

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.206 of 2019

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Bijay Kumar Mantri @ Vijay Kumar Mantri Son of Late Bishwambhar Lal Mantri Resident of Near Chand Road, Kishanganj, Ward No. 14, P.O. and P.S. and District Kishanganj.

... .. Petitioner/s

Versus

1. Shiv Nandan Mantri Son of Late Mali Ram Mantri Resident of Mantri Katra Neem Chand Road, P.O. and P.S. and District Kishanganj.
2. Raghunandan Mantri S/o Late Maliram Mantri Resident of Loharpatti Road, P.O. and P.S. and District Kishanganj.
3. Rajendra Prasad Rathi S/o Late Mahabir Prasad Rathi 204 Rajendra Ratan Co-operative Society, S.V. Road, Maheshnagar Goregaon (W), Mumbai-26 (Maharashtra).
4. Kamal Kishore Rathi S/o Late Mahabir Prasad Rathi 204 Rajendra Ratan Co-operative Society, S.V. Road, Maheshnagar Goregaon (W), Mumbai-62 (Maharashtra).
5. Raj Bhandari D/o Late Mahabir Prasad Rathi, W/o Shri Manohar Lal Bhandari Resident of C-115, High Rise, 3rd Floor, Savitri Path, Near Janta Circle, Bapu Nagar, Jaipur- 302015.
6. Saroj Devi Lakhota D/o Late Mahabir Prasad Rathi, C/o and W/o Sri Raj Kumar Lakhota Resident of 53 State Bank of Colony Near Rana Pratap Bagh, New Delhi- 110009.
7. Smt. Bimla Devi Lakhota D/o Late Maliram Mantri, W/o Late Shambhu Dayal Lakhota 459, Madhobari, Baraily, P.O. and P.S. and District- Bareilly (U.P.)- 243005.
8. Ravi Kumar Mantri S/o Late Bishwambar Lal Mantri Arena Nursery, Loharpatti Road, P.O. and P.S. and District Kishanganj.
9. Laxmi Devi @ Sushma Karnani D/o Late Bishwambhar Lal Mantri and W/o Sri Santosh Kumarjee 4 Tarachand Dutta Street, 3rd Floor, Bara Bazar, Kolkata-700073 (West Bengal).
10. Jayanti Devi Maheshwari W/o Late Damodar Maheshwari and D/o Late Bishwambhar Lal Mantri Resident of Goleha Katra, M.G. Road, P.O. and P.S. and District- Katihar, at present Jay Shree Apartment, Netaje Nagar Road, Near Petrol Pump, Kolkata- 700092 (W.B).
11. Nikita D/o Late Pushpa Devi Randhar Resident of Char Bhuja Raod, P.O. - Makrana, District- Nagore, Rajashtan, (Rajasthan), at present Lodha Haveli Ke Samne, Naya Bazar, Azmer, Rajasthan.
12. Puja D/o Late Pushpa Devi Randhar Resident of Char Bhuja Raod, P.O. - Makrana, District- Nagore, Rajashtan, (Rajasthan), at present Lodha Haveli Ke Samne, Naya Bazar, Azmer, Rajasthan.
13. Anuj S/o Late Pushpa Devi Randhar Resident of Char Bhuja Raod, P.O. - Makrana, District- Nagore, Rajashtan, (Rajasthan), at present Lodha Haveli



Ke Samne, Naya Bazar, Azmer, Rajasthan.

