



2025:AHC:165568

Reserved On: 11.09.2025
Delivered On: 17.09.2025

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 658 of 2023

Surendra Kumar Agarwal And 3 Others

.....Petitioner(s)

Versus

Sabir Hussain Khan And 5 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Sr. Advocate, Vivek Kumar Singh
Counsel for Respondent(s)	:	Maithali Sharan Pipersenia

along with

MATTERS UNDER ARTICLE 227 No. - 748 of 2023

Asha Agarwal And 3 Others

.....Petitioner(s)

Versus

Sabir Hussain Khan And 5 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Sr. Advocate, Vivek Kumar Singh
Counsel for Respondent(s)	:	Maithali Sharan Pipersenia

along with

MATTERS UNDER ARTICLE 227 No. - 749 of 2023

Surendra Kumar Agarwal And 3 Others

.....Petitioner(s)

Versus

Sabir Hussain Khan And 5 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Sr. Advocate, Vivek Kumar Singh
Counsel for Respondent(s)	:	Maithali Sharan Pipersenia

along with

MATTERS UNDER ARTICLE 227 No. - 750 of 2023

Asha Agarwal And 3 Others

.....Petitioner(s)

Versus

Sabir Hussain Khan And 5 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Sr. Advocate, Vivek Kumar Singh
Counsel for Respondent(s)	:	Maithali Sharan Pipersenia

Court No. - 9**HON'BLE MANISH KUMAR NIGAM, J.**

1. Heard Sri B.P. Singh, Sr. Advocate assisted by Sri V.K. Singh and Sri Raunak Tiwary, learned counsel for the petitioners and Sri Manish Goyal, Sr. Advocate assisted by Sri M.S. Pipersenia, learned counsel for the respondents.

2. All these four petitions involve common question of law and fact and therefore, they are being decided together.

3. In all the petitions, order dated 12.10.2017 passed by Civil Judge (Junior Division) Kayamganj, District Farukkhabad rejecting an application under Order VII Rule 11 of C.P.C. filed by defendant-petitioners and the revisional order dated 19.10.2022 are under challenge. Brief facts of all the cases are noted as under:-

(a) Facts in Matters Under Article No. 658 of 2023 are that Original Suit No. 253 of 2013 was instituted by predecessor in interest of respondent Nos. 1/1 to 1/3 and respondent No. 2/1 for the relief of cancellation of sale deed dated 17.07.2013 executed by defendant Nos. 2 to 4 in favour of defendant No. 1 in the suit and also for the relief of permanent injunction restraining the defendant No. 1 from interfering with the possession of the plaintiffs in the suit over the land in dispute. The plaint averments as made in the plaint are that father of the plaintiffs, namely, Nisar Ahmad Khan was owner in possession of Gata No. 256 area 0-198 hectare and Gata No. 260 area 0-316 hectare situated at Kayamganj, Pargana Kampil, Tehsil Kayamganj, District Farukkhabad. The plaintiffs in the suits were son of Nisar Ahmad Khan. After the death of Nisar Ahmad Khan, the plaintiffs in the suit succeeded to the property in dispute being sons of Nisar Ahmad Khan as the only heirs and legal representatives of the deceased Nisar Ahmad Khan and their name were also recorded in the revenue record. Father of the defendant Nos. 2 to 4, namely, Achchan Khan has no concern with the land in dispute but in connivance with the revenue authorities, Achchan Khan got his name recorded over the land in

dispute in the revenue records, which was later on deleted. Taking advantage of this fact, the defendant Nos. 2 to 4 has executed a sale deed dated 17.07.2013 in favour of defendant No. 1. The plaintiffs came to know about the said sale deed on 13.08.2013 and thereafter, they instituted a suit. The defendant-petitioners in the suit contested the suit by filing written statement denying the plaint averments. The defendants also filed an application under Order VII Rule 11 of C.P.C. for rejecting the plaint on the ground that the plaintiffs are not the recorded bhumidhars over the land in dispute in the revenue records and the plaintiff-respondents are seeking declaration of their right in the garb of the present suit, which is not cognizable by the civil court in view of Section 331 of the U.P.Z.A & L.R. Act, 1950 (Section 206 of the U.P. Revenue Code, 2006). The said application filed by the defendants was rejected by the court below by order dated 12.10.2017 on the ground that at the time of considering an application under Order VII Rule 11 of C.P.C. only the averments made in the plaint has to be seen and that on the basis of averment made by the defendant-petitioners, an issue has been framed as to whether the suit is barred by Section 331 of the U.P.Z.A & L.R. Act, 1950, which is an issue involving facts and law and can be decided only after evidence of the parties. The order dated 12.10.2017 was challenged by filing revision before the District Judge which has also been dismissed by the District Judge by judgment and order dated 19.10.2022 affirming the order passed by the trial court.

