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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CR-5426-2024 (O&M)
Date of Decision: 18.09.2024**

Arun Kaushal

..... Petitioner

Versus

Jang Bahadur and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present : Mr. Mayank Mathur, Advocate,
for the petitioner.

PANKAJ JAIN, J. (ORAL)

1. Prayer is for setting aside order dated 10.07.2024 passed by learned Civil Judge (Junior Division), Patiala, whereby application under Order 7 Rule 11 CPC filed by the petitioner/defendant No.1 seeking rejection of the plaint has been dismissed.

2. Plaintiff filed a suit for declaration claiming that his father namely Som Nath Kaushal is missing since 11.10.2017. The General Power of Attorney dated 15.03.2011 executed by Som Nath Kaushal in favour of defendant No.1 and the sale deeds executed by defendant No.1 acting as Power of Attorney of Som Nath Kaushal are result of fraud and are forged documents. Further prayer was for grant of permanent injunction restraining the defendants from alienating and transferring the property as described under the head-note of the plaint. Further defendant No.1 filed an application under Order 7 Rule 11 CPC claiming that the suit was filed before the Court



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which has no jurisdiction to try and entertain the same as the properties are situated within the jurisdiction of Sub-Divisional Courts at Rajpura and at Ambala and thus, Court at Patiala has no jurisdiction to try the suit.

3. Further it was claimed that Som Nath Kaushal himself earlier filed a petition under the Maintenance and Welfare of Parents and Senior Citizenship Act, 2007, which already stands decided by a forum of competent jurisdiction vide order dated 27.04.2017 on the basis of compromise between the parties and thus, the present suit was barred by *res judicata*. Further ground pleaded in the application was with respect to deficiency in the Court fee. It was claimed that the plaintiff has challenged the sale deeds and has not affixed the *ad valorem* Court fee on the value of the property. Trial Court vide impugned order dismissed the application holding that the issue of jurisdiction cannot invoke the jurisdiction of claim. So far as the plea of *res judicata* is concerned, the same being pure question of fact, cannot be determined without there being evidence on the record. So far as deficiency in the Court fee is concerned, trial Court opined that Power of Attorney has been challenged on the ground of fraud. Plaintiff is not executant of the sale deed and has not claimed possession thus, he was not required to pay *ad valorem* Court fee.

4. Learned counsel for the petitioner while assailing the impugned order has drawn attention of this Court to the application dated 25.05.2022, placed on record as Annexure P-9, whereby the plaintiff himself admitted that the suit has been filed before the Court, which had no jurisdiction to try



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the same. Mr. Mathur further submits that from the reading of the plaint in its entirety, it is evident that plaintiff is seeking cancellation of the sale deeds and merely by clever drafting, he cannot be blamed to pay *ad valorem* Court fee. He further submits that in view of the fact that Som Nath Kaushal during his life time challenged the sale deeds and the Power of Attorney invoking provisions of Maintenance and Welfare of Parents and Senior Citizenship Act, 2007, before the competent authority and the matter having been compromised, the present suit would be barred by principle of *res judicata*.

5. I have heard learned counsel for the petitioner and carefully gone through the record.

6. So far as the plea with respect to the suit being barred by *res judicata* is concerned, I do not find any reason to interfere in the findings of the trial Court. It is that doctrine of *res judicata* is pure question of fact and the same cannot be ascertained at a later stage of the suit. It is only after both the parties have adduced their evidence, the Court can ascertain whether suit is barred by *res judicata* or not. Otherwise also, in order to decide an application under Order 7 Rule 11 CPC, the Court has to evaluate the plaint only. In whole of the plaint, there is no such averment from which it can be held that the suit is barred by *res judicata*. Reference can be made to **Srihari Hanumandas Totala Vs. Hemant Vithal Kamat and others, 2021(9) SCC 99.**

“16. Order 7 Rule 11(d) of CPC provides that the plaint shall



be rejected “where the suit appears from the statement in the plaint to be barred by any law”. Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Court while deciding such an application must have due regard only to the statements 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. Before proceeding to refer to precedents on the interpretation of Order 7 Rule 11(d) CPC, we find it imperative to refer to Section 11 of CPC which defines res judicata:

