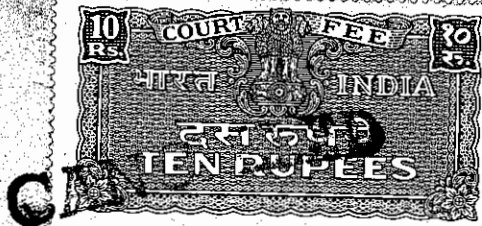




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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CIVIL REVISION No. 85 /2010

Single Bench

REVISIONER
DEFENDANT

B.R. No. 2291/10
Presented by Shri Atanu Ghosh
Dated. 30/07/10

Maniram Tamrakar, S/o. Shri Lokman Prasad Tamrakar, Aged about 58 years, R/o. Infront of House of Vijay Kumar Tamrakar, Jabrapara, Sarkanda, Bilaspur, Tahsil & District Bilaspur (C.G.).

VERSUS

RESPONDENTS
PLAINTIFFS

1. Kunj Bihari Gahwai, Aged about 40 years, S/o. Late Dhanushram Gahwai.

2. Ras Bihari Gahwai, Aged about 35 years, S/o. Late Dhanushram Gahwai.

3. Vipin Bihari Gahwai, Aged about 40 years, S/o. Late Dhanushram Gahwai.

4. Smt. Kanti Bai Gahwai, Aged about 70 years, W/o. Late Dhanushram Gahwai.

5. Smt. Kirti Lali Gahwai, Aged about 40 years, D/o. Late Dhanushram Gahwai.

All R/o. Village Piparload, Patralaya Bawali, Tahsil Mungeli, District Bilaspur (C.G.)

CIVIL REVISION U/S. 115 OF CIVIL PROCEDURE CODE

Being aggrieved by the impugned order dated 11/3/10

(ANNEXURE A-1) passed by 8th Civil Judge, Class-II, Bilaspur in Civil Suit No.15-A/10, the above revisioner humbly prefers the instant Revision well within limitation :



HIGH COURT OF CHHATTISGARH AT BILASPUR

CIVIL REVISION NO. 85 OF 2010

Maniram Tamrakar

Vs.

Kunj Bihari Gahawai & others

Post for pronouncement of judgment/order on 31 /01/2013

Sd/-
N.K. Agarwal
Judge



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HIGH COURT OF CHHATTISGARH AT BILASPUR

CIVIL REVISION NO. 85 OF 2010

REVISIONER : Maniram Tamrakar
Defendant

VERSUS

RESPONDENTS : Kunj Bihari Gahawai & others
Plaintiffs

(REVISION UNDER SECTION 115 OF THE CODE OF CIVIL PROCEDURE)

(Single Bench: Hon'ble Mr. N.K. Agarwal, J.)

Present : Shri Ashok Shukla, Advocate for the applicant.
Shri Rajeev Shrivastava, Advocate for the respondents.

JUDGMENT

(Delivered on 31.01.2013)

1. Legality and propriety of order dated 11.03.2010 passed by VIIIth Civil Judge, Class-II, Bilaspur, in Civil Suit No. 15-A/2010, allowing the respondent's application filed under Section 14 of the Limitation Act, 1963 (for short, 'the Act, 1963').
2. Facts in nutshell necessary for disposal of this revision are that: the plaintiffs had filed a suit for recovery of possession and damages against the defendant being Civil Suit No. 317-A/1983. In the said suit, the cause of action was shown to have arisen in the year 1983. The suit was dismissed by the trial court on 26.09.1989.
3. Appeal preferred there-against by the plaintiffs was allowed by the Additional District Judge, Bilaspur vide its judgment and decree dated 28.07.1995.
4. The defendant/applicant herein preferred miscellaneous appeal before this court against the appellate judgment. This court, vide



order dated 14.11.2008 (Annexure P/5) allowed the applicant's appeal inter alia on the ground :since the suit was filed under Section 6 of the Specific Relief Act, therefore, remedy of appeal was not available to the plaintiffs and the appeal preferred by the plaintiffs was not maintainable and set aside the appellate judgment with liberty to the plaintiffs to file fresh suit for possession based on title subject to law of limitation.

5. Thereafter, the plaintiffs have filed the instant suit for possession based on title along with application under Section 14 of the Limitation Act, 1963, for excluding the time during which the former civil proceedings was pending for the purpose of computation of period of limitation.
6. The trial court vide order impugned allowed the plaintiffs application. Hence this revision.
7. Shri Ashok Shukla, learned counsel appearing for the applicant would submit: in the former suit, the plaintiffs have claimed the relief of possession under Section 6 of the Specific Relief Act, 1963. The suit was dismissed on merits, thereafter; they preferred an appeal which was allowed. Against that, the applicant herein preferred Misc. Appeal before this court and this court having found, against the judgment passed by the trial court under Section 6 of the Specific Relief Act, remedy of appeal is not available, but only revision lies, allowed the applicant's appeal and set aside the order passed by the appellate court. Liberty was given by the court to the



