

HIGH COURT OF CHHATTISGARH, BILASPURFA No. 138 of 2006

1. Sardar Krishna Singh dead through LRs Smt. Mehendur Kaur W/o Late Sardar Krishna Singh, Aged About 78 Years R/o Sadar Road, Ambikapur, Tehsil- Ambikapur, Distt. Surguja, Chhattisgarh,
2. Smt. Paramjeet Kaur W/o Late Gurumel Singh Sidhu, Aged About 43 Years R/o Sadar Road, Ambikapur, Tehsil- Ambikapur, District : Surguja (Ambikapur), Chhattisgarh
3. Karan Singh Sidhu S/o Late Gurumel Singh Sidhu, Aged About 18 Years R/o Sadar Road, Ambikapur, Tehsil- Ambikapur, District : Surguja (Ambikapur), Chhattisgarh
4. Ku. Gurlen Kaur Sidhu D/o Late Gurumel Singh, Aged About 16 Years Minor Through Natural Guardian Mother Smt. Paramjeet Kaur Sidhu W/o Late Gurumel Singh Sidhu, Aged About 43 Years, R/o Sadar Road, Ambikapur, Tehsil- Ambikapur, District : Surguja (Ambikapur), Chhattisgarh
5. Charanjeet Kaur Sidhu D/o Late Sardar Krishna Singh, Aged About 48 Years R/o Sadar Road, Ambikapur, Tehsil- Ambikapur, District : Surguja (Ambikapur), Chhattisgarh
6. Ravi Singh Sidhu S/o Late Sardar Krishna Singh, Aged About 38 Years R/o Sadar Road, Ambikapur, Tehsil- Ambikapur, Distt. Surguja, ChhattisgarhPlaintiffs, District : **--- Appellants**

Versus

1. (a) Smt. Chandraprabha Gupta W/o Shri Surendra Nath Gupta, Aged About 68 Years R/o Surajpur, Shri Vinod Kumar Gupta Advocate Police Station/ Tahsil Surajpur, Chhattisgarh, Chhattisgarh
(b) - Smt. Geeta Gupta D/o S.N.Gupta, Aged About 36 Years R/o Surajpur, Shri Vinod Kumar Gupta Advocate Police Station/ Tahsil Surajpur, Chhattisgarh
(c) - Vinod Kumar Gupta S/o S.N.Gupta, Aged About 40 Years R/o Surajpur, Shri Vinod Kumar Gupta Advocate Police Station/ Tahsil Surajpur, Chhattisgarh
(d) - Smt. Satyaprabha Gupta D/o S.N.Gupta, Aged About 43 Years R/o Surajpur, Shri Vinod Kumar Gupta Advocate Police Station/ Tahsil Surajpur, Chhattisgarh
(e) - Smt. Ratnaprabha Gupta D/o S.N.Gupta, Aged About 45 Years R/o Surajpur, Shri Vinod Kumar Gupta Advocate Police Station/ Tahsil Surajpur, Chhattisgarh
(f) - Smt. Shashiprabha Gupta D/o S.N.Gupta, Aged About 48 Years R/o Surajpur, Shri Vinod Kumar Gupta Advocate Police Station/ Tahsil Surajpur, Chhattisgarh
2. **(a)** Smt. Pretlata W/o Satish Chandra Gupta, Aged About 70 Years R/o Bilaspur, Gupta Stationary Mart Tilaknagar, Bilaspur, Chhattisgarh, District : Bilaspur, Chhattisgarh
(b) – Harish Chandra Gupta, s/o Satish Chandra Gupta, aged about 50 years (died) through

2.b(i) - Smt. Shanti Gupta W/o Late Harish Chandra Gupta, Aged About 53Years

2.b(ii) - Vaibhav Gupta S/o Late Harish Chandra Gupta, Aged About 27 Years (both are resident of Ward No18, Rajendra Nagar, Police Station Civil Lines Bilaspur, Civil & Revenue Distt. Bilaspur (C.G)