14. Smt. Rama @ Jama Devi Karwa D/o Dinesh Bishwambhar Lal Mantri, W/o Sri Dinesh Kumar Karwa Dinesh Hardware Stores, Netaje Subhash Road, Islampur, P.O. and P.S.- Islampur- 733202 District- Uttar Dinajapur (West Bengal).
15. Most. Premlata Mantri W/o Late Deoki Nandan Mantri Resident of Anand Sadan, Loharpatti Road, P.S. and District- Kishanganj.
16. Most. Hulasi Devi Mantri W/o Late Deokinandan Mantri Resident of 29 A Shiv Shakti Estate, Prem Nagar, P.O and P.S.- Prem Nagar, Barailly (U.P.)
17. Pradip Kumar Mantri S/o Late Deokinandan Mantri Resident of Anand Sadan, Loharpatti Road, P.S. and District- Kishanganj.
18. Pramod Kumar Mantri S/o Late Deoki Nandan Mantri @ Yadav Chand Mantri Resident of Mahabir Marg Road, Near Puja Hotel, P.S. and District- Kishanganj.
19. Sanjay Kumar Mantri S/o Late Deokinandan Mantri Resident of Old Gas Office, Loharpatti Road, P.S. and District- Kishanganj.
20. Ajay Kumar Mantri S/o Late Deokinandan Mantri Resident of Nepalgarh Colony, Loharpatti Road, P.S. and District- Kishanganj.
21. Rakesh Kumar Mantri S/o Late Deokinandan Mantri Resident of 29 A Shiv Shakti Estate, Prem Nagar, P.O and P.S.- Prem Nagar, Barailly (U.P.).
22. Smt. Leela Devi Tuwani D/o Late Deokinandan Mantri and W/o Sri Shyam Sundar Tuwani Resident at C/o M/s. Mohan Lal Narayan Lal Tuwani, P.O.- Bijni, District- Bongaigaon (Assam).
23. Smt. Seema D/o Late Deokinandan Mantri, W/o Sri Binod Kumar Soni Resident of C/o- M/S Inderchand Binod Kumar Soni, Kasipur Bazar, P.O.- Murliganj (Madhepura).

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ragibh Ahsan, Sr. Advocate Mr. Satish Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Alok Kumar Chaudhary, Advocate Mrs. Priyanka Kumari, Advocate Mr. Rakesh Tiwary, Advocate Mr. Subhro Sanyal, Advocate Mr. Dhaneshwar Prasad Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
CAV JUDGMENT

Date : 11-08-2023

Learned Senior Counsel for the petitioner and learned
counsel for the opposite parties/respondents have been heard on



the last date of hearing.

2. The matter has been taken up for hearing on the point of admission but I intend to dispose of this civil revision petition at the stage of admission stage.

3. The petitioner has filed the instant civil revision petition for setting aside the order dated 03.07.2019 passed in Title Suit No. 52 of 2018, whereby and whereunder the application filed under Order 7 Rule 11 of the Code of Civil Procedure of the petitioner/defendant has been rejected by the learned Sub Judge-II, Kishanganj.

4. The case of the petitioner is that respondent no. 1/plaintiff has filed a title suit bearing No. 52 of 2018 praying for the following relief(s):-

“A) That let it be declared and adjudicated by the court that the family settlement deed dated 10.05.1979 (ten day of May one thousand nine hundred seventy-nine) vide 03.06.1980 (third day of June one thousand nine hundred eighty) Sketch Map Sutta Karkhana, Sutta Karkhana, Agriculture land and Pachhimpali Patgola in between the heirs of Late Tara Chand Mantri are not correct and the settlement never acted upon and as such not binding on the plaintiff. The defendants have no right to dispose of any



properties on the basis of illegal and collusive partition deed dated 10.05.1979 and 03.06.1980.

B) The above land involved in the said unregistered partition are the land of Mali Ram Mantri. That a preliminary decree be passed in favour of land of Mali Ram Mantri and 1/3rd share may be passed in favour of plaintiff.

C) That it be further declared and adjudicated that the plaintiff has got every manner of right, title, interest over the schedule "B", "B/1" and "C" property and thereby the title of the plaintiff over the schedule "B", "B/1" and "C" be declared and defendants have no right over schedule "C1" land.

D) That after adjudicated the said relief a decree for recovery of possession be granted and defendants be directed to submit the account of income etc. from Schedule "B" property over which the plaintiff shall pay requisite court fee accordingly.

(E) That the legal heirs of Bishamber Lal Mantri and Deokinandan Mantri be directed to give final account realised rent from the tenants of firm M/s Kanhaiya Lal Ram Narain and Suta Gaddi and Stock of firm.

F) That the defendants be restrained not to alienate the suit land during the pendency of



suit.

G) A decree for all cost of the suit be passed in favour of the plaintiff.

H) Any other relief or reliefs to which be plaintiff are in title to get in the opinion of the court be granted to the plaintiff against the defendants.”

5. The petitioner is defendant no. 7 who appeared before the learned court below and moved an application under Order 7 Rule 11 of the Code of Civil Procedure praying to reject the plaint.

6. A rejoinder was filed by the plaintiff/respondent no. 1 and the learned trial court after hearing the parties came to the conclusion that the plaint was not fit to be rejected under Order 7 Rule 11 of the Code of Civil Procedure and thus rejected the application of the petitioner/defendant vide impugned order dated 03.07.2019.

