

A.F.R.

Judgment Reserved on- 15.09.2025

judgment Delivered on- 19.09.2025

Neutral Citation No. - 2025:AHC:168126

Court No. - 35

Case :- FIRST APPEAL No. - 678 of 2018

Appellant :- Deen Dayal Pipraiya And 5 Others

Respondent :- Ram Sharan

Counsel for Appellant :- Sanjay Agrawal

Counsel for Respondent :- Krishna Dutt Tiwari

Hon'ble Sandeep Jain,J.

1. The instant appeal under Section 96 C.P.C. has been preferred by the plaintiff in O.S. No.205 of 2016, Deen Dayal Pipraiya(deceased) through Lrs. vs. Ram Sharan against the judgment and decree dated 10.11.2017 passed by the Court of Sri Radhey Mohan Srivastava, Civil Judge (Senior Division), Jhansi whereby the plaintiff's suit for the relief of permanent injunction has been dismissed under Order 7 Rule 11(d) C.P.C. on the ground that it is barred by res judicata under Section 11 C.P.C.

2. Factual matrix is that the plaintiff-appellant filed O.S. No.205 of 2016 in the lower court with the averments that Sri Thakur Maithli Raman Jee Maharaj, Virajman Mandir Kunj i.e. plaintiff no.2 is a private temple, of which the plaintiff no.1, Deen Dayal Pipraiya was the Manager. The immovable property of the temple is situated in Chak no.40 in Village Nunar, Tehsil Garautha, District Jhansi, whose khata numbers alongwith total area were specified in the plaint.

3. It was further averred that previously the owner of temple-plaintiff no.2 was Smt. Janki Bai widow of Rajaram, who inherited the property from her father-in-law, Mathura Prasad through registered gift dated 13.09.1938, which was registered at Book No.1, Jeeld 102, pages 322-324 at Sr. No.296 on 14.09.1938 in the office of Sub Registrar, Mauranipur, in which it was specifically mentioned that the right of appointing Manager, for managing the property of the temple vested solely in Smt. Janki Bai, and in accordance with that right, one person, namely Ram Sharan was appointed as manager

of the temple. The plaintiff further averred that since Ram Sharan did not honestly managed the affairs of the temple and committed irregularities in the accounting, as such, Smt. Janki Bai removed him, and thereafter, appointed plaintiff no.1 as the Manager of plaintiff no.2. The plaintiff further averred that Smt. Janki Bai died on 18.02.1983, her father-in-law, Mathura Prasad also died in the 1940, but his registered gift deed has not been cancelled by any competent court till date. It was further averred by the plaintiff that the defendant is a fraudulent person with malafide intention, who intends to illegally occupy the property of the temple plaintiff no.2, and to transfer it to some other person. The defendant also illegally harvested the crops standing on the property of plaintiff no.2. The defendant also managed to sell the property of plaintiff no.2, who is in the company of anti-social elements, who was having influence in political circles. It was also submitted that defendant had no concern with the property of the temple plaintiff no.2.

4. With these submissions, it was prayed that the defendant be restrained from selling, transferring the property of the plaintiff temple, from harvesting the crops standing on the temple property, by decree of permanent injunction granted by the court in favour of the plaintiffs.

5. During pendency of the suit, the defendant filed his written statement in which he accepted that on 13.09.1938, a registered gift deed by Mathura Prasad was executed in favour of Smt. Janki Bai, widow of Rajaram and he also accepted that a temple is situated on the disputed property. He also accepted that Janki Bai died on 18.02.1983 and also her father-in-law died in the year 1940, and also accepted that the registered gift deed has not been cancelled by any competent court till date, but he denied that plaintiff no.1 is the Manager of the temple plaintiff no.2, as such, it was averred that the plaintiff no.1 had no cause of action to file the present suit. The defendant specifically denied that plaintiff no.1 was the Manager of temple plaintiff no.2. He averred that after the death of Janki Bai, he was vested with the right to manage the properties of temple-plaintiff no.2 and since then he was managing the affairs of the temple-plaintiff no.2. Since then his name is

recorded in the revenue records and he is harvesting the crops. He specifically pleaded that he had earlier filed O.S. No.33 of 1989, Sri Thakur Maithli Raman Jee Maharaj vs. Deen Dayal Pipraiya and others in the Court of Civil Judge (Junior Division), Jhansi, which was dismissed on 27.02.1996, against which he had filed Civil Appeal No.45 of 1996, Thakur Maithli Raman Jee Maharaj vs. Deen Dayal Pipraiya in the Court of District Judge Jhansi, which was partly allowed by the Court of 6th Additional District Judge, Jhansi on 31.03.1998 and consequently plaintiff no.1, was permanently restrained from interfering in the affairs of the temple-plaintiff no.2.

