

IN THE HIGH COURT OF UTTARAKHAND AT
NAINITAL

Writ Petition (M/S) No. 3421 of 2024

Smt. Shalini Sharma

... Petitioner

Versus

Shri Rajeev Lochan Sharma & Others

... Respondents

With

Writ Petition (M/S) No. 3422 of 2024

Writ Petition (M/S) No. 3423 of 2024

Writ Petition (M/S) No. 3425 of 2024

Writ Petition (M/S) No. 3426 of 2024

Writ Petition (M/S) No. 3427 of 2024

Writ Petition (M/S) No. 3428 of 2024

Writ Petition (M/S) No. 3431 of 2024

Mr. Rajat Mittal, Advocate, for the petitioner.

Mr. Siddhartha Singh, Advocate, for the
respondents.

20.12.2024

Hon'ble Manoj Kumar Tiwari, A.C.J.

Since common question of law and fact are involved in these writ petitions, therefore, these are being heard and decided together. However, for brevity, facts of Writ Petition (M/S) No. 3421 of 2024 alone are being considered and discussed here.

2. Petitioner and respondents are siblings. Petitioner filed a civil suit for partition with the averment that her father died on 17.05.2014, leaving behind plaintiff, her two brothers & two sisters as legal heirs; defendants have an intention to alienate the family property and she prayed that her 1/5th

share in the property be partitioned and she be given possession of her share in the family property.

3. Defendants to the suit filed an application under Order 7 Rule 11 CPC before the trial court. Learned trial court rejected said application vide order dated 30.4.2022, by observing that only the contents of the plaint have to be seen while deciding application under Order 7 Rule 11 CPC. Defendants challenged trial court's order by filing a revision. Their revision petition was allowed by learned 2nd Additional District Judge, Dehradun vide judgment dated 14.08.2024. Thus feeling aggrieved, plaintiff has filed this writ petition.

4. Learned counsel for the petitioner submits that revisional court has rejected the plaint on following four grounds:-

- (i) the suit is frivolous;
- (ii) plaintiff has suppressed material facts in the plaint;
- (iii) the suit is barred by *res judicata*; &
- (iv) the suit is barred by Section 331 of U.P.Z.A. & L.R. Act.

5. He submits that these grounds are not available at the stage of dealing with an application under Order 7 Rule 11 CPC.

6. Learned counsel for the respondents, however, supports the impugned judgment and submits that revisional court has rightly rejected the plaint, as suit is barred by *res*

judicata, moreover, the suit is not maintainable in a civil court in view of bar created by Section 331 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P.Z.A.&L.R. Act), which is extracted below:-

“331. Cognizance of suits, etc. under this Act.

(1) Except as provided by or under this Act no court other than a court mentioned in Column 4 of Schedule II shall, notwithstanding anything contained in the Civil Procedure Code, 1908 (V of 1908), take cognizance of any suit, application, or proceedings mentioned in Column 3 thereof, [or of a suit, application or proceedings based on a cause of action in respect of which any relief could be obtained by means of any such suit or application:]

[Provided that where a declaration has been made under Section 143 in respect or any holding or part thereof, the provisions of Schedule II insofar as they relate to suits, applications or proceedings under Chapter VIII shall not apply to such holding or part thereof.]

[Explanation. - If the cause of action is one in respect of which relief may be granted by the revenue court, it is immaterial that the relief asked for from the civil court may not be identical to that which the revenue court would have granted.]

[(1-A) Notwithstanding anything in sub-section (i), an objection, that a court mentioned in Column 4 of Schedule II, or, as the case may be, a civil court, which had no jurisdiction with respect to the suit, application or, proceeding, exercised jurisdiction with respect thereto shall not be entertained by any appellate or revisional court unless the objection was taken in the court of first instance at the earliest possible opportunity and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.]

(2) Except as hereinafter provided no appeal shall lie from an order or decree passed under any of the proceedings mentioned in Column 3 of the Schedule aforesaid:

[(3) An appeal shall lie from any decree or from an order passed under Section 47 or an order of the nature mentioned in Section 104 of the Code of Civil Procedure, 1908 (V of 1908) or in Order 43, Rule 1 of the First Schedule to that Code passed by a court mentioned in Column No. 4 of Schedule II to this Act in proceedings mentioned in Column 3 thereof to the court or authority mentioned in Column No. 5 thereof.

(4) A second appeal shall lie on any of the grounds specified in Section 100 of the Code of Civil Procedure, 1908 (V of 1908) from the final order or decree, passed

in an appeal under sub-section (3), to the authority, if any, mentioned against it in Column 6 of the Schedule aforesaid.]”

7. Hon’ble Supreme Court in the case of *P.V. Guru Raj Reddy v. P. Neeradha Reddy*, reported in (2015) 8 SCC 331 has held that rejection of plaint under Order 7 Rule 11 CPC is a drastic power conferred on the court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation or *res judicata*.

