

(2018) 08 CHH CK 0246

Chhattisgarh High Court

Case No: C.R. No. 36 Of 2018

Shakuntala Sharma

APPELLANT

Vs

Awadhesh Mishra And Ors

RESPONDENT

Date of Decision: Aug. 23, 2018

Acts Referred:

- Code Of Civil Procedure 1908 - Order 7 Rule 11(d)

Hon'ble Judges: Sanjay K. Agrawal, J

Bench: Single Bench

Advocate: Ankur Agrawal, B. D. Guru, Avinash Singh

Final Decision: Disposed Of

Judgement

Sanjay K. Agrawal, J

1. In a suit filed by the respondents No. 1 to 3 / plaintiffs for declaration of title and permanent injunction on 05.08.2008, the petitioner / defendant

No.1 has filed an application under Order 7 Rule 11 (d) of C.P.C. that the suit for declaration of title and permanent injunction is based on adverse

possession and is barred by Order 7 Rule 11 (d) of C.P.C. which has been rejected by the impugned order dated 19.02.2018 (Annexure - P/1).

2. Learned counsel for the petitioner submits that the impugned order is unsustainable and bad in law and the learned trial Court is absolutely unjustified in not rejecting the plaint.

3. On the other hand, learned counsel for the respondents would support the order impugned.

4. I have heard learned counsel for the parties.

5. The instant suit for declaration of title and permanent injunction was filed way back on 05.08.2008 and the written statements filed on 02.01.2010.

No plea as to non-maintainability of suit has been raised by the defendant No. 1 and suit was allowed to be proceeded with, but now on 17.11.2016 an

application under Order 7 Rule 11 (d) C.P.C. has been filed stating that suit for declaration of title and permanent injunction is not maintainable which

was rejected by the trial Court by the impugned order.

6. Since, the suit is pending for last 16 years, in the considered opinion of this Court, it would be appropriate to direct the trial Court to frame an issue

on question of maintainability of suit as raised and conclude the trial expeditiously by deciding all the issues.

7. Accordingly, the civil revision is disposed of with aforesaid direction. No order as to cost(s).