6. He further submitted that the judgment in First Appeal No. 45 of 1996 was challenged in Second Appeal No.1011 of 1998, Deen Dayal Pipraiya vs. Thakur Maithli Raman Jee Maharaj before the High Court, which was dismissed on merits on 16.03.2001, against which Deen Dayal Pipraiya filed S.L.P. No.7976 of 2001 before the Apex Court, which was also dismissed on 11.05.2001, as such, the decision of the appellate court dated 31.03.1998 attained finality, on it's basis, plaintiff no.1-Deen Dayal Pipraiya, had no right to manage the affairs of the temple-plaintiff no.2. He further submitted that since the judgment of the appellate court in Civil Appeal No. 45 of 1996, was affirmed up to the Apex Court, as such, the plaintiff no.1 had no right to re-agitate the issue again on the same facts in the instant suit, which was also barred by the provisions of Section 11 C.P.C. He further submitted that since plaintiff no.1's name was not recorded in the revenue record, as such, the suit was also barred by Section 331 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and also since plaintiff no.1 had no possession of the suit property, as such, plaintiff's suit was also barred by Section 34, 38, 41 of the Specific Relief Act.

7. With these submissions, it was prayed that the plaintiff's suit be dismissed.

8. During pendency of the suit, plaintiff no.1, Deen Dayal Pipraiya died on 08.04.2017, as such, his legal representatives were substituted in the suit.

9. In the trial court, the defendant moved an application under Order 7 Rule 11 C.P.C. with the submissions that the disputed property in the suit is similar to that in Civil Appeal No.45 of 1996, the parties are also the same and since the decision in that civil appeal was affirmed up to the Apex Court, and since the plaintiff no.1 filed the suit against the same parties in respect of the same property on false ground, as such, the plaintiff's suit was barred by res judicata under Section 11 C.P.C. With these averments, it was prayed that the plaintiff's suit be dismissed, being barred under Section 11 C.P.C.

10. The plaintiff did not file written objection against the defendant's above application.

11. The trial court vide impugned order dated 10.11.2017 allowed the defendant's application under Order 7 Rule 11 C.P.C. by concluding that the plaintiff's suit was barred by res judicata Section 11 C.P.C., aggrieved against which, the instant first appeal has been filed by the plaintiff-appellants.

12. Learned counsel for the plaintiff-appellants submitted that the issue of res judicata is a mixed question of law and fact, which can only be appreciated after pleadings of the parties are complete and also there is oral evidence of the parties on record. Learned counsel further submitted that the issue of res judicata cannot be solely decided on the basis of plaintiff averments, without examining the documents submitted by the defendant.

13. Learned counsel submitted that it is well settled that at the time of disposing application under Order 7 Rule 11 C.P.C., only the plaintiff averments are to be examined, but since the plea of res judicata cannot be solely decided on the basis of plaintiff averments, as such, the trial court erred in dismissing the plaintiff suit under Order 7 Rule 11 CPC. Learned counsel relied on the case law of ***Prem Kishore & others Vs. Brahm Prakash & others, (2023) 19 SCC 244*** and ***Pandurangan Vs. T. Jayarama Chettiar & another, (2025) SCC Online SC 1425*** in support of his contentions.

14. Learned counsel for the appellant submitted that the issue of res judicata cannot be decided under Order 7 Rule 11 CPC and, as such, the trial court has committed material illegality in rejecting the plaintiff's suit. With these submissions, it was submitted that the appeal be allowed and the matter be remitted back for disposal in accordance with law.