“11. Res judicata.—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

*17. Section 11 of the CPC enunciates the rule of res judicata: a court shall not try any suit or issue in which the matter that is directly in issue has been directly or indirectly heard and decided in a ‘former suit’. Therefore, for the purpose of adjudicating on the issue of res judicata it is necessary that the same issue (that is raised in the suit) has been adjudicated in the former suit. It is necessary that we refer to the exercise taken up by this Court while adjudicating on res judicata, before referring to res judicata as a ground for rejection of the plaint under Order 7 Rule 11. Justice R C Lahoti (as the learned Chief Justice then was), speaking for a two Judge bench in **V. Rajeshwari v. T.C. Saravanabava (2004) 1 SCC 551** discussed the plea of res judicata and the particulars that would be required to prove the plea. The court held that it is discussed the plea of res judicata and the particulars that would be required to provide the plea. The court held that it is necessary to refer to the copies of the pleadings, issues and the judgment of the ‘former suit’ while adjudicating on the plea of res judicata:*

“11. The rule of res judicata does not strike at the root of the jurisdiction of the court trying the subsequent suit. It is a rule of estoppel by judgment based on the public policy that there should be a finality to litigation and no one should be vexed twice for the same cause.



13. Not only the plea has to be taken, it has to be substantiated by producing the copies of the pleadings, issues and judgment in the previous case. Maybe, in a given case only copy of judgment in previous suit is filed in proof of plea of res judicata and the judgment contains exhaustive or in requisite details the statement of pleadings and the issues which may be taken as enough proof. But as pointed out in **Syed Mohd. Salie Labbai v. Mohd. Hanifa [(1976) 4 SCC 780]** the basic method to decide the question of res judicata is first to determine the case of the parties as put forward in their respective pleadings of their previous suit and then to find out as to what had been decided by the judgment which operates as res judicata. It is risky to speculate about the pleadings merely by a summary of recitals of the allegations made in the pleadings mentioned in the judgment. The Constitution Bench in **Gurbux Singh v. Bhooralal [AIR 1964 SC 1810 : (1964) 7 SCR 831]** placing on a par the plea of res judicata and the plea of estoppel under Order 2 Rule 2 of the Code of Civil Procedure, held that proof of the plaint in the previous suit which is set to create the bar, ought to be brought on record. The plea is basically founded on the identity of the cause of action in the two suits and, therefore, it is necessary for the defence which raises the bar to establish the cause of action in the previous suit. Such pleas cannot be left to be determined by mere speculation or inferring by a process of deduction what were the facts stated in the previous pleadings. Their Lordships of the Privy Council in **Kali Krishna Tagore v. Secy. of State for India in Council [(1887-88) 15 IA 186 : ILR 16 Cal 173]** pointed out that the plea of res judicata cannot be determined without ascertaining what were the matters in issue in the previous suit and what was heard and decided. Needless to say, these can be found out only by looking into the pleadings, the issues and the judgment in the previous suit.”

(emphasis supplied)

18. 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 & others v. KT 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 by the High Court. Justice S B Sinha speaking for the



two judge bench examined the ambit of Order 7 Rule 11(d) of the CPC and observed:

“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.”

(emphasis supplied)

The Court further held:

“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.”*

(emphasis supplied)

*The above view has been consistently followed in a line
of decisions of this Court. In **Church of Christ
Charitable Trust & Educational Charitable Society v.
Ponnamman Educational Trust (2012) 8 SCC 706**,*

*Justice P Sathasivam (as the learned Chief Justice then
was), speaking for a two judge Bench, observed that
“10. [...] It is clear from the above that where the plaint
does not disclose a cause of action, the relief claimed is
undervalued and not corrected within the time allowed
by the court, insufficiently stamped and not rectified
within the time fixed by the court, barred by any law,
failed to enclose the required copies and the plaintiff
fails to comply with the provisions of Rule 9, the court
has no other option except to reject the same. A reading
of the above provision also makes it clear that power
under Order 7 Rule 11 of the Code can be exercised at
any stage of the suit either before registering the plaint
or after the issuance of summons to the defendants or at
any time before the conclusion of the trial.*

*11. This position was explained by this Court in **Saleem
Bhai v. State of Maharashtra [(2003) 1 SCC 557]**, in
which, while considering Order 7 Rule 11 of the Code, it
was held as under: (SCC p. 560, para 9)*

*“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, therefore, a direction to file the
written statement without deciding the application
under Order 7 Rule 11 CPC cannot but be procedural
irregularity touching the exercise of jurisdiction by the
trial court.”*

*It is clear that in order to consider Order 7 Rule 11, the
court has to look into the averments in the plaint and the
same can be exercised by the trial court at any stage of*



*the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in **Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184]** and **Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express [(2006) 3 SCC 100]**.”*

Similarly, in Soumitra Kumar Sen (supra), an application was moved under Order 7 Rule 11 of the CPC claiming rejection of the plaint on the ground that the suit was barred by res judicata. The Trial Judge dismissed the application and the judgement of the Trial Court was affirmed in revision by the High Court. Justice AK Sikri, while affirming the judgment of the High Court held:

“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 defense 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 11 CPC. 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 defense projected in the written statement cannot be looked into while



deciding application under Order 7 Rule 11 CPC.”

