Chhattisgarh)
3. Smt. Bimla Bai D/o Manohar Lal (W/o Purushottam) Aged About 43 Years
R/o Village Telitola (Arjunda), Tahsil Gunderdehi And District Balod
(Chhattisgarh)
4. State Of Chhattisgarh Through - The Collector Balod, District Balod
(Chhattisgarh) **-----Non-Applicants**

For Applicant:	Shri Jitendra Gupta, Advocate.
For Non-Applicant No.4/State:	Smt Seema Dixit, Panel Lawyer.

Single Bench:Hon'ble Shri Deepak Kumar Tiwari, J
C A V Order

1. This Revision has been preferred by the Applicant/Defendant under Section 115 of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the legality and propriety of the order dated 08.09.2021 passed in Civil Suit No.6-A/2021 by the 1st Civil Judge, Class-1, Gunderdehi, District Balod (CG) whereby, an application filed by the Applicant/Defendant under Order VII Rule XI r/w Section 151 CPC has been rejected.
2. Brief facts of the case are that the Plaintiff filed a suit for declaration, permanent injunction, separate possession and partition before the 1st Civil

Judge, Class-1, Gunderdehi, District Balod (CG) in which, the Applicant/Defendant filed an application under Order VII Rule XI CPC r/w Section 151 CPC raising objection that the suit is time barred.

3. The trial Court, while dismissing the said application, held that the question of limitation is a mixed question of law and facts and the same will be decided after recording of the evidence.

4. Aggrieved by the aforesaid order, this Revision has been preferred.

5. The question for determination is whether the trial Court, while passing the impugned order, has committed any illegality which calls for interference ?

6. Heard learned Counsel for the parties and perused the impugned order.

7. The Applicant/Defendant raised the ground that the partition took place in presence of both the parties before the Tahsildar, Gunderdehi on 16.04.2016, therefore, the suit filed is barred by limitation. In the matter of Salim D. Agboatwala & Ors vs. Shamalji Oddhavji Thakkar & Ors. passed in Civil Appeal No.5641/2021, it was observed by the Supreme Court that insofar as the rejection of Plaint on the ground of limitation is concerned, it is a mixed question of law and fact and therefore, the rejection of Plaint under Order VII Rule XI is a drastic power conferred on the Court to terminate a civil action at the threshold. When a Plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order VII Rule XI CPC. The Supreme Court has further observed that if the Plaintiff succeeds in establishing that he gained knowledge of the order as claimed in the Plaint, then the issue

of limitation cannot be against the Plaintiffs. Generally, a party who never had any notice of a particular proceeding, is entitled to approach the Court upon gaining knowledge of the proceedings and the point of limitation will not have any binding on such party.

8. In view of the foregoing discussions, the Revision, being devoid of any substance, is accordingly dismissed at the stage of admission. No order as to costs.

Sd/-
(Deepak Kumar Tiwari)
JUDGE

Priya