15. None is present for the defendant-respondent.

16. Heard the learned counsel for the plaintiff-appellants and perused the record.

17. The Apex Court in the case of **Prem Kishore (supra)** while discussing whether a suit can be dismissed under Order 7 Rule 11 (d) CPC as being barred by res judicata, held as under:-

“28. At this stage, it would be necessary to refer to the decisions that particularly deal with the question whether res judicata can be the basis or ground for rejection of the plaint. In Kamala and others v. K.T. Eshwara Sa (2008) 12 SCC 661, the trial Judge had allowed an application for rejection of the plaint in a suit for partition and this was affirmed [Kamala v. K.T. Eshwara Sa, 2007 SCC OnLine Kar 819] by the High Court. S.B. Sinha, J. speaking for the two-Judge Bench examined the ambit of Order 7 Rule 11(d)CPC and observed : (SCC pp. 668-69, paras 21-22)

“21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.”

“23. The principles of res judicata, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

24. It is one thing to say that the averments made in the plaint on their face discloses no cause of action, but it is another thing to say that although the same discloses a cause of action, the same is barred by a law.

25. The decisions rendered by this Court as also by various High Courts are not uniform in this behalf. But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained.”

30. Similarly, in Soumitra Kumar Sen v. Shyamal Kumar Sen (2018) 5 SCC 644 : (2018) 3 SCC (Civ) 329 , an application was moved under Order 7 Rule 11CPC claiming rejection of the plaint on the ground that the suit was barred by res judicata. The trial Judge dismissed the application and the judgment of the trial court was affirmed in revision by the High Court. A.K. Sikri, J. while affirming the judgment of the High Court, held :(SCC p. 649, para 9)

“9. In the first instance, it can be seen that insofar as relief of permanent and mandatory injunction is concerned that is based on a different cause of action. At the same time that kind of relief can be considered by the trial court only if the plaintiff is able to establish his locus standi to bring such a suit. If the averments made by the appellant in their written statement are correct, such a suit may not be maintainable inasmuch as, as per the appellant it has already been decided in the previous two suits that Respondent 1-plaintiff retired from the partnership firm much earlier, after taking his share and it is the appellant (or appellant and Respondent 2) who are entitled to manage the affairs of M/s Sen Industries. However, at this stage, as rightly pointed out by the High Court, the defence in the written statement cannot be gone into. One has to only look into the plaint for the purpose of deciding application under Order 7 Rule 11CPC. It is possible that in a cleverly drafted plaint, the plaintiff has not given the details about Suit No. 268 of 2008 which has been decided against him. He has totally omitted to mention about Suit No. 103 of 1995, the judgment wherein has attained finality. In that sense, the plaintiff-Respondent 1 may be guilty of suppression and concealment, if the averments made by the appellant are

ultimately found to be correct. However, as per the established principles of law, such a defence projected in the written statement cannot be looked into while deciding application under Order 7 Rule 11CPC.”

Referring to Kamala [Kamala v. K.T. Eshwara Sa, (2008) 12 SCC 661] , the Court further observed that :(SCC p. 650, para 12)

“12. ... The appellant has mentioned about the earlier two cases which were filed by Respondent 1 and wherein he failed. These are judicial records. The appellant can easily demonstrate the correctness of his averments by filing certified copies of the pleadings in the earlier two suits as well as copies of the judgments passed by the courts in those proceedings. In fact, copies of the orders passed in judgment and decree dated 31-3-1997 passed by the Civil Judge (Junior Division), copy of the judgment dated 31-3-1998 passed by the Civil Judge (Senior Division) upholding the decree passed by the Civil Judge (Junior Division) as well as copy of the judgment and decree dated 31-7-2014 passed by the Civil Judge, Junior Division in Suit No. 268 of 2008 are placed on record by the appellant. While deciding the first suit, the trial court gave a categorical finding that as per MoU signed between the parties, Respondent 1 had accepted a sum of Rs 2,00,000 and, therefore, the said suit was barred by principles of estoppel, waiver and acquiescence. In a case like this, though recourse to Order 7 Rule 11CPC by the appellant was not appropriate, at the same time, the trial court may, after framing the issues, take up the issues which pertain to the maintainability of the suit and decide the same in the first instance. In this manner the appellant, or for that matter the parties, can be absolved of unnecessary agony of prolonged proceedings, in case the appellant is ultimately found to be correct in his submissions.”

