

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CIVIL REVISIONAL JURISDICTION**

Present:

The Hon'ble Justice Debangsu Basak

**C.O. No. 208 of 2024
Tapasi Saha @ Tapashi Saha
Vs.
Mridul Kanti Das & Ors.**

For the Petitioner	: Mr. Sibasis Ghosh, Adv. Mr. Haider Ali, Adv. Mr. Satyam Sarkar, Adv.
For the Opposite party/ Plaintiff	: Mr. Saptangsu Basu, Sr. Adv. Mr. Bijay Bikram Das, Adv.
Hearing Concluded on	: January 09, 2026
Judgement on	: January 14, 2026

DEBANGSU BASAK, J.:-

1. A defendant in a suit for declaration, injunction and cancellation of title deed has assailed the order No. 35 dated October 1, 2024 passed by the learned Civil Judge Senior Division at Jalpaiguri in Title Suit No. 155 of 2019.
2. For the sake of convenience parties herein are referred to as 'plaintiff' and 'defendant' in the manner as they are appearing in the title suit.
3. Learned advocate appearing for the defendant has submitted that, the defendant filed an application under

Order 7 Rule 11 of the Code of Civil Procedure, 1908 stating that, the plaint filed by the plaintiffs did not disclose any cause of action. He has referred to the allegations made in the plaint. He has also referred to the contentions of the defendant in the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908. He has pointed out that, the application of the defendant was filed on January 13, 2020. He has also pointed out that, the plaintiffs had filed an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 on January 27, 2020.

4. Relying upon **2023 Volume 4 Calcutta High Court Notes 320 (Shri Kamal Kishor Jhawar vs. Shri Sunil Jhawar and others)** and **2009 Volume 2 CLJ (Cal) 276 (Nellimarla Jute Mills Company Ltd. vs. Rampuria Industries & Investments Ltd.)** learned advocate appearing for the defendant has contended that, the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 was required to be heard and decided first prior to the learned Trial Judge hearing and deciding the application under Order 6 Rule 17 thereof.

5. Learned advocate appearing for the defendant has relied upon **2016 Volume 14 Supreme Court Cases 275 (R.**

K. Roja vs. U. S. Rayudu and Another) and contended that, an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 can be filed at any stage and that, without disposing of such an application, the Court cannot proceed with the trial.

6. Learned Senior Advocate appearing for the plaintiffs has contended that, the plaintiffs sought to amend the plaint in order to incorporate certain facts which the plaintiffs came to know subsequent to the filing of the suit.

7. Learned Senior Advocate appearing for the plaintiffs has contended that, pendency of an application for rejection of the plaint should not prevent a Court to consider and decide an application for amendment. He has contended that, in the event, the proposed amendments cure any defect in the suit, the same should be allowed and such an application should be heard and decided prior to the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908. In support of such contentions, he has relied upon **AIR 1951 Cal 262 (Ahmed Hossein vs. Mt. Chembelli and Ors.)** and **2009 Volume 3 CHN 24 (Nellimarla Jute Mills Company Ltd. Vs. Rampuria Industries & Investments Ltd.)**.

8. The plaintiffs had filed Title Suit No. 155 of 2019 in the Court of the learned Civil Judge Senior Division at Jalpaiguri seeking a decree for declaration that, the plaintiffs are owners of the Schedule-B property which includes Schedule-A property and that, the defendant has no right, title and interest in respect of Schedule A and Schedule B property and that, the specified title deeds in respect of the suit properties all involving the defendant, are void and not binding upon the plaintiffs as also a decree for perpetual injunction.

9. In such suit, the defendant had filed an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 on January 13, 2020. During the pendency of such an application, the plaintiffs had filed an application under Order 6 Rule 17 of the Code of Civil Procedure, 1908 seeking introduction of various pleadings in the body of the plaint and some prayers in the plaint.

10. It appears from the materials made available on record that, the plaintiffs, have claimed right, title and interest in support of the suit property through heirs, legal representatives of one Sahabuddin. The defendant has claimed right, title and interest in support of the suit property through one Jamila Khatun.

11. It appears from the records that, one Kafayatulla, since deceased was the original owner of the suit properties. Kafayatulla, since deceased had three sons, namely, Kafiruddin, Sahabuddin and Earuddin and two daughters, namely, Khahitan Bewa and Sajai Nesha. The heirs and legal representatives of Kafayatulla, since deceased had by an original deed of partition dated June 7, 1963 partitioned various immoveable properties including the suit properties. Kafiruddin beine one of the sons of Kafayatulla, since deceased, died intestate leaving behind four sons, namely, Bisharu Md., Tafijuddin, Mosharaf Hossain and Basiruddin and six daughters, namely, Julfi Nesha, Javeda khatun, Batashi Nesha, Sakina Nesha, Jamila Khatun, Aadhari Nesha.

12. Through the amendment petition, the plaintiffs have sought to introduce pleadings to the effect that, Md. Sahabuddin, a son of Kafayatulla, since deceased, enjoyed the suit property openly, continuously, and uninterruptedly denying the right, title and interest of Kafayatulla at all material point of time. Essentially, the plaintiffs have sought to introduce a case of adverse possession of Md. Sahabuddin in respect of the suit properties as the brothers and sisters of Md. Sahabuddin subsequent to the deed for partition.

13. The defendant has claimed title to the suit property through Jamila Khatun, a daughter of Kafiruddin Muhammad who is one of the sons of Kafayatulla. According to the defendant, the record of rights were wrongfully altered, contrary to the deed of partnership dated June 7, 1963.

