IN THE HIGH COURT AT CALCUTTA
Circuit Bench at Jalpaiguri
(Via Video Conference)

BEFORE:
The Hon'ble Justice Ravi Krishan Kapur

CO/196/2024
IA NO: CAN/1/2025

SAKUNTALA DEVI MINTRI AND ORS
VS
MRS OMO YUTHOK PANGDA @ MRS OMO YUTHOK PANGDASANG AND ORS.

For the petitioner	: Mr. Sakya Sen, Advocate Mr. Debanjan Das, Advocate Mr. S. Mukherjee, Advocate
For the respondent no.1	: Mr. Anmole Prasad Senior Advocate Mr. Dipankar Deb, Advocate
For the respondent nos. 2(a) to 2(f)	: Mr. Rishav Karnani, Advocate Mr. Debabrata Sarkar, Advocate
Judgment on	: 25.08.2025

Ravi Krishan Kapur, J.:

1. This revisional application is directed against an order dated 24 October, 2024 dismissing an application filed under Order VII Rule 11 of the Code of Civil Procedure, 1908.
2. Briefly, the suit is for declaration and for consequential reliefs pertaining to a partnership firm. The firm was running a cinema hall 'Kanchan Cinema' since 1954. Thereafter, the partnership was reconstituted in 1967 with some minor changes in the composition of the partners. The partnership firm comprised of the Mintris, i.e. the group of petitioners, the Shakbpas and Pangdasangs being the other

two families of whom the respondent no. 1 is the last surviving heir and partner. The partnership firm carried on business until 2007 when the business of the firm closed down. Admittedly, no formal dissolution or distribution of the partnership assets has ever taken place.

3. It is alleged that disputes arose in 2007 when the Mintris surreptitiously mutated their names in the Records of Rights and fraudulently dealt with the immoveable property of the firm. The respondent no. 1 had challenged such mutation, but the same was rejected by the Sub-Divisional Land & Land Reforms Officer, Kalimpong.

4. Thereafter, the Mintris purported to sell the partnership asset behind the back of the other partners, belonging to the partnership firm by executing a sale deed on 21 October 2021 in favour of the respondent no. 2 herein (also the defendant no. 19 i.e. Creative Associates) who it is alleged had colluded with the Mintris to defraud the respondent no. 1 and the family of the Shakbpas being the respondent nos. 3 and 4. In this background, the respondent no. 1 filed this suit for declaration of title and cancellation of the deed of sale. Subsequently, the petitioners filed an application under Order VII Rule 11 of the Code of Civil Procedure 1908 seeking rejection of the plaint and dismissal of the suit on the ground that the suit was barred by law and the plaint failed to disclose any cause of action. By the impugned order, the application was rejected which resulted in the filing of this application.

5. The primary ground raised in seeking dismissal of the suit was limitation. It is contended by the petitioner that the relief of declaration claimed in the suit could have only been filed within a period of three years when the right to sue first arose i.e. in 2007 when the plaintiff for the first time was made aware of the Mintris refusal to accept the status of the suit premises as partnership property. As such, the period of limitation to file any such suit challenging the validity of the status of the suit property expired in 2010. No fresh cause of action could have arisen upon the execution of the sale deed in 2021.The plaintiff had full knowledge and right to sue as far back as in 2007 but chose to file this suit in 2024 which was hopelessly barred by limitation. The letter of the respondent no. 1 questioning the validity of the mutation executed by the Mintris could not have given rise to any cause of action. In support of such contention, the petitioner relies on the decisions *in Raghwendra Sharan Singh Versus Ram Prasanna Singh (2020)16 SCC 601, Rajendra Bajoria And Others v. Hemant Kumar Jalan And Others 2022 (12) SCC 641 at para 14-19, Nikhila Divying Mehta & Anr. versus Hitesh P. Sangvi & Ors. 2025 INSC 485 at para 15-19, 24-27.*
6. On behalf of the respondent, it is contended that disputes arose in 2007 when the partnership business was closed and the Mintris fraudulently and without authority of law mutated their names in respect of the partnership property. Subsequently, the parties resolved their differences and in early 2018 jointly set about putting up the assets of the partnership firm i.e. Kanchan Cinema for sale through

the efforts of Mr. B.P. Subba, Advocate and distributing the share proceeds in the ratio of their entitlements. Being the highest bidder, the respondent no. 2 i.e. Creative Associates, [Creative] offered a sum of Rs. 4.10 crores directly to the respondent no 1, which was accepted.