31. This Court in Soumitra Kumar Sen [Soumitra Kumar Sen v. Shyamal Kumar Sen, (2018) 5 SCC 644 : (2018) 3 SCC (Civ) 329] was examining a case where the defendant had moved an application before the trial court under Order 7 Rule 11 of CPC requesting the court to reject the plaint on the ground of res judicata. The Courts below had rejected such a prayer upon which the defendant had approached this Court. This Court, referring to its various judgments on the point, upheld such orders observing that if the averments made by the appellant in the written statement are correct, the suit may not be maintainable. However, at this stage, as rightly held by this Court, the defence in the written statement cannot be gone into. One has to look into the plaint for the purpose of deciding application under Order 7 Rule 11CPC.

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

(i) 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;

(ii) The defence made by the defendant in the suit must not be considered while deciding the merits of the application;

(iii) To determine whether a suit is barred by res judicata, it is necessary that (a) the “previous suit” is decided, (b) the issues in the subsequent suit were directly and substantially in issue in the former suit; (c) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (d) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and

(iv) Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the ‘previous suit’, such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused.

(See : Srihari Hanumandas Totala v. Hemant Vithal Kamat (2021) 9 SCC 99 : (2021) 4 SCC (Civ) 489])”

18. The above principle of law was reiterated by the Apex Court in the case of ***Pandurangan (supra)***. It was further held that in ***Keshav Sood v. Kirti Pradeep Sood and others 2023 SCC OnLine SC 2459***, this Court took a strong view against the plea of res judicata being raised in applications seeking rejection of plaint and held as follows:-

“5. As far as scope of Rule 11 of Order VII of CPC is concerned, the law is well settled. The Court can look into only the averments made in the plaint and at the highest, documents produced along with the plaint. The defence of a defendant and documents relied upon by him cannot be looked into while deciding such application.

6. Hence, in our view, the issue of res judicata could not have been decided on an application under Rule 11 of Order VII of CPC. The reason is that the adjudication on the issue involves consideration of the pleadings in the earlier suit, the judgment of the Trial Court and the judgment of the Appellate Courts. Therefore, we make it clear that neither the learned Single Judge nor the Division Bench at this stage could have decided the plea of res judicata raised by the appellant on merits.”

19. From the perusal of the above law laid down by the Apex Court in the case of ***Prem Kishore (supra)*** and ***Pandurangan (supra)***, it is evident that the issue of res judicata could not have been decided by the trial court, on an

application under Order 7 Rule 11 CPC, where only the statement in the plaint are to be perused. It is clear that under Order 7 Rule 11 CPC, the written statement and the documents submitted by the defendant cannot be examined, to arrive at a conclusion that the suit is barred by res judicata. It is clear that the plea of res judicata requires detailed examination of the pleadings, issues, and decision in the previous suit which is beyond the scope of Order 7 Rule 11 CPC, where only the plaint averments and documents of the plaintiff can be perused.

20. In the instant case, it is evident that the trial court while deciding the defendant's application under Order 7 Rule 11 CPC has considered his written statement, additional written statement and several documents submitted by him, which is contrary to the above law laid down by the Apex Court. The trial court erred in considering the written statement and documents submitted by the defendant while disposing application under Order 7 Rule 11 CPC. It is also apparent that the plea of res judicata can only be examined after detailed examination of the pleadings of the parties in the earlier suit and after perusing all the relevant documents filed by the parties, which is impossible at the stage of deciding defendant's application under Order 7 Rule 11 CPC.

21. In view of the above, it is clear that the trial court committed material illegality in dismissing the plaintiff's suit under Order 7 Rule 11 (d) CPC on ground of being barred by res judicata, as such, the impugned judgment and decree passed by the trial court is unsustainable in the eye of law and is liable to be set aside.

22. **The appeal is hereby allowed.** Consequently, the impugned judgment and decree of the trial court dated 10.11.2017 in O.S. No.205 of 2016 is set aside, the original suit is restored on its original number. The matter is remitted back to the trial court.

23. The trial court is directed to decide the issue of res judicata after framing it as a preliminary issue and after giving opportunity to both the parties to

lead oral and documentary evidence on this issue, in accordance with law, expeditiously.

24. However, in the facts and circumstances of the case, the parties shall bear their respective costs.

25. Office is directed to prepare the decree accordingly.

26. Interim order, if any, stands vacated.

27. All the pending applications, if any, stand disposed of.

Order Date-19.09.2025

Himanshu/Mayank

(Sandeep Jain,J.)