7. The petitioner has submitted in his petition that plaintiff/respondent no.1 has referred in his plaint about Registered Deed No. 863 dated 20/21.06.1905 and the same has been made part of the pleading by bringing the same on record. Further case of the petitioner is that Deed No. 863 dated 20/21.06.1905 is the deed of relinquishment of the property and



the said properties are not part of the property partitioned through the family settlement deed dated 10.05.1979 and 03.06.1980 which was subject matter of Title Suit No. 02 of 1989, Title Appeal (First Appeal) No. 535 of 1996 and the SLP No. 27671 of 2012, which is pending adjudication before the Hon'ble Apex Court. Further case of the petitioner is that the plaintiff/respondent no. 1 cannot seek any relief with regard to property involved in Title Suit No. 02 of 1989 in which judgment and decree has been passed on 23.08.1996 and the same is still pending adjudication in SLP before the Hon'ble Apex Court. The petitioner has also brought this fact on record that by partition deed dated 29.09.1982 and 24.07.1987, plaintiff/respondent no. 1 and his family members partitioned amongst themselves all joint family property which they received through settlement dated 10.05.1979 and 03.06.1980 including the property received by Deed No. 863 dated 20/21.06.1905. It has been further submitted by the petitioner that the plaintiff/respondent no. 1 has made effort to base his claim on registered deed dated 20/21.06.1905 but has sought no relief on the basis thereof and therefore, the plaintiff/respondent no. 1 cannot be granted any relief unless relief is prayed for on the basis of registered deed of 1905. Further case of the



petitioner is that plaintiff/respondent no. 1 has mentioned a previous Title Suit No. 02 of 1989 which is based on family settlement dated 10.05.1979 and 03.06.1980 which has been decreed vide judgment and decree dated 23.08.1996. The plaintiff/respondent no. 1 has sought adjudication on the point that finding of partition on the basis of these two settlement deeds are not correct and the settlement was never acted upon as such not binding upon the plaintiff/respondent no. 1. The petitioner has contended that since the decree has been passed and acted upon in Title Suit No. 02 of 1989, therefore, the right of the parties to the suit have been adjudicated upon and conclusively decided unless and until the said decree is reversed, recalled, modified or set aside, the parties cannot be divested of their right. Thus, the plaintiff/respondent no. 1 has got no cause of action to challenge the finding recorded in previous Title Suit No. 02 of 1989 in a fresh title suit. Further case of the petitioner is that in paragraphs 17, 19 and 22 of the plaint the plaintiff/respondent no. 1 has claimed that for the first time he came to know about the partition deed dated 20/21.06.1905, which appears to be a deed of relinquishment, from the legal heirs of Sagarmal Mantri and others while the matter has been subjudice in SLP No. 27671 of 2012 before the



Hon'ble Supreme Court of India. Moreover, the so called partition deed of 1905 is hit by the mischief of Section 17(1) (b) of the Registration Act, 1908 and hence it could be said that same was within the constructive notice of the plaintiff/respondent no. 1 and which could have been made a ground in the previous Title Suit No. 02 of 1989 in view of Explanation I of Section 3 of Transfer of Property Act. Therefore, the plaintiff/respondent no. 1 cannot take the plea of knowledge of the deed of 1905 in the year 2017, i.e., after more than 112 years and as such the entire claim of the plaintiff/respondent no. 1 is hopelessly barred under the provisions of the Limitation Act. In fact, the plaintiff/respondent no. 1 has taken advantage of the order dated 18.04.2017 passed in I.A. Nos. 06 and 07 of 2017, arising out of SLP No. 27671 of 2012 for making a fresh cause of action by wrongly interpreting the order. The Hon'ble Court accorded permission to withdraw I.A. Nos. 06 and 07 of 2017 with liberty to avail the appropriate remedy and both the I.As. were dismissed as withdrawn but appropriate remedy does not mean that it gives any right to the plaintiff to file fresh suit against the property which is subject matter of SLP No. 27671 of 2012. Further case of the petitioner is that plaintiff/respondent no. 1 has submitted in paragraph 14