(b) In Matters Under Article 227 No. 748 of 2023 also, the orders passed by the trial court dated 12.10.2017 rejecting an application under Order VII Rule 11 of C.P.C. and order dated 19.10.2022 passed by the revisional court dismissing the revision have been challenged. In this case, Original Suit No. 256 of 2013 was instituted for cancellation of sale deed dated 17.07.2013 executed by defendant Nos. 2 to 4 in favour of defendant No. 1 and also for permanent injunction restraining the defendant No. 1 from interfering with the possession over the land in dispute of the plaintiffs. Plaintiffs and defendants in the suit are same as plaintiffs and defendants in Original Suit No. 253 of 2013. Similar objection was taken in the present suit also, which has been rejected by the trial court as well as by the revisional court.

(c) Similarly, in Matters Under Article 227 No. 749 of 2023, the orders passed in Original Suit No. 255 of 2013 between the same parties has been challenged.

(d) In Matters Under Article 227 No. 750 of 2023, the orders passed in Original Suit No. 254 of 2013 between the same parties has been challenged.

4. The only difference in all the suits is regarding the sale deed and all other averments are identical. Since the parties to the proceedings are same and the averments are identical, I am only considering the averments made in Original Suit No. 253 of 2013. The relevant averments as made in the plaint are paragraph Nos. 1, 2, 3, 4 and 5, which are quoted as under:-

"1. यह कि मुसम्मी निसार अहमद खाँ पिता वादीगण भूमि जिनके हाल गाटा सं० 256/0-198 है० व गाटा संख्या 260/0-316 है० स्थित गिर्द कायमगंज परगना कम्पिल तहसील कायमगंज जिला फर्रुखाबाद के मालिक काविज अपनी वफात तक थे।

2. यह कि उपरोक्त निसार अहमद खाँ पिता वादीगण का स्वर्गवास काफी अरसा हो चुका है और उन्होने अपनी मृत्यु के समय अपने दो पुत्रगण साबिर हुसैन खाँ व षाकिर हुसैन खाँ वादीगण को अपना वारिसान व विधिक उत्तराधिरीगण छोड़ा जो मृतक निसार अहमद खाँ द्वारा छोड़ी गयी जुमला सम्पत्तियों जिनमें प्रष्णगत भूखण्ड भी सम्मिलित है के बजूद होने वारिसान व विधिक उत्तराधिकारीगण मृतक निसार अहमद खाँ भूमिधर मालिक व काबिज हो गये और उनका नाम ग्राम प्रलेखों में तदनुसार दर्ज भी हुआ।

3. यह कि अच्छन खाँ उर्फ वाजिद हुसैन खाँ पुत्र तफज्जुल हुसैन खाँ निवासी मोहल्ला चिलांका कायमगंज ग्राम गिर्द कायमगंज परगना कम्पिल तहसील कायमगंज जिला फर्रुखाबाद का उपरोक्त भूखण्डों में कभी कोई स्वामित्व अधिकार व अधिपत्य नहीं रहा है और न ही उपरोक्त भूखण्डों पर किसी भी हैसियत से काबिज व दखील रहे परन्तु उपरोक्त अच्छन खाँ उर्फ वाजिद हुसैन पुत्र तफज्जुल हुसैन खाँ ने बरूए चालाकी अपना नाम प्रष्णगत भूखण्डों पर तहसील कर्मचारीगण से मिलकर दर्ज करा लिया जो कालांतर में कलमजद भी हुआ तथा वादीगण का नाम प्रष्णगत भूखण्डों पर मुसम्मी निसार अहमद खाँ पिता वादीगण द्वारा छोड़े गये अन्य कृषक भूखण्डों के साथ ग्राम प्रलेखों में दर्ज भी हुआ।

4. यह कि प्रतिवादीगण सं० 2 लगायत 4 अच्छन खाँ उर्फ वाजिद हुसैन खाँ पुत्र तफज्जुल हुसैन खाँ उपरोक्त के वारिसान हैं ने तहसील कर्मचारीगण से साज करके प्रष्णगत भूखण्डों के साथ वादीगण के अन्य भूखण्डों पर अपना नाम अच्छन उर्फ वाजिद हुसैन खाँ के वारिसान की हैसियत से ग्राम प्रलेखों में दर्ज करा लिया था। हालांकि यह नाम वाद में कलमजद भी हुआ और उसका अनुचित लाभ उठाते हुए प्रतिवादीगण सं० 2 लगायत 4 ने प्रष्णगत भूखण्डों का विक्रयपत्र बिना किसी वैधानिक अधिकार के दि० 17.07.2013 को प्रतिवादिनी

सं01 के पक्ष में निष्पादित कर दिया। प्रश्नगत भूखण्डों का सम्पूर्ण विवरण व सीमायें वादपत्र के अन्त में वर्णित हैं।"

Identical averments have been made in other suits also.

