

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.41 of 2023

1. Shiv Shankar Raut @ Shankar Raut, Male, aged about 54 years, Son of Late Ram Das Raut. Resident of Village-Dhangar (Madanpur Bishwanath), P.S.-Parsauni, District-Sitamarhi, Presently Mohalla-Bajrangpuri, P.O.-Guljarbagh, P.S. Alamganj, District-Patna.
2. Hari Raut @ Hari Shankar Prasad, Male, aged about 52 years, Son of Late Ram Das Raut, Resident of Village-Dhangar (Madanpur Bishwanath), P.S.-Parsauni, District-Sitamarhi, Presently Mohalla-Bajrangpuri, P.O.-Guljarbagh, P.S. Alamganj, District-Patna.

... .. Petitioner/s

Versus

1. Chandrakala Devi, Wife of Bittan Raut, Resident of Village-Dhangar (Madanpur Bishwanath), P.S.-Parsauni, District-Sitamarhi.
2. Baiju Raut, Son of Late Bittan Raut, Resident to Village-Dhangar (Madanpur Bishwanath), P.S.-Parsauni, District-Sitamarhi.
3. Amar Raut, Son of Late Bittan Raut, Resident of Village-Dhangar (Madanpur Bishwanath), P.S.-Parsauni, District-Sitamarhi.
4. Santosh Raut, Son of Late Bittan Raut, Resident of Village-Dhangar (Madanpur Bishwanath), P.S.-Parsauni, District-Sitamarhi.
5. Mala Devi Wife of Sri Shatrudhan Raut, Resident of Village-Dhangar (Madanpur Bishwanath), P.S. Parsauni, District-Sitamarhi.

... .. Respondent/s Opposite Parties

Appearance :

For the Petitioner/s : Mr. Bishwa Nath Chaudhary, Advocate
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV ORDER

15 29-01-2026 The present Civil Revision application is being filed for setting aside the order dated 04.11.2022 passed in Title Suit no. 07 of 2021 by the learned Court of Munsif, Belsand, Sitamarhi whereby and where under the petition dated 27.06.2022 filed under Order VII Rule 11(d) of the Code of Civil Procedure (hereinafter referred to as 'CPC') was rejected.

2. Heard the learned counsel for the petitioners and



nobody appears on behalf of the learned counsel for the respondents to press this application.

3. Learned counsel on the behalf of petitioners 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 *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. Learned counsel further submits that the land in question was of one Harihar Prasad Singh and Bittan Raut the husband of Respondent no. 1 was engaged in the house of Harihar Prasad Singh and Harihar Pd. Singh given his landed property of schedule No. 1 to Bittan Raut and since 1968, Bittan Raut and further the opposite parties have been living in the Kuchha house and further averred that the petitioners have no concerned in any way from the Schedule No. 1 property.

3.ii. He further submits that earlier bittan raut, the husband of opposite party no. 1 had filed a partition suit no. 449



of 2013 before the learned court of sub judge-ivth sitamarhi for partition of the property mentioned in Schedule No. 2 between the plaintiffs and defendants which would be apparent from the Title Suit No. 449 of 2013. He further submits that from bare perusal of paragraph nos. 4 and 5 of the plaint as contained in Annexure-3 to the petition, it appears that the property of Schedule-2 has been jointly purchased by Bittan Raut and Ram Das Raut so it may be partitioned equally.

3.iii. He relied upon the judgment rendered by the Hon'ble Supreme Court in *M/s Faime Makers Pvt. v. District Deputy Registrar, Co-Operative Societies* reported in **2025 INSC 423** relevant para-11 and 13:

“11. It has been settled by this Court that the principle of res judicata applies to and binds quasi-judicial authorities. This Court in Ujjam Bai v. State of U.P. 1962 SCC OnLine SC 8 has taken the view that principles of res judicata equally apply to quasi-judicial bodies. Whenever a judicial or quasi-judicial tribunal gives a finding on law or fact, its findings cannot be impeached collaterally or in a second round and are binding until reversed in appeal or revision or by way of writ proceedings. The characteristic attribute of a judicial act or decision is that it binds, whether right or wrong. Thus, any error, either of fact or law, committed by such bodies cannot be controverted otherwise by way of an appeal or revision or a writ



unless the erroneous determination relates to the jurisdictional matter of that body.

12.....

13. From the foregoing discussion, it is evident that once a Competent Authority (quasi-judicial in nature) settles an issue, that determination attains finality unless it is set aside in accordance with law.”

3.iv. He further relied upon the judgment rendered by the Hon’ble Supreme Court in *M/s Sree Surya Developers & Promoters v. N. Sailesh Prasad & others* reported in **(2022) 5 SCC 736**, relevant para-10.1:

“10.1. As held by this Court in a catena of decisions right from 1977 that a mere clever drafting would not permit the plaintiff to make the suit maintainable which otherwise would not be maintainable and/or barred by law. It has been consistently held by this Court that if clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

3.v. He further relied upon the judgment rendered by the Hon’ble Supreme Court in *Smt. Uma Devi & others v. Sri Anand Kumar and others* reported in **(2025) 5 SCC 198**, relevant para-13, 17 & 18:

“13. A registered document provides a complete account of a transaction to any party interested in the property. This Court in Suraj Lamp & Industries (P) Ltd. (2) v.



State of Haryana held as under: (SCC pp. 664-65, para 15)

"15.... 17. ... Registration of a document (when it is required by law to be, and has been affected by a registered instrument]" gives notice to the world that such a document has been executed.

18. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property. as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is of are the person(s) presently having right, title, and Interest in the property. It gives solemnity of form and perpetuates documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and gas far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the



registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified.”

17. *In Dahiben v. Arvindbhai Kalyanji Bhanusali, (SCC p. 377, para 23) it is stated as under:*

“23... 23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.”

18. *In our considered opinion, the trial court had rightly allowed the application of the appellant-defendants under Order 7 Rule 11 CPC, holding that the suit filed by the plaintiffs was a meaningless litigation, that it did not disclose a proper cause of action and was barred by limitation. There were thus no justifiable reasons for the appellate court to have remanded the matter to the trial court”*

3.vi. He lastly submits that the prayer of partition of suit property is basically challenging the previous decree. A mere clever drafting would not permit the plaintiff to make the suit maintainable which otherwise is not maintainable. Therefore, the same issue cannot be raised and decided in the present suit and the continuance of the present suit would



amount to an abuse of the process of the Court. Accordingly, the impugned order under revision is otherwise bad, illegal and is fit to be set aside.

4. Learned counsel for the respondents are not appearing since last several dates to press this application, despite giving enough opportunity for his arguments.

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 Hon'ble 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 Hardeh 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 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 *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. *Res judicata* is mixed question of law and facts that requires a full trial for proper adjudication after evidence has been presented. *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 *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 *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*** reported in **(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 *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*** reported in **(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. Moreover, issue raised by the petitioners about *res judicata* and limitation cannot be decided at this preliminary stage since they constitute mixed question of law and facts and need detailed hearing. In any case, issue of limitation in partition suit is hardly material and no question could arise on this aspect of the matter. 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)

Anand Kr

U			
---	--	--	--