plaintiffs/respondents for filing of suit for possession based on title subject to law of limitation. Therefore, it cannot be said that former suit was dismissed due to defect of jurisdiction or other cause of a like nature, but, the same was dismissed on merits in accordance with law and the only mistake committed by the plaintiffs was of filing of appeal in place of revision. He further submits that now, the instant suit has been filed by them for possession based on title and not under Section 6 of the Specific Relief Act, and therefore, the matter & issue in the earlier suit as well as in the instant suit are not same and Section 14 of Limitation Act has no application at all and the court below has acted without jurisdiction in allowing the plaintiff's application filed under Section 14 of the Limitation Act.

8. On the other hand, Shri Rajeev Shrivastava, learned counsel appearing for the respondents/plaintiffs supported the order impugned and contended, a bare reading of the former suit it would be clear that the plaintiffs in-fact have filed the earlier suit for possession based on title. It was further contended, liberty has been given by this court and accordingly considering every aspects of the matter, the trial court has allowed the respondent's application under Section 14 of the Limitation Act, which cannot be said to be without jurisdiction and the order impugned does not suffer from any jurisdictional illegality and the revision is devoid of merit.
9. I have heard the counsel appearing for the parties and perused the order impugned including paper book.



10. Para 10 and 11 of order dated 14.11.2008 (Annexure P/5) passed by this court in MA No. 952 of 1995 (Mani Ram v. Dhanus Ram & others) read as under :

“10. In Ramaiah v. Narayana (Dead) by LR's, 2004, AIR SCW 4695, the Apex Court has held that Article 65 of the Limitation Act, 1963, is a residuary article applying to suits for possession not otherwise provided for. It was held that suits based on plaintiff's title on which there is no allegation of prior possession and subsequent dispossession alone can fall within Article 65 of the Limitation Act. Therefore, the contention of the learned counsel for the respondents/plaintiffs that the suit falls under Article 65 of the Limitation Act is unacceptable. Even as per the plaint averments, the question of title was wholly irrelevant in the suit and the plaintiff had invoked the speedy remedy to recover possession of immovable property provided by law under Section 6 of the Act. In this manner, appeal against the judgment and decree passed by the 4th Civil Judge, Class-II, Bilaspur, in Civil Suit No. 317-A/1983 did not lie. The lower appellate court thus acted illegally and without jurisdiction by allowing the appeal and the application for amendment filed by the plaintiff and remanding the matter to the trial court for a fresh decision. The impugned order is, therefore, liable to set aside.

11. In the result, the appeal is allowed. The appeal against the judgment and decree passed by the 4th Civil Judge, Class-II, Bilaspur, on 26.09.1989 in Civil Suit No. 317-A/1983 not being maintainable the impugned order dated 28.07.1995 passed in Civil Appeal No. 14-A/89 by the 1st Additional Judge to the District Judge, Bilaspur, is set aside. Subject to the law of limitation, it is open to the respondents/plaintiffs to file a fresh suit for possession based on title. There shall not no order asto costs.”



11. A bare reading of above paragraphs of the order dated 14.11.2008 it would reveal, it was argued by the plaintiffs before this court that they have filed the suit for possession based on title and Article 65 of the Limitation Act applies. But the contention raised by the plaintiffs have been rejected by the court holding : plaintiffs had invoked the speedy remedy to recover possession of the property provided by law under Section 6 of the Act, and therefore, appeal against the judgment and decree passed by the 4th Civil Judge, Class-II, Bilaspur, in Civil Suit No. 317-A/1983 did not lie, and, while allowing the appeal, liberty was granted to the respondents/defendants to file suit based on title subject to law of limitation, meaning thereby, if their suit comes within the limitation under Article 64 or 65 of the Limitation Act, then they can bring that suit. The court has not given any liberty to the respondents/plaintiffs to seek exclusion of time spent in former civil proceeding by filing application under Section 14 of the Limitation Act before the trial court.

12. Section 14 of the Act reads as under :

14. Exclusion of time of proceeding bona fide in court without jurisdiction.—(1) In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.



jurisdiction or other cause of a like nature, is unable to entertain it.

(2) In computing the period of limitation for any application, the time during which the applicant has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief shall be excluded, where such proceeding is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(3) Notwithstanding anything contained in Rule 2 of Order XXIII of the Code of Civil Procedure, 1908 (5 of 1908), the provisions of sub-section (1) shall apply in relation to a fresh suit instituted on permission granted by the court under Rule 1 of that Order, where such permission is granted on the ground that the first suit must fail by reason of a defect in the jurisdiction of the court or other cause of a like nature.

