

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.115 of 2019

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Yogendra Rai @ Yogendra Ray @ Yogi Rai, Male aged about 50 years, Son of Botal Ray, Resident of Village Dhepura, P.S. Dalsing Sarai, District - Samastipur.

... .. Petitioner/s

Versus

1. Vijaywant Kumar Choudhary, Son of Late Yaswant Kumar Choudhary Resident of Village Ramashray Nagar, Kewta Gandh, P.S. and P.O. Dalsing Sarai, District - Samastipur.
2. Valwant Kumar Choudhary, Son of Late Yaswant Kumar Choudhary, Resident of Village - Ramashray Nagar, Kewta Gandh, P.S. and P.O. - Dalsing Sarai, District- Samastipur.
3. Samant Kumar Choudhary Son of Late Yaswant Kumar Choudhary, Resident of Village - Ramashray Nagar, Kewta Gandh, P.S. and P.O. - Dalsing Sarai, District- Samastipur.
4. Smt. Uma Devi wife of Late Raghvesh Mishra, resident of Village- Raghunathpur, Deodhi, P.S. - Pator, District - Darbhanga.
5. Arjun Rai, Son of Late Botal Ray, resident of village Dhepura, P.S. - Dalsing Sarai, District - Samastipur.
6. Arun Rai, Son of Late Botal Ray, resident of Village Dhepura, P.S. - Dalsing Sarai, District - Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar Sinha, Advocate
For the Opposite Party no. 1	:	Mr. Ujjwal Kumar, Advocate
		Mr. Mukesh Kumar Jha, Advocate
For the Opposite Party No. 4	:	Mr. Binod Kumar Singh, Advocate
		Ms. Vagisha Pragya Vacaknavi, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV ORDER

16 02.12.2025 This civil revision application is filed against order dated 06.05.2019 passed in the Title Suit No. 10 of 2000, by the Learned Sub-Judge I, Dalsing Sarai, Samastipur whereby and where under the petition dated 10.11.2014 filed on behalf of defendant-petitioner under Order VII rule 11 of the Code of Civil Procedure (hereinafter referred to as CPC) was rejected on the ground that the suit is barred by law and the principle of *res-*



judicata.

2. Heard the learned counsel for the petitioner and the learned counsel for the respondent.

3. Learned counsel on the behalf of petitioner submitted that the learned Trial Court committed illegality in refusing the application for rejection of plaint under Order VII Rule 11 of CPC, the impugned order is illegal, improper and against the mandatory provisions of law and is liable to set aside. The learned trial court failed to appreciate that the plaint is barred by principle of *constructive res-judicata* and the plaintiff case is vexatious, merit less and completely based on irrelevant statements and frivolous facts thus the plaint ought to have been rejected under Order VII Rule 11 of the CPC.

3.i. He further submitted that the petitioner-defendants purchased the suit land from Radhika Devi through registered sale deed dated 13.04.1999. Radhika Devi is the absolute owner of suit land of her father share and as per the final decree passed by Privy Council vide appeal no 102 of 1933 decided in favour of Radhika Devi, present suit is not maintainable as it is barred by principles of *constructive res-judicata*. He further submitted that the petitioner filed a petition dated 10.11.2014 (Annexure-5) before the learned Trial Court to dismiss the plaint as the



same is barred by law and principle of *constructive res-judicata* under Order VII Rule 11 of CPC hence not maintainable. The dispute regarding the disputed land described in Schedule-1 of the plaint has already been finally decided by Hon'ble Patna High Court vide Judgment and decree dated 12.04.1932 in title appeal no.168 of 1927 and by Privy Council at London vide order dated 11.10.1935 in Privy Council Appeal no.102 of 1933 in favour of said Radhika Devi.