2(c) - Ravindra Gupta S/o Satish Chandra Gupta, Aged About 48 Years

2(d) Pradeep Kumar Gupta S/o Satish Chandra Gupta, Aged About 42Years

All R/o Bilaspur, Gupta Stationary Mart, Tilaknagar, Bilaspur

3. Sushil Kumar Gupta Dead Through Legal Representatives :

3(a) – Smt. Munni Devi w/o late Sushil Kumar Gupta, aged about 70 years

3(b) – Smt. Indu, D/o Late Sushil Kumar Gupta aged about 50 years,

3(c) - Pramod Kumar Gupta S/o Late Sushil Kumar Gupta, Aged About 45 Years

3(d) – Anju Gupta D/o Sushil Kumar Gupta, aged about 40 years

(All residents of Kedarpur, Ambikapur, P.S. Ambikapur, Distt. Surguja, Chhattisgarh

4. (a) Smt. Uma Gupta W/o Naresh Gupta, Aged About 60 Years R/o Bairav Prasad Gupta, Near Narayan Kirana Stores Deviganj Road, Ambikapur, District Surguja, Chhattisgarh,

(b) - Bhairav Prasad Gupta S/o Naresh Gupta, Aged About 43 Years

(c) - Chandra Sekhar Gupta S/o Naresh Gupta, Aged About 40 Years

(d) - Smt. Kusum Gupta W/o Shiv Prasad Gupta, Aged About 40 Years

(e) - Smt. Sharda Gupta W/o Rajendra Prasad Gupta, Aged About 31 Years

(f) - Smt. Gudiyarani Gupta D/o Naresh Chandra Gupta, Aged About 35 Years

5. State of Chhattisgarh through the Collector, District Surguja, ChhattisgarhDefendants, --- **Respondents**

For the appellants : Mr. Rakesh Pandey, Advocate.

For the Respondents : Mr. Gaurav Singh & Mr. A.K. Yadav, Advocates

Hon'ble Shri Justice Goutam Bhaduri

Order on Board

03.12.2018

1. The present appeal is against the order dated 12.05.2006 passed by the Court of III Additional District Judge (FTC)

Ambikapur, Surguja (C.G) in Civil Suit No.8-A/2005 whereby the application moved by the defendants (respondents herein) under order 7 Rule 11 CPC was considered and the suit was dismissed.

2. Learned counsel for the plaintiff/appellant would submit that in this case initially the agreement to sell the land bearing Survey/Khasra No.233 admeasuring 22.40 acres was executed on 27.02.1963 and it contains that after the name of seller Lalji Prasad Gupta is mutated in the revenue record, the agreement to sale can be enforced. He submits that subsequently suit filed by the respondents was decreed on 23.09.1991 thereby the legal heirs of late Lalji Prasad Gupta have come in possession. Thereafter the prospective purchaser Sardar Krishna Singh requested the sons of Lalji Prasad to get the sale deed executed in his favour and when the request was rejected, the suit was filed by plaintiff Krishna Das (appellant herein).

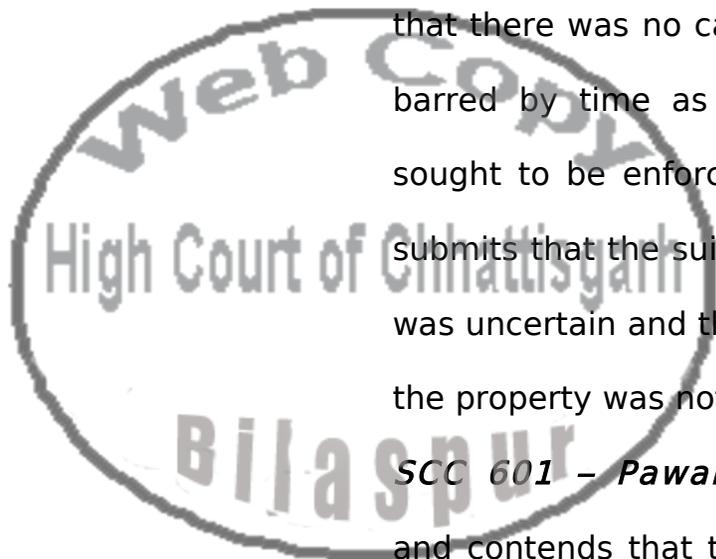
3. Learned counsel for the appellants submits that subsequently after filing of the suit the written statement of the defendants/respondents was also filed and the Court on two occasions in 1998 once framed as many as 7 issues, thereafter again framed 9 issues thereby total 16 issues were framed. It is contended that all of a sudden when the affidavit was filed, the evidence was also placed on record and thereafter an application under order 7 Rule 11 CPC was filed stating that the suit is barred by time and there is no cause action.