Explanation.—For the purposes of this section,—

(a) in excluding the time during which a former civil proceeding was pending, the day on which that proceeding was instituted and the day on which it ended shall both be counted;

(b) a plaintiff or an applicant resisting an appeal shall be deemed to be prosecuting a proceeding;

(c) misjoinder of parties or of causes of action shall be deemed to be a cause of a like nature with defect of jurisdiction.”

13. Section 14 of the Act gives benefit to party who has been prosecuting with due diligence another civil proceedings whether in a court to first instance or of appeal or revision against the defendant where the proceeding is founded upon the same cause of action and is prosecuted in good faith in a court which, from defect of jurisdiction, or other cause of a like nature, is unable to entertain it.

Where the court is not in a position to decree the suit, the plaintiff



was permitted to withdraw the suit to file fresh suit; the benefit of section 14(1) of the Act can be awarded.

14. Quite often because of widespread illiteracy and because of ill advice, the proceedings are initiated in a wrong forum and because of defect of jurisdiction, ultimately the proceedings are dismissed. Under such circumstances, the person prosecuting the earlier proceedings cannot be punished simply because he chose a wrong forum. Therefore, in order to save his remedy, the theory of exclusion of time has been introduced by Section 14 of the Act.
15. No doubt, while construing the provisions of Section 14 of the Act, proper approach is required to be adopted and the court is required to exercise its jurisdiction so as to advance justice rather than abort the proceedings. However, the court would not ignore the element of due diligence and good faith. (Please see – Rabindra Nath Samuel Dowson v. Sivakami¹).
16. The Supreme Court in case of Deena (dead) through LR's v. Bharat Singh (dead) through LR's and other² had held in para 15 & 16 as under :

15. The other expressions relevant to be construed in this regard are "defect of jurisdiction" and "or other cause of a like nature". The expression "defect of jurisdiction" on a plain reading means the court must lack jurisdiction to entertain the suit or proceeding. The circumstances in which or the grounds on which, lack of jurisdiction of the court may be found are not enumerated in the section. It is to be kept in mind that there is a distinction between granting permission to the plaintiff to withdraw the suit with leave to

¹ 1973 (3) SCC 381

² AIR 2002 SC 2768



file a fresh suit for the same relief under Order 23 Rule 1 and exclusion of the period of pendency of that suit for the purpose of computation of limitation in the subsequent suit under Section 14 of the Limitation Act. The words "or other cause of a like nature" are to be construed *ejusdem generis* with the words "defect of jurisdiction", that is to say, the defect must be of such a character as to make it impossible for the court to entertain the suit or application and to decide it on merits. Obviously Section 14 will have no application in a case where the suit is dismissed after adjudication on its merits and not because the court was unable to entertain it.

16. Coming to the case on hand, as noted earlier, the previous suit filed by the respondents was decreed by the trial court; and the defendant had filed appeal against the judgment and decree of the trial court. It does not appear from the discussions in the impugned judgment that there was any finding of the court in the previous suit holding the suit to be not entertainable on any ground. The ground on which withdrawal of the suit was sought was that Smt Ghogri, one of the mortgagors, had not been impleaded in the suit. It is not the case of the plaintiffs that the court had found the suit to be not maintainable on that ground. Non-impleadment of Smt Ghogri, a necessary party, in the suit was a clear case of laches on the part of the plaintiffs. In such circumstances it could not be said that the plaintiffs were prosecuting the previous suit in good faith."

17. While analyzing Section 14 of the Limitation Act, the Supreme Court in case of Consolidated Engineering Enterprises v. Principal Secretary, Irrigation Department and others³ has laid down following conditions to be fulfilled before granting relief:

- "(1) Both the prior and subsequent proceedings are civil proceedings prosecuted by the same party;
- (2) The prior proceeding had been prosecuted with due diligence and in good faith;
- (3) The failure of the prior proceeding was due to defect of jurisdiction or other cause of like nature;
- (4) The earlier proceeding and the latter proceeding must relate to the same matter in issue and;
- (5) Both the proceedings are in a court."

³ 2008 (7) SCC 169



18. Reverting to the facts of the present case, it is crystal clear that, the former suit filed by the plaintiffs was properly constituted suit and was also filed in the court having jurisdiction to try the same. The above suit was also dismissed on merits.
19. Further, the earlier proceedings and the later proceedings are not relating to the same matter in issue, inasmuch as, earlier suit was filed by the plaintiffs seeking speedy remedy to recover possession of the suit property provided by law under Section 6 of the Specific Relief Act whereas instant suit has been filed for recovery of possession based on title, and therefore, Section 14 of the Limitation Act has no application at all in the facts and circumstances of the present case and the order impugned passed by the trial court, on the face, is without jurisdiction.
20. For the forgoing reasons, the revision deserves to be and is hereby allowed. Order impugned passed by the trial court is set aside. The matter is remitted back to the trial court to decide the question of limitation on its own merits without taking recourse of Section 14 of the Limitation Act and then to proceed with the matter in accordance with law. No order as to costs.

Sd/-
N.K. Agarwal
Judge