that Respondent No. 2 Raghunandan Mantri preferred First Appeal No. 535 of 1996 and the judgment and the decree passed in Title Suit No. 02 of 1989, which subsequently was partly allowed by the High Court vide judgment dated 08.05.2022. But there is no averment in the plaint that the judgment and decree of the learned trial court was ever challenged by the plaintiff/respondent no. 1 either before the High Court or before the Hon'ble Supreme Court and thus, the plaintiff/respondent No. 1 has admitted the factum of partition by metes and bounds and the same has been acted upon vide judgment and decree dated 23.08.1996 passed in Title Suit No. 02 of 1989 in which plaintiff/respondent no. 1 was also a contesting party. Moreover, the plaintiff/respondent no. 1 has not impleaded all the parties in the present suit who were parties to the Title Suit No. 02 of 1989 who are necessary party to the suit and in absence whereof, relief A cannot be granted to the plaintiff/respondent no. 1 in the present suit. Similarly, relief B is completely dependent upon relief A unless relief A is granted, relief B is meaningless. Similarly, other reliefs, from relief C to relief H, are also interconnected and in absence of a clear right to seek any of the reliefs, the reliefs could not be granted to the plaintiff/respondent no. 1. The petitioner has thus submitted that



Title Suit No. 52 of 2018 is flagrant misuse of the law and it is vexatious and is also meritless since it does not disclose a clear right to seek any relief as prayed in the plaint. Therefore, the plaint should have been rejected in limine and its continuation is bad in law.

8. Having reiterated the case of the petitioner, learned senior counsel has tried to confine his argument mainly on the ground that the suit before the learned court below is barred under Order 7 Rule 11(d) of the Code of Civil Procedure. Learned senior counsel has submitted that the impugned order is bad in the eyes of law and requires to be set aside. Learned senior counsel took this Court through different paragraphs of the plaint to support his contention that the subject matter of Title Suit No. 52 of 2018 is the same on which decree has been passed in Title Suit No. 02 of 1989. Learned senior counsel has further submitted that in paragraph 19 of the plaint it is submitted that the decree against the interest of plaintiff/respondent no. 1 in Title Suit No. 02 of 1989 is wholly illegal, void and not binding upon the plaintiff/respondent no. 1 and thus plaintiff/respondent no. 1 is challenging the decree of Title Suit No. 02 of 1989 which is still subjudice in SLP No. 27671 of 2012 before the Hon'ble Apex Court. The



plaintiff/respondent no. 1 has even reiterated his contention in paragraph 20 of the plaint about suit property being same as in Title Suit No. 02 of 1989. Learned senior counsel has further submitted that the learned trial court failed to appreciate that the deeds of family settlement dated 10.05.1979 and 03.06.1980 respectively cannot be challenged in the present suit as the same has already been subject matter of Title Suit No. 02 of 1989 and have been acted upon. In this manner the plaintiff/respondent no. 1 wants declaration of decree of Title Suit No. 02 of 1989 to be void and *non est*. Further the learned trial court failed to consider that nowhere in the plaint it has been stated that the properties of 1905 were not partitioned. The learned trial court further failed to consider that no relief has been sought on the basis of the deed of 1905 bearing Deed No. 863. Learned senior counsel further reiterated that unless relief A is granted, relief B is meaningless. Also, it is not the case of the plaintiff/respondent no. 1 that properties mentioned in Schedule B, B/1, C and C/1 were allotted to him exclusively in any partition suit/deed, so no title can be declared in favour of the plaintiff/respondent no. 1. Similarly, grant of relief B is consequential in nature dependent upon relief C. Relief E is subject matter of SLP No. 27671 of 2012. Even relief F to H are also consequential in nature and



subject to grant of relief A. Learned senior counsel has further submitted plaintiff/respondent no. 1 has not impleaded all necessary parties who were party to the Title Suit No. 02 of 1989 and therefore, cannot claim any relief as sought in para 1 and for other consequential relief which are barred by law of limitation. Thus, learned senior counsel has submitted that learned trial court committed an error on record in rejecting the application filed under Order 7 Rule 11 of the Code of Civil Procedure on behalf of the petitioner and the impugned order dated 03.07.2019 be set aside and instant revision petition be allowed.