4. It is contended that the court should not have considered the application of such nature as it was too belated and the

evidence of parties were on record. He further submits that the agreement postulates that the after the name is mutated in revenue records of the seller, the sale would be executed, therefore, that would be a mixed question of facts and law and as such the plaintiffs/appellants could not have been non-suited on the ground. He placed reliance on **2015 (5) SCC 674** and **2007 (10) SCC 59**, paras 21 and 22 and submits that irrespective of the merit the trial Court is bound to go into the issues on merits and to decide the case.

5. Per contra, learned counsel for the respondents would submit that the suit was dismissed on two grounds. First, that there was no cause of action and secondly the suit was barred by time as the agreement of the year 1963 was sought to be enforced by filing a suit in 1991. He further submits that the suit was liable to be dismissed as property was uncertain and the decree could not have been passed as the property was not clear. He placed reliance in **(2010) 15 SCC 601 – Pawan Kumar Dutt vs. Shakuntala Devi** and contends that the agreement is void for uncertainty as per Section 29 of the Contract Act.

6. Learned counsel for the respondents further placed reliance in **(1996) 8 SCC 611 Trilok Singh Vs. Vijay Kumar Sabharwal ; (1997) 3 SCC 1 K.S. Vidyanadam and others vs. Vairavan & 218 (2015) DLT 305 Sangita Rehan v. Surinder Krishnan Grover** and contends that the issue of limitation is not always a mixed question of law and fact. He also placed his reliance on a judgment passed by this Court passed in Second Appeal No.2/2001 decided on 02.05.2014 (**Manharan vs. Ghanaram**). He further submits that the State is a party and no notice



was served u/s 80 of the CPC, therefore, the suit should not be allowed to be proceeded.

7. Perused the documents. The pleading would show that on 29.04.2014 a *Hukumnama* was executed in favour of Lalji Prasad in respect of land bearing Kh.No.233 ad-measuring 22.40 acres situated at village Namnakala, Distt. Sarguja. However it is stated that the name of Lalji Prasad Gupta was not recorded. Subsequently on 27.02.1963 agreement was executed by Lalji Prasad Gupta for selling the land in favour of the plaintiff late Sardar Krishna Singh. In the meanwhile, certain litigation was going on between the parties i.e., legal heirs of the seller and the State and eventually in Civil Suit No.21-A/1990 decided on 23rd Sept. 1991 a declaration was passed by the Court that the legal heirs are owners of the land bearing Kh. No. 233 admeasuring 22.40 decimal and further the direction was given that the lease be granted in favour of the plaintiffs and the names of legal representatives of the plaintiffs who were then Surendra Nath Gupta, Satish Chandra Gupta, Sushil Kumar Gupta and Ganesh Chandra Gupta be recorded in the revenue records.
8. Thereafter Civil Suit was filed on 20.11.1991 for specific performance of the agreement on the ground that the agreement contained the fact that name of Lalji Gupta was not recorded and it was agreed that when the name is recorded, registry would be made in respect of the land. After filing of the civil suit, written statement of the parties were filed and on 27.10.1991 initially the trial Court framed 8 issues for trial of the case and Issue No.5 was also with respect to whether the suit is also barred by time.