Referring to Kamala (supra), the Court further observed that

“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 judgement 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 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 11 CPC 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.”

(emphasis supplied)

While holding that “recourse to Order 7 Rule 11” by the appellant was not appropriate, this Court observed that the Trial Court may, after framing the issues, take up the issues which pertain to the maintainability of the suit and decided them in the first instance. The Court held that this course of action would help the appellant avoid lengthy proceedings.”

7. So far as the plea with respect to lack of jurisdiction of the Court is concerned, Mr. Mathur has fairly agreed that even if the case of the defendant is accepted, at the most, it would be a case of return of the plaint



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and not rejection of the plaint.

8. Coming to the issue with regard to deficiency of Court fee, it will be apt to peruse the prayer clause, which reads as under:-

- “A. That the present revision petition may kindly be allowed, the order dated 10.07.02024 (Annexure P-1) may kindly be set aside and the plaint of respondent no. 1 (Annexure P-6) may kindly be rejected.*
- B. That the proceedings of the Ld. Trial Court may kindly be stayed during the pendency of the present suit.*
- C. That the petitioner may kindly be exempted from filing the certified copies of Annexure P-1 to Annexure P-10 and the photocopies of the same may kindly be taken on record.*
- D. Pass any other order or direction in favour of the petitioner which this Hon’ble Court may deem appropriate in the peculiar facts and circumstances of the present case.”*

9. The issue with respect to evaluation of the suit wherein sale deed is subject matter of challenge has been well explained in the case of **Suhrid Singh @ Sardool Singh Vs. Randhir Singh and others, 2010 AIR Supreme Court 2807**. The Apex Court with the help of illustration has explained the question. Operative part reads as under :-

“6. Where the executant of a deed wants it to be annulled, he has to seek cancellation of the deed. But if a non-executant seeks annulment of a deed, he has to seek a declaration that the deed is invalid, or non-est, or illegal or that it is not binding on him. The difference between a prayer for cancellation and declaration in regard to a deed of transfer/conveyance, can be brought out by the following illustration relating to ‘A’ and ‘B’ -- two brothers. ‘A’ executes a sale deed in favour of ‘C’. Subsequently ‘A’ wants to avoid the sale. ‘A’ has to sue for cancellation of the deed. On the other hand, if ‘B’, who is not the executant of the deed, wants to avoid it, he has to sue for a declaration that the deed executed by ‘A’ is invalid/void and non- est/ illegal and he is not bound by it. In essence both may be suing to have the deed set aside or declared as non-binding. But the form is different and court fee is also different. If ‘A’, the executant of the deed, seeks cancellation of the deed, he has to pay ad-valorem court fee on the consideration stated in the sale deed. If ‘B’, who is a non-executant, is in possession and sues

for a declaration that the deed is null or void and does not bind him or his share, he has to merely pay a fixed court fee of Rs. 19.50 under Article 17(iii) of Second Schedule of the Act. But if `B', a non-executant, is not in possession, and he seeks not only a declaration that the sale deed is invalid, but also the consequential relief of possession, he has to pay an ad-valorem court fee as provided under Section 7(iv)(c) of the Act. Section 7(iv)(c) provides that in suits for a declaratory decree with consequential relief, the court fee shall be computed according to the amount at which the relief sought is valued in the plaint. The proviso thereto makes it clear that where the suit for declaratory decree with consequential relief is with reference to any property, such valuation shall not be less than the value of the property calculated in the manner provided for by clause (v) of Section 7.”

10. Keeping in view that neither the plaintiff is executant of the sale deed nor has sought possession, this Court finds that the case of the plaintiff is squarely covered by the ratio of law laid down in **Suhrid Singh @ Sardool Singh (supra)**. Being a non-executant, plaintiff can avoid the sale deed and thus, is not required to afix *ad valorum* Court fee on the value of the property.

11. In view of the above, finding no merits in the present case, the same is hereby dismissed.

(PANKAJ JAIN)
JUDGE

18.09.2024
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No