

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CIVIL REVISION No. 111 of 2019**

Reserved on 19-1-2021

pronounced on 20-1-2021

- Bhuwan Lal S/o Ganesh Ram Bind Aged About 45 Years R/o Village Jawalpur, Tahsil Janjgir District Janjgir Champa Chhattisgarh

---- Applicant**Versus**

1. Ram Kumar S/o Bahadur Gauraha Aged About 54 Years
2. Durga Prasad S/o Bahadur Gauraha Aged About 49 Years
3. Chandrbhushan S/o Bahadur Gauraha Aged About 41 Years
4. Arun Kumar S/o Bahadur Gauraha Aged About 38 Years
5. Rama D/o Bahadur Gauraha Aged About 60 Years
All R/o Village Jawalpur, Tahsil Janjgir District Janjgir Champa CG
6. Kshama D/o Bahadur Gauraha Aged About 45 Years R/o Village Jawalpur, Tahsil Janjgir District Janjgir Champa Chhattisgarh,
District : Janjgir-Champa, Chhattisgarh

---- Non-applicants

For applicant	: Mr. Somnath Verma, Adv.
For non-applicants	: None, though served.

Hon'ble Mr. Sharad Kumar Gupta, Judge**C.A.V. ORDER**

1. Applicant has preferred instant Civil Revision against the order dated 24-9-2019 passed by the Civil Judge Class 1, Akaltara, Distt. Janjgir Champa (C.G.) in Civil Suit No. 10-A/2001 whereby and whereunder he rejected his application for withdrawal of the suit with permission to file new suit.
2. Applicant had filed a civil suit for specific performance of contract on 26-9-2001. The case was fixed for defendant's evidence. Applicant had filed an application under Order 23 Rule 1 of the Civil Procedure Code (in short 'CPC') for withdrawal of the suit with the permission to file new civil suit, on the grounds that on account of formal defect and non-joinder of parties, the suit must fail. Trial Court rejected the said application on 24-9-2019 on the

grounds that non-joinder of the parties does not fall in the category of formal defect, no other sufficient ground exists to permit applicant to withdraw the suit with the permission to file new suit.

3. Being aggrieved the applicant preferred instant revision.

4. In brief the applicant's case regarding revision is that the impugned order is against law, non-joinder of the parties is itself a formal defect. There was defective drafting in plaint. Hence, instant revision may be allowed.

5. For the proper adjudication it would be pertinent to mention the provisions of Section 115 of Civil Procedure Code (for short, '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.”

6. It would be noteworthy to mention the provisions of Order 23 Rule 1(3) of the CPC which reads as under :-

“Order XXIII- **1. Withdrawal of suit or abandonment of part of claim.—**

(1) xxx xxx xxx.

(2) xxx xxx xxx

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim,

it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.”

7. In the matter of **Vinod Kumar Gupta -v- Rama Devi Shivhare and anr. 2008(1) MPHT 83**, Hon'ble MP High Court has laid down following judicial precedent :-

“Court can grant permission under Order 23 Rule 1 (3) of CPC at any time after institution of suit to withdraw suit or to abandon any part of claim. Suit must fall under some formal defect or there must be sufficient grounds to allow plaintiff to institute fresh suit for subject matter of the suit or part of claim. The ground of non-joinder of parties for invoking jurisdiction under Order 23 Rule 1(3) of the CPC cannot be held as formal defect.”

8. Applicant has failed to show that allegedly what were defects in drafting of suit, on account of which suit would fail. He also failed to show that which parties were not incorporated in the suit. Moreover, looking to the aforesaid judicial precedent laid down by Hon'ble MP High Court, this Court finds that non-joinder of parties does not fall in the term 'formal defect' as enumerated in Order 23 Rule 1(3) of CPC. In other words, non-joinder of parties does not cover by term 'formal defect' embodied in Order 23 Rule 1(3) of CPC. Moreover, there are no other sufficient grounds for giving said permission to applicant.

9. In these circumstances, prima facie it does not appear that while passing the impugned order the trial Court had committed illegality or material irregularity while exercising its jurisdiction at the time of rejecting the said application of applicant.

10. Looking to the above mentioned facts and circumstances of the case, this Court finds that instant revision is not fit for admission. Consequently, instant revision is not admitted for final hearing and dismissed at motion hearing stage.

**Sd/-
(Sharad Kumar Gupta)
Judge**