9. In the meanwhile, defendants No.1(a), 1(e) & (f) namely Smt. Chandra prabha Gupta, Vinod Kumar Gupta and 1(f) Smt. Geeta Gupta along with defendant No.3 filed an application under order 7 rule 11 for dismissal of the suit. The Civil Court has framed 8 issues and thereafter on 26.4.2005, 9 issues were framed. It appears that in the intervening period, the affidavit by way of Order 18 Rule 4 was also placed on record by the plaintiff. However the trial Court dismissed the suit on the ground that the suit is barred by time.

10. The Supreme Court in case of *(2006) 5 SCC 638 Ramesh B. Desai v. Bipin Vadilal Mehta* has reiterated the principles to decide the application under Order 7 Rule 11 and held that the plea of limitation cannot be decided as an abstract principle of law divorced from the facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. Para 19 of the said judgment is relevant and quoted below :

“19. A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. A plea of limitation is a mixed question of law and fact. The question whether the words “barred by law” occurring in Order 7 Rule 11(d) CPC would also include the ground that it is barred by law of limitation has been recently considered by a two-Judge bench of this Court to which one of us was a member (Ashok Bhan, J) in *Balalaria Construction (P) Ltd v. Hanuman Seva Trust*, (2006) 5 SCC 658 it was held (SCC p.661, Para 8) :

“8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the

present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex-facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time."

The principle would be equally applicable to a company petition. Therefore, unless it becomes apparent from the reading of the Company petition that the same is barred by limitation, the petition cannot be rejected under Order 7 Rule 11(d) CPC."

11. Likewise in ***(2015) 5 SCC 674 – Satti Paradesi Samadhi & Pillayar Temple v. M. Sankuntala*** the Supreme Court reiterated the principles laid down in *Ramesh B. Desai v. Bipin Vadilal Mehta* (2006) 5 SCC 638 (*Supra*). Para 14 of the said decision is relevant and quoted below :

"14.

The Court further proceeded to state that a plea of limitation is mixed question of fact and law. On a plain consideration of the language employed in sub-rule(2) of Order 14 it can be stated with certitude that when an issue requires an inquiry into facts it cannot be tried as a preliminary issue. In the said judgment the Court opined as follows (*Ramesh B. Desai Case (supra)*) :

"13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit, and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in *Major S.S. Khanna v. Brig. F.J. Dillon* AIR 1964 SC 497 and it was held as under : (AIR pp.502-03, Para 18 SCR p. 421)

“18..... Under Order 14 Rule 2 of the Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.’

Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the above quoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon a decision of fact, it cannot be tried as preliminary issue.”

12. The Supreme Court further in **(2007) 10 SCC 59 – Ram Prakash Gupta vs. Rajiv Kumar Gupta** held that while passing an order in an application filed for rejection of plaint under Order 7 Rule 11(d) CPC, that too after filing of the written statement, framing of the issues including on limitation etc., the Court is bound to verify the entire plaint averments and while deciding the application under Order 7 Rule 11 CPC, merely few lines or passage should not be read

in isolation and the pleadings have to be read as a whole to ascertain its true import. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read.

13. Here the plaint averments would show that a decree was passed on 23.09.1991 in a Civil Suit No.21-A/1990 filed by the legal heirs of Lalji Prasad whereby the mutation was directed. Subsequently civil suit for specific performance was filed on 20.11.1991. Therefore, certainly after going through the averments and on the applying the aforesaid principles to the present case, it would show that mixed question of law and facts are involved and the plaintiff could not be non-suited on that ground.

14. The arguments raised by the respondents herein shall always be available during the course of trial and the respondents would be at liberty to raise contention but considering the facts and law, the rejection of the plaint at the threshold after framing of issues and filing written statement cannot be sustained. In the result, the appeal is allowed. The impugned order dt. 12.05.2006 dismissing the suit is set aside. The parties shall appear before the trial Court on 14th December, 2018. Thereafter considering the fact that the suit is of the year 1991 the trial Court shall dispose of the same within a further period of 5 months from the date of production/ receipt of of the certified copy of this order.

Sd/-
GOUTAM BHADURI
JUDGE