

(2019) 10 CHH CK 0180

Chhattisgarh High Court

Case No: Civil Revision No. 20 Of 2018

Rajesh Kumar Agrawal

APPELLANT

Vs

Sanjay Agrawal And
Ors

RESPONDENT

Date of Decision: Oct. 23, 2019

Acts Referred:

- Code Of Civil Procedure 1908 - Section 115, 151, Order 7 Rule 11, Order 7 Rule 11(b), Order 7 Rule 11(d)
- Indian Succession Act, 1925 - Section 372

Hon'ble Judges: Sanjay Agrawal, J

Bench: Single Bench

Advocate: Abhishek Vinod Deshmukh, Sanjay Agrawal

Final Decision: Allowed

Judgement

Sanjay Agrawal, J

1. This Revision Petition has been preferred by Defendant No.10 Rajesh Kumar Agrawal under Section 115 of the Code of Civil Procedure, 1908

((hereinafter referred to as the 'CPC') questioning the legality and propriety of the order dated 15.01.2018 passed by the Third Civil Judge Class-I,

Raipur (C.G.) in Civil Suit No.15A/12, by which, the application filed under Order 7 Rule 11 (b) & (d) read with Section 151 of CPC has been

rejected.

2. Briefly stated the facts of the case are that a suit for declaration and injunction has been made by the Plaintiff alleging inter alia that the shares in

dispute described in plaint Schedule 'A', allotted to him in partition effected in 1965, were transferred to his step mother Smt. Indu Agrawal in 1982-84

as per the instructions of his father. According to the Plaintiff, his step mother expired on 20.05.1998 and the alleged shares were obtained by his

father (Defendant No.1) based upon the Will executed by her on 05.07.1997. It is pleaded further in the plaint that despite the assurance given by his

father to return those shares by executing an affidavit on 03.05.2005, it was not returned, therefore, he has been constrained to institute a suit on

26.04.2008 in the instant nature.

3. During pendency of the aforesaid suit, an application enumerated under Order 7 Rule 11(b) & (d) read with Section 151 of CPC has been made by

Defendant No.10 alleging therein that the suit as instituted much beyond the period of 3 years after the death of his step mother and also from the date

of initiation of proceedings by him under Section 372 of the Indian Succession Act, 1925 (hereinafter referred to as 'the Act, 1925') is not only barred

by time but is under valued as well. The claim as made is, therefore, liable to be rejected. The said application has been contested by the Plaintiff and

after considering the averments made in the plaint, it was rejected by the trial Court by observing inter alia that the question as raised by Defendant

No.10 involves a mixed question of law and fact and could be determined only at the time of trial on the basis of evidence adduced by the parties. This

is the order which has been impugned by way of this Revision Petition.

4. Shri Abhishek Vinod Deshmukh, learned counsel for the Applicant submits that the order impugned rejecting the application for rejection of plaint

by holding that the question so raised could be determined at the time of trial, is apparently contrary of law. According to him, the suit has been

instituted on 26.04.2008 much beyond the period of 3 years as provided under Article 58 of the Indian Limitation Act, 1963 (hereinafter referred to as 'the Act, 1963')

by claiming ownership over the shares in question held by his step mother upon her death on 20.05.1998 and also from the initiation of

the proceedings by his brother, i.e., present Applicant Rajesh Kumar Agrawal in the year 1998 seeking grant of succession certificate for alleged

shares, is apparently barred by time. It is contested further that the value of the shares in question on the date of institution of the suit is

Rs.1,03,41,233/-, therefore, valuing the suit at Rs.41,890/- is under valued. The claim is, therefore, liable to be rejected.

5. On the other hand, Shri Agrawal, learned counsel for Non-applicant No.1/Plaintiff, while supporting the order impugned submits that the question of

limitation as raised by the Applicant is a mixed question of law and fact and for which evidence is required to be led by the parties. As such, the trial

Court has not committed any illegality in rejecting the said application filed under Order 7 Rule 11 (b) & (d) read with Section 151 of CPC for

rejection of the plaint.

6. I have heard learned Counsel for the parties and perused the entire relevant papers annexed with this petition carefully.

7. In order to entertain the application filed under Order 7 Rule 11 of CPC, I have examined the averments made in the plaint and from its bare

perusal, it appears that a suit for declaration and injunction has been made by the Plaintiff on 26.04.2008 seeking ownership with regard to the shares

in question described in plaint Schedule 'A' by alleging that the alleged shares obtained by him in partition effected in 1965 were given by him to his

step mother Smt. Indu Agrawal as per the request of his father. It appears further that his brother Rajesh Kumar Agrawal (Defendant No.10) after

the death of Smt. Indu Agrawal, who expired on 20.05.1998, initiated the proceedings under Section 372 of the Act, 1925 praying for grant of

succession certificate with regard to the alleged shares. According to the Plaintiff, his brother, being a step son, is not entitled to obtain such a

certificate. In the said proceeding, Ramrasal Agrawal (Defendant No.1) the father had pleaded that he succeeded those shares on the strength of the

deed of Will dated 05.07.1997 purported to have been executed by said Smt. Indu Agrawal in his favour. It, thus, appears that the cause of action

arose to the Plaintiff immediately upon the death of his step mother as well as from the initiation of the said proceedings by his brother under Section

372 of the Act, 1925.