5. It has been contended by counsel for the petitioners that the court below has erred in law in rejecting the application filed by the petitioners under Order VII Rule 11 of C.P.C. as the suit was barred under Section 331 of the U.P.Z.A. & L.R. Act, 1950 for the reason that the plaintiffs are not the recorded tenure holders of the land in dispute and in the garb of the present suit, they were seeking a declaration of their rights regarding an agricultural land, which cannot be granted by the civil court and the remedy open for the plaintiff-respondents was to file a suit under Section 229-B of the U.P.Z.A. & L.R. Act, 1952 or the corresponding provision in the U.P. Revenue Code, 2006 for declaration of their rights. Learned counsel for the petitioners relied upon judgment of this Court in case of **Ram Bharan Vs. Sheetla Prasad Yadav and others** reported in **2025(4) ADJ 446 (MANU/UP/0830/2025)** and **Babu Ram (Dead) through Lrs. Vs. District Judge, Varanasi; 2013(119) RD 73 .**

6. *Per contra*, learned counsel for the plaintiff-respondents submitted that at the time of considering an application under Order VII Rule 11 of C.P.C, it is only the averments made in the plaint has to be seen. The averments made in the written statement or in the application filed under Order VII Rule 11 of C.P.C. filed by the defendants cannot be considered while deciding an application under Order VII Rule 11 of C.P.C. No amount of evidence led by either of parties can be seen.

7. Before considering the rival submissions, it would be appropriate to look into the provisions of Order VII Rule 11 of C.P.C., which is quoted as under:-

"11. Rejection of plaint " The plaint shall be rejected in the following cases:"

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the

requisite stamp-paper within a time to be fixed by the Court, fails to do so;
(d) where the suit appears from the statement in the plaint to be barred by any law;
[(e) where it is not filed in duplicate];
[(f) where the plaintiff fails to comply with the provisions of rule 9];
[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

8. In case of **T. Arivandandam vs. T.V. Satyapal; (1997) 4 SCC 467**: Apex Court has held that the provisions of Rule 11 are mandatory. If the plaint is found to be defective and the case is covered by Rule 11, it goes to the root of the matter and the Court has no option and the plaint has to be rejected. An application by opposite party is not necessary.

9. From the reading of Clause 11 of Order VII C.P.C., it is clear where the suit appears from the statements in the plaint to be barred by any law, the Court shall reject the plaint.

10. Indeed, Order VII Rule 11 CPC gives ample power to the Court to reject the plaint, if from the averments in the plaint, it is evident that the suit is barred by any law including the law of limitation, this position is no more res integra.

11. Order VII Rule 11(d) CPC provides that the plaint shall be rejected "where the suit appears from the statement made in the plaint to be barred by any law", hence, in order to decide whether the suit is barred by law, it is the statement in the plaint will have to be construed. The Court while deciding such an application under Order 7 Rule 11 C.P.C. must have due regard only to the statements made in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case.

12. In **Saleem Bhai vs. State of Maharashtra; (2003) 1 SCC 557**, the Apex Court while considering Order VII Rule 11 of the Code held as

under: (SCC 560, Para 9) :-

"A perusal of Order 7 Rule 11 CPC. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit-before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage...."

13. In case of **Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal; (2017) 13 SCC 174: (2017) 5 SCC (Civ) 602**; the Apex Court has summarized the legal position as follows :-

"The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

14. Recently, the Apex Court in case of **Srihari Hanumandas Totala vs. Hemant Vithal Kamat and others; (2021) 9 SCC 99** has reiterated the same principle (paras 25, 25.1 and 25.2), which are as follows :-

"25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows:

25.1 To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;

25.2 The defense made by the defendant in the suit must not be considered while deciding the merits of the application;"

15. In case of Srihari Hanumandas Totala (Supra), the Apex Court was considering with an objection regarding bar of res judicata and not of limitation.

16. With the help of counsel for the parties, I have perused the averments made in the plaint, which is annexed as Annexure No. 3 to the petition and are also quoted in this judgment. It is apparent that the plaintiff-respondents have claimed that they are the recorded tenure holders of the land in dispute. It is also stated that with the connivance of the revenue authorities, name of Achchan Khan, predecessor in interest of defendant Nos. 2 to 4 in the suit was recorded in the revenue records, which was subsequently deleted. Thus, in the present case, from the reading of the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the court is required to do so, it cannot be said that the pleadings ex-facie disclose that the suit is barred under Section 331 of the U.P.Z.A. & L.R. Act, 1952. Since, at the stage of deciding an application under Order VII Rule 11 of C.P.C., only the pleadings as made in the plaint are to be seen and the pleadings in the written statement cannot be considered, the contentions raised by the learned counsel for the petitioners on merits which are based on the pleadings in their written statement can be considered only after framing an issue in this regard and after considering the evidence of both the parties and not at the stage of deciding the application under Order VII Rule 11 of C.P.C.

17. In my view, the trial court has rightly held that the question whether

suit is barred under Section 331 of the U.P.Z.A. & L.R. Act, 1952 can be decided only after evidence of the parties and an issue as to the maintainability of the suit has already been framed on the basis of pleading of the parties, therefore, such question cannot be decided at the stage of deciding an application under Order VII Rule 11 of C.P.C.

18. In my view, the courts below have committed no illegality in rejecting the applications filed by the petitioners under Order VII Rule 11 of C.P.C., consequently, all the writ petitions fail and are dismissed, accordingly.

(Manish Kumar Nigam,J.)

September 17, 2025

Nitika Sri.