8. In the case of *Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar*, reported in (2018) 6 SCC 422, Hon’ble Supreme Court held that the question, whether the suit is barred by limitation or not is a triable issue and hence the suit cannot be thrown out at the threshold by invoking power under Order 7 Rule 11 CPC.

9. In the case of *Madhukar D. Shende v. Tarabai Aba Shedage*, reported in (2002) 2 SCC 85, Hon’ble Supreme Court held that *res judicata* is a mixed question of fact and law, therefore, plaint cannot be rejected on the ground that suit is barred by *res judicata*.

10. The scope of scrutiny under Order 7 Rule 11 CPC is limited and only the averments made in the plaint are to be seen while deciding an application under Order 7 Rule 11 CPC. The first three grounds, on which

revisional court allowed respondent's application under Order 7 Rule 11 CPC, are not relevant for deciding that application; these are the contentions raised by defendants and which are not spelled out in the plaint, therefore, learned revisional court erred in taking note of the contentions raised by the defendants, while deciding their application for rejection of plaint.

11. As regards the fourth ground taken by revisional court that suit is barred by Section 331 of U.P.Z.A & L.R. Act, provision contained in Section 331A of the said Act, appears to have been overlooked, which reads as under:-

“331A. Procedure when plea of land being used for agricultural purposes is raised in any suit.

(1) If in any suit, relating to land held by a bhumidhar, instituted in any court, the question arises or is raised whether the land in question is or is not used for purposes connected with agriculture, horticulture or animal husbandry, which includes pisciculture and poultry farming, and a declaration has not been made in respect of such land under Section 143 or 144, the court shall frame an issue on the question and send the record to the Assistant Collector in-charge of the sub-division for the decision of that issue only:

Provided that where the suit has been instituted in the court of Assistant Collector-in-charge of the sub-division, it shall proceed to decide the question in accordance with the provisions of Section 143 or 144, as the case may be.

(2)The Assistant Collector-in-charge of sub-division after reframing the issue, if necessary, shall proceed to decide such issue in the manner laid down for the making of a declaration under Section 143 or 144, as the case may be, and return the record together with his finding thereon to the court which referred the issue.

(3)The court shall then proceed to decide the suit accepting the finding of the Assistant Collector-in-charge of the sub-division on the issue referred to it.

(4)The finding of the Assistant Collector-in-charge of the sub-division on the issue referred to it shall, for the purpose of appeal, be deemed to be part of the finding of the court which referred the issue]”

12. Section 331 of the Act provides that for seeking relief in respect of agricultural land, one has to approach the forum specified in Schedule-II of U.P.Z.A.&L.R. Act and for reliefs, which can be sought in the forums provided in Schedule II of U.P.Z.A.&L.R. Act, civil courts will have no jurisdiction. Thus, for applicability of Section 331 of the said Act, it has to be ascertained whether the land in question is being used for purposes connected with agriculture, horticulture, animal husbandry or not. Section 331A of U.P.Z.A.&L.R. Act lays down the procedure, which has to be adopted for determining the question whether the land in question is being used for agricultural purposes or not.

13. In the case of *Chandrika Singh & others v. Raja Vishwanath Pratap Singh & another*, reported in (1992) 3 SCC 90, Hon'ble Supreme Court has considered and discussed the interplay between Section 331 and Section 331A of U.P.Z.A. & L.R. Act. Para 17 of the said judgment is extracted below:-

“17. It was, therefore, not open to the Civil Judge to decide, on its own, the question whether the said land was held or occupied for purposes connected with agriculture, horticulture or animal husbandry and after holding that it is not so held refuse to follow the procedure laid down in Section 331-A on the ground that the said provision has no application to the land in dispute. The only course which was open to the Civil Judge was to frame an issue on the question whether the land in dispute is or is not used for purposes connected with agriculture, horticulture or animal husbandry and send the record to the

Assistant Collector in charge of the sub-division for decision on that issue and decide the suit in the light of the finding recorded by the Assistant Collector on that issue. By deciding this question himself the Civil Judge has exercised jurisdiction not vested in him by law and in not following the procedure laid down in Section 331-A he has committed illegality in exercise of his jurisdiction which error was required to be rectified by the High Court in exercise of its revisional jurisdiction under Section 115 CPC."

14. Thus, the procedure prescribed in Section 331A of U.P.Z.A.&L.R. Act is required to be followed whenever a question arises as to whether the land in question is used for purposes connected with agriculture, horticulture or animal husbandry; since that procedure was not followed in the instant case; even though there was dispute regarding the purpose for which land in question was being used, therefore, rejection of the plaint by invoking bar of Section 331 of U.P.Z.A.& L.R Act, is not proper.

15. Accordingly, the writ petitions are allowed. The impugned judgment dated 14.08.2024 is set aside. Learned trial court shall frame an issue in terms of Section 331A of U.P.Z.A.&L.R. Act and refer the same for determination to the Assistant Collector concerned.

(Manoj Kumar Tiwari, A.C.J.)