

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CR No. 12/2023

CM No. 2143/2023

Ganda Mal Gupta and others

.....Appellant(s)/Petitioner(s)

Through: Mr. Sachin Gupta, Advocate

Vs

Sardhari Lal Gupta

..... Respondent(s)

Through: Mr. Sumir Pandita, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER

29.06.2026

1. Learned counsel appearing for the petitioners submits that during the pendency of the present petition, petitioner No. 1, Mr. Ganda Mal Gupta, expired. It is submitted that petitioner Nos. 2 and 3 are his only legal representatives and are entitled to pursue the present petition. Consequently, the cause title requires amendment. Learned counsel appearing for the respondent has no objection to the said prayer. Accordingly, petitioner Nos. 2 and 3 shall stand substituted as the legal representatives of deceased petitioner No. 1, and the cause title shall be amended accordingly.
2. On merits, learned counsel for the petitioners contends that the Trial Court has committed a manifest error in rejecting the application filed under Order VII Rule 11 of the Code of Civil Procedure. It is submitted that the plaintiff/respondent had prior knowledge of the execution of the Memorandum of Family Settlement, as is evident from FIR No. 13/2021 lodged by him against the petitioners. It is further argued that the suit

seeking declaration and other consequential reliefs was instituted on 06.09.2021 after the plaintiff had already filed a suit for specific performance on the basis of the Agreement to Sell dated 30.07.2012. Therefore, according to the petitioners, the plaint does not disclose any cause of action and is barred by the provisions of Order II Rule 2 CPC. It is submitted that the Trial Court failed to appreciate the scope and ambit of Order II Rule 2 CPC and dismissed the application in a cursory manner.

3. *Per contra*, learned counsel appearing for the respondent supports the impugned order and submits that whether the plaintiff had knowledge of the Memorandum of Family Settlement is a disputed question of fact, which can only be adjudicated upon during trial. It is contended that the execution of the Agreement to Sell dated 30.07.2012 between the respondent and deceased petitioner No. 1 is not in dispute, and since petitioner Nos. 2 and 3 have stepped into the shoes of their predecessor, the contention that the respondent was already aware of the Memorandum of Family Settlement is wholly misconceived. It is further submitted that the plaint specifically pleads that the plaintiff came to know about the Memorandum of Family Settlement only during the course of criminal proceedings. Therefore, the question of limitation or the alleged bar under Order II Rule 2 CPC cannot be adjudicated while considering an application under Order VII Rule 11 CPC.
4. I have heard learned counsel for the parties and perused the material available on record.
5. The respondent instituted a suit seeking declaration that the Memorandum of Family Settlement dated 15.03.2018, registered on 16.03.2018 before

the Sub-Registrar, Jammu, is null and void, along with a consequential decree of permanent prohibitory injunction restraining the defendants from alienating or altering the nature of the suit property, namely House No. 20, 2nd Extension, Gandhi Nagar, Jammu, constructed over land measuring one Kanal.

6. The plaintiff pleaded that an Agreement to Sell dated 30.07.2012 had been executed between him and petitioner No. 2 in respect of the aforesaid property for a total sale consideration of ₹1,92,00,000/-. An amount of ₹45,00,000/- was paid as earnest money, which was duly acknowledged by petitioner No. 2. The balance amount of ₹1,47,00,000/- was agreed to be paid within ninety days. According to the plaintiff, the period for completion of the transaction was subsequently extended, and by the year 2013 the entire sale consideration had been paid. The plaintiff further asserts that the original title documents of the property were also handed over to him.
7. It is further pleaded that petitioner No. 2 failed to execute the sale deed on the pretext that she had yet to acquire title to the property. Upon persistent demands made by the plaintiff, petitioner No. 2 refused either to execute the sale deed or refund the amount received, compelling the plaintiff to lodge a criminal complaint, which culminated in registration of FIR under Section 420 RPC on 04.03.2020.
8. According to the plaintiff, it was only during the investigation of the aforesaid FIR that petitioner No. 2 disclosed the existence of the Memorandum of Family Settlement, whereby the property had allegedly been transferred in favour of petitioner No. 3 in March, 2018. Claiming

that he acquired knowledge of the said settlement only during the criminal proceedings, the plaintiff instituted the present suit.

9. In the suit, the defendants filed an application under Order VII Rule 11 CPC seeking rejection of the plaint on the ground that the plaintiff had prior knowledge of the Memorandum of Family Settlement even before instituting the earlier suit for specific performance and, therefore, the subsequent suit was barred under Order II Rule 2 CPC and disclosed no cause of action. The Trial Court rejected the said application, observing that the plaint specifically averred that the plaintiff had no prior knowledge of the Memorandum of Family Settlement and that the FIR did not indicate otherwise. Consequently, the Trial Court held that such disputed questions could not be decided at the stage of considering an application under Order VII Rule 11 CPC.
10. Learned counsel for the petitioners has reiterated that the respondent was fully aware of the Memorandum of Family Settlement and deliberately omitted to challenge the same in the earlier proceedings. It is, therefore, argued that the present suit is barred by Order II Rule 2 CPC.
11. Having considered the rival submissions, this Court finds no merit in the contention advanced on behalf of the petitioners. The execution of the Agreement to Sell dated 30.07.2012 is not disputed. Equally, there is no dispute that substantial consideration was paid by the respondent pursuant thereto. The principal controversy pertains to whether the respondent had prior knowledge of the Memorandum of Family Settlement before instituting the earlier proceedings.

12. The plaint specifically asserts that the plaintiff became aware of the Memorandum of Family Settlement only during the course of investigation in FIR No. 13/2021 and after proceedings initiated before this Court in CRM (M) No. 482/2021. Whether such assertion is correct or not is a disputed question of fact requiring evidence. Such an issue cannot be conclusively determined at the threshold while exercising jurisdiction under Order VII Rule 11 CPC.
13. The bar contained in Order II Rule 2 CPC would operate only if it is established that both proceedings arise from the same cause of action and that the plaintiff, despite possessing complete knowledge of all material facts, omitted to claim the relief which he was entitled to seek in the earlier suit. The burden to establish the applicability of the said provision squarely lies upon the defendants. At this stage, the petitioners have failed to demonstrate, solely from the averments contained in the plaint and the documents relied upon therein, that the respondent possessed prior knowledge of the Memorandum of Family Settlement when the earlier suit was instituted.
14. The scope of consideration under Order VII Rule 11 CPC is confined to the averments made in the plaint. Where the controversy involves disputed questions of fact requiring evidence, rejection of the plaint would be wholly impermissible. The Trial Court has rightly held that the issue regarding the plaintiff's knowledge of the Memorandum of Family Settlement can only be adjudicated upon after the parties lead evidence during trial.

15. In view of the foregoing discussion, this Court finds no illegality, infirmity or perversity in the impugned order warranting interference in exercise of revisional jurisdiction. The revision petition is, accordingly, ***dismissed***.
16. The Trial Court shall proceed with the suit expeditiously and in accordance with law.
17. Interim directions, if any, shall stand vacated.

(Sanjay Parihar)
Judge

Jammu
29.06.2026
Diksha