3.ii. He further submitted that the plaintiff-respondent no.1 to 3 are bound by the aforesaid judgment and decree drawn up and affirmed by this Court and Privy Council. The purpose of *res-judicata* sprouted from the maxim “*nemo debet bis vexari pro una et eadem causa*” which means no person should be vexed twice for the same cause. He relies on the judgement passed by the Hon'ble Apex Court in ***Sopan Sukhdeo Sable Vs. Asstt. Charity Commr.*** reported in **(2004)3 SCC 137** in which it has been held that a duty is cast on court to perform its obligation in rejecting the plaint hit by any of the infirmities under Clause (a) to (d) of Order VII Rule 11 of CPC without intervention of defendant and trial court can exercise the power under Order VII Rule 11 at any Stage of the Suit.

3.iii. He further submitted that the defendants are not



tenant of plaintiffs and have never paid monthly rent to the plaintiffs hence there has been no relation of landlord and tenant between them. The defendant-petitioner purchased the disputed land from Smt. Radhika Devi vide registered sale deed dated 23.03.1999 and constructed house over the same. The plaintiffs ought to have filed eviction suit in the Trial Court under Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, the defendant-petitioner was their tenant, but they have instituted title suit No.10 of 2000 for eviction of petitioner, hence not maintainable in law and moreover Tauzi No. has not been intentionally mentioned by the plaintiff in Schedule 1 of the plaint for the purpose of concealment of facts. The relief sought by the defendant-petitioner to reject the plaint of title suit no.10 of 2000 is bonafide and in accordance with law. He lastly submitted that the impugned order under revision is otherwise bad, illegal and is fit to be set aside.

4. Learned Counsel on the behalf of respondent submitted that the disputed land is not the joint family property and it has no concerned with the judgment and decree passed in title suit no. 80 of 1925 and first appeal no.168 of 1927 as the disputed land is the self acquired property of the Vijaywant Kumar Chaudhary (grandfather) of the answering opposite



party. The suit land was purchased by the grandfather of the answering opposite party through registered sale deed dated 29.04.1944 and thereafter he came in possession and after his death his legal heir inherited the property and also the revenue records subsisted in the name of Ramashray Prasad Choudhary. He further submitted that the title and possession of Ramashray Pd. Choudhary was confirmed in partition suit No.77 of 1948/9 of 1958 filed by Raghunandan Sah and others and first appeal no.447 of 1959 against the judgment and decree of the aforesaid partition suit was disposed of on the terms of compromise and on the basis of the said compromise decree title and possession of Ramsharay Pd. Choudhary was affirmed and later on in family partition the suit land was allotted in the share of the father of the answering opposite party. Radhika Devi never acquired title with respect to the disputed land through appeal no.102 of 1933 or appeal no.6 of 1933 or compensation appeal no.4 of 1979 as alleged in the sale deed dated 13.04.1999.

4.i. He further submitted that the Radhika Devi has no right, title and interest to execute sale deed dated 13.04.1999 in favour of defendants/petitioner. The defendant was tenant of the answering opposite party and in order to grab the disputed land a forge and fabricated sale deed was created by the defendants.



Botal Rai father of the petitioner has admitted the tenancy under Hemant Kumar Choudhary (brother of the answering Opposite Party) through the affidavit dated 07-01-1989.

4.ii. He further submitted that the sale deed in question is void in the eye of law in as much as the land in question along with other lands held by Ramashray Prasad Choudhary has been included in a land ceiling Proceeding vide land ceiling case no. 40 of 1973-1974 and 6 of 1994-1995 which is pending and in the said case the vendor of the defendant/petitioner has not claimed her right over the disputed land nor she has approached the competent authority for exclusion of the disputed land claiming that it has been wrongly included in the ceiling proceeding and the said ceiling proceeding is still pending and it is well settled principal of law that it cannot be transferred without permission of ceiling authority and the alleged sale deed has been executed by Radhika Devi without permissions of the competent ceiling authority.