9. Learned counsel appearing on behalf of plaintiff/respondent no. 1 has vehemently opposed the contention of the learned senior counsel for the petitioner. Learned counsel for plaintiff/respondent no. 1 has submitted that Title Suit No. 52 of 2018 is maintainable. Learned counsel has further submitted that at the time of hearing in the instant revision, submission of learned senior counsel for the petitioner has been noted by learned Co-ordinate Bench in its order dated 14.12.2022, that the property of registered deeds dated 20/21.06.1905 are not part of the property partitioned through family settlement deed dated 10.05.1979 and 03.06.1980 which



was subject matter of Title Suit No. 02 of 1989 and SLP No. 27671 of 2012, pending adjudication before the Hon'ble Supreme Court.

10. Learned counsel has submitted that Kunj Lal Mantri and Kanhaiya Lal Mantri were brothers and they were sons of one Tara Chand Mantri. All movable and immovable properties were partitioned between two brothers vide registered deed No. 863 dated 20/21.06.1905. In the manner the firm M/s Kanhaiya Lal Ram Narayan was exclusively allotted to Kanhaiya Lal Mantri. After death of Kanhaiya Lal Mantri, his only son, Mali Ram Mantri, was the sole heir and successor of all movable and immovable properties of his father and in this way, the sole owner/proprietor of the firm M/s Kanhaiya Lal Ram Narayan. Learned counsel has further submitted that the heirs and successors of Kunji Lal Mantri cannot claim any right of partition to the suit properties which had fallen in the exclusive share of Kanhaiya Lal Mantri by dint of registered partition deed dated 20/21.06.1905. Learned counsel has further submitted that the plaintiff discovered the existence of registered partition deed dated 20/21.06.1905 executed in between the ancestors of the parties and in absence of any issue being framed regarding the deed of 1905 in the Title Suit No. 02



of 1989, the findings recorded in the said partition suit cannot be treated to have attained finality *de hors* the said issue. Learned counsel further submitted that by the said deed of 1905, it is clear that the property involved in Title Suit No. 02 of 1989 and Title Suit No. 52 of 2018, respectively all along belonged exclusively to Mali Ram Mantri, the ancestor of the plaintiff/respondent no. 1 so there was no question of further partition of the said property in 1979 and 1980 and this fact was not considered by the learned trial court in Title Suit No. 02 of 1989. For this reason no issue was framed on this point. Learned counsel has further submitted that Title Suit No. 02 of 1989 for partition was based on two registered deeds of family settlement from the year 1979 and 1980 and was in total ignorance of earlier deed dated 20/21.06.1905 and hence, Title Suit No. 52 of 2018 is based on different cause of action and the heirs and successors of one branch cannot seek partition of two property which fell into exclusive share of another branch by registered deed of partition dated 20/21.06.1905. Moreover, the preliminary decree dated 23.08.1996 of Title Suit No. 02 of 1989 has become inexecutable due to lapse of time and for this reason it has got no legal sanctity. Learned counsel further submitted that the plaintiff/respondent no. 1 was given liberty to



seek appropriate remedy by the Hon'ble Apex Court on the basis of registered deed of partition dated 20/21.06.1905.

11. Learned counsel has further submitted that there could be no application of *res judicata* and suit is not barred under Order 7 Rule 11(d) of the Civil Procedure Code. Learned counsel has further submitted that the plea of *res judicata* be considered only at the time of trial as at this stage only the averments in the plaint can be considered. Learned counsel relied upon the decision of the Hon'ble Supreme Court in the case of ***Srihari Hanumandas Totala v. Hemant Vithal Kamat*** reported in ***(2021) 9 SCC 99*** to stress the point that the plaint in subsequent suit cannot be rejected on the ground that it is barred by principles of *res judicata* as same will require production of pleadings, issues framed and judgment in the previous suit to compare it with present suit and that cannot be done for deciding an application under Order 7 Rule 11 (d) of the Code of Civil Procedure as only the averments in the plaint itself can be considered at this stage. Learned counsel has further submitted that *res judicata* is a mixed question of fact and law and the same may require not only the examination of the plaint but also other evidence and order passed in this earlier suit. In this regard reliance has been placed in the case of ***Vaish***



Aggarwal Panchayat v. Inder Kumar and others reported (2020) 12 SCC 809. Reliance has also been placed by the learned counsel for the plaintiff/respondent no. 1 on the decisions of Hon'ble Supreme Court in the cases of *Nusli Neville Wadia v. Ivory Properties and others* reported in (2020) 6 SCC 557, *Premlata Alias Sunita v. Naseeb Bee and others* reported in (2022) 6 SCC 585 and *Alpana Gupta v. APG Towers Private Limited and another* reported in (2019) 15 SCC 46 in support of his contention as to when a plaint can be rejected under Order 7 Rule 11. Learned counsel further submitted that the petitioner can raise all issues in his written statement and allow the learned trial court to decide the issue at any stage.