7. Thereafter, the petitioner and the third party Creative Associates colluded in defrauding the rights of the respondent no 1 and the Shakbpas by surreptitiously executing a deed of sale on 21.10.2021 signed only by and between the group of the Mintris and Creative Associates. Subsequently, the entire sale proceeds were illegally and fraudulently appropriated by the Mintris and wrongfully appropriated by them. In such circumstances, the cause of action has arisen only after the impugned sale had been conducted on 21.10.2021 which is the actual date from which limitation commenced and not from 16 of November, 2007, as alleged by the petitioner. In this background, the principal relief sought for is for cancellation of the impugned deed of sale dated 21 October, 2021 and there is no question of the suit being barred by limitation.

8. It is settled law that the revisional jurisdiction of the High Court is restricted to cases of illegal or irregular exercise of jurisdiction. Ordinarily, while exercising such jurisdiction the Court does not also interfere with concurrent factual findings. *(Ambadas Khanduji Shinde v. Ashok Sadashiv Mamurkar, (2017) 14 SCC 132,* and *Bihar Industrial Area Development Authority and Ors. Vs. Rama Kant Singh (2022) 4 SCC 489).*

9. By the impugned order, the Learned Court after considering all the facts and circumstances of the case refused to exercise its discretion to reject the plaint and held that the question of limitation was a mixed question of law and fact and could not be adjudicated upon without evidence being adduced by both the parties. [*Raghwendra Sharan Singh Versus Ram Prasanna Singh 2020 (16) 601* and *Abhijit Joy Ghosh v. Amit Kumar Ghosh, AIR OnLine 2024 Calcutta 420].*

10. The impugned order is adequately reasoned. In passing the same, the Learned Court has dealt with all the contentions raised on behalf of the petitioner and concluded that the question of limitation could not be decided in isolation and would require evidence. In *Popat And Kotecha Property Versus State Bank Of India Staff Association, (2005) 7 SCC 510 it has been held as follows:*

> ***16.*** *The Trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See T. Arivandandam v. T.V. Satyapal [(1977) 4 SCC 467] .)*
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> ***17.*** *It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi v. Nachhattar Singh Gill [(1982) 3 SCC 487] only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.*
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> ***18.*** *In Raptakos Brett & Co. Ltd. v. Ganesh Property [(1998) 7 SCC 184] it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was applicable.*
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> ***19.*** *There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of*

interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

23. *Rule 11 of Order 7 lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word "shall" is used clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.*

25. *When the averments in the plaint are considered in the background of the principles set out in Sopan Sukhdeo case [(2004) 3 SCC 137] the inevitable conclusion is that the Division Bench was not right in holding that Order 7 Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years needs evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11. This is not so in the present case."*

11. In view of the above, there is nothing in the impugned order which justifies any interference whatsoever. The impugned order records all the facts and circumstances of the case and deals with the contentions of the parties. This is not a case where the suit from the

statements in the plaint can be said to be barred by law. On a plain and meaningful reading of the plaint alongwith the reliefs claimed therein, it is evident that the plaintiff had sought for a declaration and consequential reliefs in respect of the deed of sale dated 21st October, 2021. The fresh cause of action insofar as the sale deed is concerned could not have accrued prior to 2021 when such sale deed was executed and registered by the petitioners. There is also no merit in the contention that the plaint does not disclose any cause of action. There is nothing which can be described as vexatious or meritless warranting dismissal of the suit at the threshold. In such circumstances, the finding of the Trial Court that the question of limitation could not be decided in isolation and required the taking of independent evidence cannot be described to be perverse, illegal or contrary to law justifying any interference whatsoever. To this extent, the decisions cited on behalf of the petitioners are distinguishable and inapposite.

12. In such circumstances, there are no grounds to interfere with the impugned order. CO/196/2024 stands dismissed. However, there shall be no order as to costs. The Learned Court is directed to proceed with the suit in accordance with law.

(Ravi Krishan Kapur, J.)