

HIGH COURT OF CHHATTISGARH, BILASPUR**CR No. 107 of 2019****Reserved on 29-1-2021****Delivered on 1-2-2021**

1. Smt. Joginder Kaur W/o Late Harwansh Singh Aged About 67 Years
2. Smt. Bibi Saini, W/o Sarvajeet Singh Aged About 44 Years Temporary R/o Block No. C / 304, Bokaro Steel City, District Bokaro (Jharkhand)

Both above applicants are permanent R/o H. No. 73 B, Amrapali Vananchal City, Street No. 18, Gauravpath Ward No. 23, Bhilai, Post Housing Board, Bhilai, District Durg Chhattisgarh.

3. Smt. Kuldeep Kaur W/o Goldiman Aged About 42 Years R/o C/o Baldev Singh, In Front Of U C O Bank, Vaishali Nagar, Bhilai, Tehsil And District Durg Chhattisgarh
4. Smt. Balbir Kaur W/o Shailesh Baghel Aged About 40 Years R/o H. No. 73 B, Amrapali Vananchal City, Street No. 18, Gauravpath Ward No. 23, Bhilai, Post Housing Board, Bhilai, District - Durg Chhattisgarh.

---- Applicants**Versus**

1. Smt. Narendar Kaur, W/o Late Jaswant Singh Aged About 57 Years R/o Medical Store Of Dr. N. D. Sahu, Beside Jai Construction, Purani Basti, Kohka, Bhilai, Tehsil And District Durg Chhattisgarh
2. State Of Chhattisgarh Through Collector, Durg, District Durg Chhattisgarh.

---- Non-applicants

For the applicants	:	Ms. Aditi Singhavi, Advocate
For Non-applicant No. 1	:	Mr. P.R. Patankar, Adv.
For non-applicant No. 2.	:	Mr. Raghvendra Verma, GA

Hon'ble Shri Justice Sharad Kumar Gupta**CAV Order**

1. Applicants have preferred instant Civil Revision against the order dated 30-9-2019 passed by 16th Civil Judge, Class-II, Durg in Civil Suit No. 261-A/2018 whereby and whereunder she rejected their application filed under Section 11 of Civil Procedure Code, 1908 (in short "CPC").
2. Non-applicant No.1 had filed a civil suit No. 261-A/2018 for declaration

and permanent injunction regarding disputed land against the applicants and non-applicant No. 2.

3. Applicants filed an application under Section 11 of CPC which was rejected by the Court on 30-9-2019.

4. Being aggrieved, the applicants have preferred instant revision.

5. In brief the applicants case regarding this revision is that the impugned order of the trial Court is contrary to law, earlier non-applicant No. 1 had also filed a civil suit no. 54-A/2016 against them before the 3rd Addl. District Judge, Durg, wherein the relief was same, earlier suit was dismissed on the ground of deficit payment of court fee and civil revision filed against that order was withdrawn, hence the order passed in earlier civil suit stands affirmed. Therefore, subsequent civil suit No. 261-A/2018 is barred under the principles of res judicata.

6. Counsel for the non-applicant No. 1 submitted that after taking the evidence the applicability of principles of res judicata can be decided. The application of applicants was pre-matured and cannot be decided. They should have raised the pleadings regarding res judicata in their WS and after framing the issue and taking the evidence matter could have been decided by trial Court.

7. Counsel for non-applicant No. 1 placed reliance in the decision of Hon'ble Supreme Court in the matter of **Madhukar D. Shende -v- Tarabai Aba Shende** [2002 (2) SCC 85] para 14 of which is relevant and reproduced below :-

“14 Res judicata is a mixed question of fact and law. We do not find the plea of res judicata having been raised in the plaint. Copies of pleadings and issues framed in the earlier suit have not been tendered in evidence and we do not find any issue on res judicata having been framed and tried between the parties in the present suit.”

8. Counsel for non-applicant No. 1 placed reliance in the decision of coordinate bench of this Court in the matter of **Ballu Ram Sahu and anr. -v- Smt. Lata Sahu and anr.** 2014(3) CGLJ 1999, para 7 of which is relevant and reproduced below:

“7. Reverting back to the facts of the instant case, the defendants have to establish the plea of res judicata by raising appropriate pleadings and if pleadings are so raised, issue has to be framed in this regard and upon leading evidence, such plea has to be established

before the competent civil Court; and plea of res judicata being mixed question of law and facts and it cannot be considered in the application under Order 7 Rule 11 of CPC.”

9. It would be pertinent to mention the provisions of Section 115 of CPC which reads as under:-

“115. Revision [(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears—

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.

Explanation.—In this section, the expression “any case which has been decided” includes any order made, or any order deciding an issue, in the course of a suit or other proceeding.”

7. It would be noteworthy to mention the Section 11 of CPC which reads as under:-

“11. Res judicata- No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under

the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

Explanation I.- xxx	xxx	xxx
Explanation II.- xxx	xxx	xxx
Explanation III.-xxx	xxx	xxx
Explanation IV.-xxx	xxx	xxx
Explanation V.-xxx	xxx	xxx
Explanation VI.-xxx	xxx	xxx
Explanation VII.-xxx	xxx	xxx
Explanation VIII.-xxx	xxx	xxx

8. In the case in hand, trial Court decided the matter of res judicata on the application filed under Section 11 of the CPC by applicants. Looking to the aforesaid judicial precedents by Hon'ble Supreme Court and coordinate bench of this Court, this Court finds that trial Court can decide the applicability of principle of res judicata after framing the issue and after recording evidence.

9. Looking to the above mentioned facts and circumstances of the case, looking to the provisions of Section 115 of CPC, looking to the aforesaid judicial precedents, this Court finds that trial Court had not committed any illegality or material irregularity while exercising its jurisdiction to reject the said application of the applicants. Liberty is granted to the applicants to raise the plea of res judicata in their WS and trial Court may decide the same after framing issue and after recording the evidence.

10. Consequently, this Court finds that instant revision is not fit for admission. Hence, the revision is dismissed at motion hearing stage.

11. I.A. No.1 is also rejected.

Sd/-
(Sharad Kumar Gupta)
Judge