14. Learned Trial Judge by the impugned order has decided to take up the application for amendment first prior to deciding upon the application for rejection of plaint. It is this decision that has been assailed in this revisional application.

15. **Ahmed Hossein (supra)** has considered the issue with regard to proposed amendment and the power to reject the plaint under Order 7 Rule 11 of the Code of Civil Procedure, 1908. It has held as follows :-

“6. What then is the object of Order 7, Rule 11? The rule contemplates four cases viz: (a) whose the plaint does not disclose a cause of action; (b) where the relief claimed has been undervalued; (c) where court fees of full value have not been supplied and (d) where the suit appears on the face of the plaint to be barred by any law. In none of these cases even if the rule had not been enacted could a decree have been passed. In cases (a) and (d) no decree could be passed for the reason that either there was no cause of action of which a decree could be passed or that the suit was barred. In cases (b) and (c) by reason of Sections 6 and 28, Court-fees Act, the plaint would be invalid and no Court would file or record it. In the absence of a provision like Order 7, Rule 11 in cases (a) and (b) the suit would have to be dismissed and in cases (b) and (c) the plaint would not be entertained or if entertained the suit would have to be dismissed. Order 7, Rule 11 provides that the

suit will not be dismissed but only the plaint will be rejected. Order 7, Rule 13 provides that if the plaint is so rejected the plaintiff will not be precluded by reason of each rejection only from filing another suit on the same cause of action. The object of Order 7, Rule 11 therefore is really to prevent the ordinary consequences of dismissal viz., to prevent the filing of another suit on the same cause of action that is to say prevent another suit filed on the same cause of action from being barred. If such is the object, it cannot be defeated by allowing the plaint to be amended so as to remove the defect and prevent the operation of Order 7, Rule 11. The result of saying that when Order 7, Rule 11 applies the plaint cannot be amended would be to say that it was the intention of the Legislature that the parties would be compelled to have the suit dismissed and start afresh and made to throw away large costs incurred in the first suit. It strikes me as absurd to say that this was what the Legislature intended. In my view therefore Order 7, Rule 11 does not in the least affect or take away the Court's powers or duties as to amendment and all necessary amendments should be made even if Order 7, Rule 11 applies.”

16. Ahmed Hossein (supra) has been noted and applied in **Nellimarla Jute Mills Company Ltd. (supra)**. The Co-ordinate Bench has found justification in the learned Trial Judge taking up the application for amendment first prior to the application for rejection of the plaint.

17. Shri Kamal Kishor Jhawar (supra) has directed decision on the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 after noticing that a direction to do so was passed by the High Court in an earlier round of litigation. In my view it has not held that, an application for amendment

cannot be decided prior to an application for rejection of the plaint being decided.

18. *R. K. Roja (supra)* has held that, an application for rejection of the plaint can be filed at any stage and that, the averments made in the plaint are relevant for the purpose of consideration thereof. It has also held that, trial of the suit cannot proceed without a decision on the application for rejection of the plaint. In the instant case, trial is yet to commence.

19. The instant suit has been filed in 2019 and is, therefore, governed by the amended provisions of Order 7 Rule 11 of the Code of Civil Procedure, 1908.

20. Subsequent to ***Ahmed Hossein (supra)***, two more grounds for rejection of the plaint have been added to Order 7 Rule 11 of the Code of Civil Procedure, 1908. Of the grounds available for rejection of the plaint, ***Ahmed Hossein (supra)*** has noted that, even in absence of provisions like Order 7 Rule 11 in cases of and clauses (a) and (d) thereof, the suit would have to be dismissed. In cases of clauses (b) and (c), if the plaintiff did not take steps as directed by the Court, the plaint would not be entertained or if entertained, the suit would have to be dismissed. The two additional grounds,

namely clauses (e) and (f) of Order 7 Rule 11 have required the Court not to accept a plaint or if accepted, to reject the same, if the same was not filed in duplicate, in terms of clause (e) and to reject the plaint if the plaintiff failed to comply with the provisions of Order 7 Rule 9 of the Code of Civil Procedure, 1908 under clause (f).

21. The proposition of law as laid down in ***Ahmed Hossein (supra)*** that, Order 7 Rule 11 of the Code of Civil Procedure, 1908 does not in the least affect or take away the Court's power or duties as to amendment and that, all necessary amendment should be made even if Order 7 Rule 11 applied, has not been established to be incorrect. Rather, the law seems to be that, a plaintiff should be allowed to carry out the amendments if such amendments cure any primary defect of the suit.

22. In the facts and circumstances of the present case, learned Trial Judge has decided to take up for consideration the application for amendment first before deciding the point of maintainability.

23. It is not the case of the defendant that, the suit is barred by law. The claim for rejection of the plaint is based on the allegations that the plaint does not disclose any cause of

action. Nondisclosure of the cause of action is premised upon the claim of the title suit property through a particular person. Claim of title of the plaintiffs to the suit is, however, through a different person. By the amendments sought to be introduced, the plaintiffs are seeking to explain why, the defendant cannot claim title to the property and why, the title of the plaintiffs to the suit property are in accordance with law.

24. The decision of the learned Trial Judge as returned by the impugned order of hearing the application for amendment first prior to deciding on the application for rejection of the plaint is not found to suffer from any material irregularities warranting inference under Article 227 of the Constitution of India.

25. C.O. No. 208 of 2024 is dismissed without any order as to costs.

[DEBANGSU BASAK, J.]