8. Although, it is pleaded in the plaint that he was assured by his father by way of an affidavit dated 03.05.2005 that the alleged shares will be returned

to him and when it was not returned despite the alleged assurance, he has been constrained to file the suit in the instant nature while disclosing the

cause of action to initiate the claim as 03.05.2005. However, from perusal of the averments made in the plaint, it is evident that the cause of action

first accrued to the Plaintiff was on 20.05.1998 when his step mother expired and/or in the year 1998 when the proceeding under Section 372 of the

Act, 1925 was initiated by his brother Rajesh Kumar Agrawal (Defendant No.10) claiming for grant of succession certificate with regard to the

alleged shares. The act of Defendant No.10 would thus show specifically that he is trying to set up his claim over the shares in question in the year

1998 immediately after the death of said Smt. Indu Agrawal and despite the occurrence of the cause of action as such, no suit was made immediately

thereafter within the period of 3 years as provided under Article 58 of the Act, 1963. The said provision is relevant for the purpose which reads as

under:-

THE SCHEDULE

PERIOD OF LIMITATION

Ã, [See Sections 2(j) and 3]

First Division---Suits

Description of suit Ã, Ã, Ã, Ã, Ã, Ã, Ã, Period of Limitation Ã, Ã, Ã, Ã, Time from which period begins to run

* * * PART III--- Suits Relating To Declarations * * *

58. To obtain any other Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Ã, Three years declaration When the right to sue first accrues.

9. According to third column of the aforesaid provision, time will begin to run from the day when the right to sue first accrues. The period of 3 years

would, therefore, be counted from the date when the right to sue first accrues.

10. The aforesaid provision has been interpreted by the Supreme Court in the *Khatari Hotels Private Limited and another v. Union of India and another*

reported in (2011) 9 SCC 126 at paragraph 30 as under:-

30. While enacting Article 58 of the 1963 Act, the legislature has designedly made a departure from the language of Article 120 of the 1908 Act. The

word "first" has been used between the words "sue" and "accrued". This would mean that if a suit is based on multiple causes of action, the period of

limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to

fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

11. Now, at this juncture, while considering the scope and ambit of the provision prescribed under Order 7 Rule 11 of CPC, few decisions of the

Supreme Court are required to be referred to and considered.

12. In the case of *Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust* reported in (2012) 8 SCC

706, where the Supreme Court in para 13 has observed and held as under:-

13. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action

is a bundle of facts which taken with the law applicable to them gives the Plaintiff the right to relief against the Defendant. Every fact which is

necessary for the Plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words

cause of action". A cause of action must include some act done by the Defendant since in the absence of such an act no cause of action can possibly

accrue.

13. In A.B.C. Laminart Pvt. Ltd. v. A. P. Agencies reported in (1989) 2 SCC 163, where the Supreme Court explained the meaning of ""cause of

action"" at paragraph 12 as under:-

12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment

of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant.

It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the

actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove

such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the

defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by

the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.

14. Yet, in the matter of Sopan Sukhdeo Sable v. Assistant Charity Commissioner reported in (2004) 3 SCC 137, it has been observed by the Supreme

Court in paras 11 and 12 as under:-

11. In I.T.C. Ltd. v. Debts Recovery Appellate Tribunal [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an

application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has

been stated with a view to get out of Order 7 Rule 11 of the Code.

12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of

not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein

is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party

searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal (1977) 4 SCC 467).

15. By applying the aforesaid principles to the case in hand where despite the occurrence of first cause of action, as found herein above, yet no action

was taken by the Plaintiff within the prescribed period of 3 years under Article 58 of the Act, 1963. The suit as framed and instituted on 26.04.2008,

much beyond the period of 3 years, therefore, cannot be held to be instituted in time.

16. In view of the forgoing discussions, the Revision Petition is allowed and the order impugned passed by the trial Court on 15.01.2018 rejecting the

application filed under Order 7 Rule 11 of CPC and thereby refusing to reject the plaint under the said provision is hereby set aside. It is, accordingly,

held that the suit as framed and instituted is barred by time under Article 58 of the Act, 1963 and the plaint being Civil Suit No.15A/12 is hereby

rejected. No order as to costs.