4.iii. He further submitted that in aforesaid facts and circumstance the principles of *constructive res-judicata* is not applicable in this case and moreover the genuineness and validity of the sale deed in question can only be examined after



proper adjudication of the suit and the learned Trial Court has rightly dismissed the petition under Order VII Rule 11 (d) of CPC and any interference of this Hon'ble Court would cause loss and injury to the answering opposite party. He further submitted that while deciding the application under Order VII Rule 11 (d) of CPC for rejection of the plaint the court would presume that the facts mentioned in the plaint are correct and such power should be exercised with utmost caution as the dismissal of the suit at the nascent stage would lead to very serious consequence. The plaint under Order VII Rule 11 of CPC can not be rejected on the ground that there is every likelihood of relief claimed by the plaintiff `would not be granted. He lastly submitted that on the basis of the aforesaid facts the present revision is fit to be rejected.

5. The scope of Order VII Rule 11 of the CPC explained in various decisions and the legal principles deducible. The material to be considered for rejecting the plaint has been dealt with in the case of ***Dahiben v. Arvind Bhai Kalyanji Bhanusali*** reported in ***(2020) SCCONLINE 563*** The Apex court has settled the principle and made the following observations:

“12.6- At this stage, the pleas taken by the defendant in the written statement and



application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

“12.7- The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken entirety, in conjunction with the documents relied upon, would the same result in a decree being passed”.

“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.

23.9. In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint [Sopan Sukhdeo Sable Vs. Charity Commr. (2004) 3 SCC 137] on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

23.12. In Hardesh Ores (P.)Ltd. v. Hede & Co. (2007) 5 SCC 614 the Court further held that it is not permissible to cull out a



sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D.Ramachandran v. R.V. Janakiraman, (1999)3 SCC 267; See also Vijay Pratap Singh Vs. Dukh Haran Nath Singh, AIR 1962 SC 941].

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

23.15. The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.

6. On meticulously examination of the aforesaid facts and circumstance, I am of the view that the genuineness and validity of the sale deed in question can only be examined after proper adjudication of the Suit and the learned Trial Court has rightly dismissed the petition under Order VII Rule 11 (d) of CPC and any interference of this Hon'ble Court would cause



loss and injury to the answering opposite party. Moreover, a plaint cannot be rejected at the initial stage based on *constructive res-judicata*. This is because rejection of plaint under Order VII Rule 11 of the CPC requires the court to look only at the averments in the plaint and documents attached to it. *Constructive res-judicata* is mixed question of law and fact that requires a full trial for proper adjudication after evidence has been presented. *Constructive res-judicata*, is a complex issue that requires examining evidence from a previous suit (e.g., the prior judgment and the nature of the hearing). Adjudicating on the point of *constructive res-judicata* at the outset would be a premature determination of a mixed question of law and fact, which is only suitable for a trial after examination of evidence.

7. So, the court will not reject the plaint based on a claim of *constructive res-judicata* at the initial stage. The issue will be addressed during the trial, after all parties have had an opportunity to present their case and evidence. The Hon'ble Apex Court in ***Srihari Hanumandas Totala v. Hemant Vithal Kamat & Ors (2021) 9 SCC 99*** held that the adjudication of the plea of *res-judicata* is beyond the scope of Order VII, Rule 11 CPC, relevant para is as follow:-

“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.”

8. the issue of *constructive res-judicata* cannot be decided merely on assertions made in the application seeking rejection of plaint. As held by Hon’ble Apex Court in ***V. Rajeshwari v. T.C. Saravanabava, (2004) 1 SCC 551. In Keshav Sood v. Kirti Pradeep Sood Civil Appeal No. 5841 of 2023***, the Hon’ble Apex 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.”*

9. In view of the aforesaid facts, circumstances and the law discussed above, this Court does not find any valid ground for interference in the impugned order of the learned Trial Court. This Civil Revision is devoid of merit and is liable to be dismissed.

10. Accordingly, the present Civil Revision stands dismissed.

(Ramesh Chand Malviya, J)

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