

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
C.R. No.40 of 2021

1. Same Lal S/o Tikait Lal Aged About 29 Years By Caste Dhanuhar R/o Village Kharhari, Tahsil Kartala, District Korba Chhattisgarh.
 2. Dori Lal S/o Tikait Lal Aged About 24 Years By Caste Dhanuhar R/o Village Kharhari, Tahsil Kartala, District Korba Chhattisgarh.
 3. Vijay S/o Tikait Lal Aged About 22 Years By Caste Dhanuhar R/o Village Kharhari, Tahsil Kartala, District Korba Chhattisgarh.
 4. Sijay S/o Tikait Lal Aged About 19 Years By Caste Dhanuhar R/o Village Kharhari, Tahsil Kartala, District Korba Chhattisgarh.
- Applicants/Defendants**

Versus

1. Shanti Devi Agrawal W/o Late Shri Prabhudayal Aged About 78 Years By Caste Agrawal R/o In Front Of Agroha Bhawan Korba Tahsil Korba, District Korba Chhattisgarh. (Plaintiff)
 2. State Of Chhattisgarh Through The Collector, Korba, District Korba Chhattisgarh.
 3. Naib Tahsildar Barpali, Tahsil Kartala, District Korba Chhattisgarh., District : Korba, Chhattisgarh
- Non-Applicants**

For Applicant:	Shri Kishanlal Sahu, Advocate.
For Non-Applicant No.4/State:	Shri DC Verma, GA

Single Bench: Hon'ble Shri Deepak Kumar Tiwari, J
Order on Board

27.10.2021

1. This Revision has been preferred by the Applicants/Defendants under Section 115 of the Code of Civil Procedure, 1908 (for short 'the CPC') questioning the legality and propriety of the order dated 06.03.2021 passed in Civil Suit No.12-A/2017 by the Civil Judge, Class-2, Kartala, District Korba (CG) whereby, an application filed by the Applicants/Defendants for rejecting the Plaint as the suit is time barred, is dismissed.

2. Brief facts of the case are that Non-Applicant No.1/Plaintiff has filed a Civil Suit before the Civil Judge, Class-II Kartala for specific performance on the basis of contract/unregistered sale deed dated 09.02.1984 in which, the Applicants/Defendants have raised an objection that under Articles 54 and 58 of the Schedule of Limitation Act, the suit is time barred and his application was dismissed by way of the impugned order.

3. Heard Counsel for the Applicants and perused the impugned order.

4. The question which now arises for determination is whether the impugned order is legal, proper and justifiable ?

5. In this case, in the unregistered sale deed dated 09.02.1984, no limitation has been stipulated and it was mentioned that whenever the purchaser asked for the same, then the seller would be bound for the registration. So, in the impugned order, the Court below has rightly observed that the objection raised by the Applicants regarding the limitation is a mixed question of law and fact and that has to be decided after the examination of the evidence.

6. In the matter of Urvashiben and Another v. Krishnakant Manuprasad Trivedi reported in (2019) 13 SCC 372, it has been held that so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that limitation can be the ground for rejection of plaint in exercise of powers under Order 7 Rule 11(d) CPC. Equally, it is well settled that for the purpose of deciding application filed under Order 7 Rule 11 CPC, only averments stated in the plaint can alone be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into. Article 54 of the Limitation Act, 1963 prescribes the limitation of three years for suits for specific performance. The said Article reads as

under:-

<u>Description of suit</u>	<u>Period of limitation</u>	<u>Time from which period begins to run</u>
*	*	*
54. For specific performance of a contract	3 years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

7. From a reading of the aforesaid Article, it is clear that when the date is fixed for performance, limitation is three years from such date. If no such date is fixed, the period of three years is to be computed from the date when the plaintiff has notice of refusal. When rejection of plaint is sought in an application filed under Order 7 Rule 11 CPC, same is to be considered from the facts of each case looking at the averments made in the plaint for the purpose of adjudicating such application.

8. In view of above, I do not find any infirmity in the findings recorded by the trial Court so as to call for any interference in this Revision, which is accordingly dismissed. No order as to costs.

Sd/-
(Deepak Kumar Tiwari)
JUDGE

Priya