12. Learned counsel has further submitted that moreover the scope of revision under Section 115 of the Code of Civil Procedure is very limited and it can be invoked only if the learned lower court has exercised the jurisdiction not vested in it, failed to exercise jurisdiction so vested or to have exercised the jurisdiction illegally or with material irregularity. The learned trial court has acted in accordance with law and it cannot be said that it acted beyond its jurisdiction or passed the order in complete disregard of any law or the order suffers from



any material irregularity.

13. I have given my thoughtful consideration to the rival submission and different aspects of the matter. The claim of the petitioner is based on the fact that Title Suit No. 02 of 1989 was decided and decreed regarding the certain properties which also are also part of Title Suit No. 52 of 2018. The right and title regarding the properties which were in dispute in Title Suit No. 02 of 1989 have been finally decided, the same cannot be re agitated in another title suit. The petitioner has claimed that the suit before the learned lower court is liable to the rejected under Order 7 Rule 11 of the Code of Civil Procedure. Learned senior counsel appearing on behalf of the petitioner has specifically submitted that the plaint should be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure.

14. Order 7 Rule 11 of the Code of Civil Procedure reads 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 returned 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 paper 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 paper, 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.”

15. Though argument has been advanced on behalf of the petitioner that the suit of respondent no. 1 does not disclose any cause of action and the relief claim cannot be granted, however, on perusal of the plaint I think such submission is



misplaced. It cannot be said that no cause of action has been shown or no relief can be granted to the plaintiff/respondent no.

1. Discussion made so far makes it clear that such submission on behalf of the petitioner is premature. The same can be decided in the instant case only after completion of pleadings and framing of issues.

16. So we are left with the contention that the suit is liable to be rejected under Order 7 Rule 11(d) of Code of Civil Procedure. In the case of *Srihari Hanumandas Totala v. Hemant Vithal Kamat* reported in (2021) 9 SCC 99, the Hon'ble Apex Court discussed the principles for deciding application under Order 7 Rule 11(d) of Code of Civil Procedure, paragraph 25 of which reads as under:-

“25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarised 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 defence made by the defendant in the suit must not be considered while deciding the merits of



the application.

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

25.4. 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.”

17. In the light of discussion made by the Hon’ble Apex Court, it leaves no doubt that an adjudication of decree of *res judicata* would require consideration of pleading, issue and decision in the previous suit and such a plea would be beyond the scope of order 7 Rule 11(d) of the Code of Civil Procedure. In an earlier decision in the case of *Kamla v. K.T. Eshwara Sa* reported in *(2008) 12 SCC 661* in paragraph 21 the Hon’ble



Apex Court held as under:-

“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”

18. The said decision was quoted with approval by the Hon’ble Apex Court in *Vaish Aggarwal Panchayat v. Inder Kumar and others* reported (2020) 12 SCC 809. Paragraph 22 of the said decision reads as under:-



“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.”

19. Having considered the provision of law in the light of abovementioned decisions of the Hon'ble Apex Court, I am of the opinion that this Court cannot look beyond the plaint for arriving at a decision as to whether the plaint is liable to be rejected under Order 7 Rule 11 of the Code of Civil Procedure. More so when a plea of *res judicata* has been taken under Order 7 Rule 11(d) of the Code of Civil Procedure, the same cannot be decided on the basis of plaint only and the same requires consideration of pleading, issues and decision thereon. The same is beyond the scope of Order 7 Rule 11(d) of the Code of Civil Procedure. Hence, I find and hold that the plaint was not liable to be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure and affirm the finding of the learned trial court and hence, the impugned order does not suffer from any illegality or material irregularity and accordingly, the instant



revision petition is dismissed for being devoid of any merit.

20. However, it is made clear that this Court has decided the instant civil revision on its merit and has at no point of time ventured upon the merits of the case of respective parties and has not expressed any opinion whether the subsequent suit is barred by principles of *res judicata* or not.

(Arun Kumar Jha, J)

DKS/-

AFR/NAFR	AFR
CAV DATE	27.07.2023
Uploading Date	11.08.2023
Transmission Date	

