



IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR

BEFORE

HON'BLE SHRI JUSTICE ASHISH SHROTI

ON THE 17th OF MARCH, 2026

MISC. PETITION No. 1168 of 2023

LAXMINARAYAN SHARMA AND OTHERS

Versus

SMT SARVATI DEVI AND OTHERS

.....
Appearance:

Mr. Harshvardan Sharma - Advocate for the petitioners.

Mr. Saurabh Parashar - Advocate for respondents no.1 to 6.

.....
ORDER

The present petition has been filed by the petitioners challenging the order dated 13.09.2022 passed by the learned 5th Civil Judge, Junior Division, Morena in RCS-A No.45/2022, whereby their application under Order 7 Rule 11 of the Code of Civil Procedure has been rejected by the learned Trial Court.

2. Respondent No.1 to 6 (hereinafter referred to as the 'plaintiffs') have filed a civil suit seeking declaration of title and permanent injunction against the petitioners and respondent no.7 to 19 in respect of land bearing Survey No.415/2 situated at Village Hingona Khurd, Tehsil and District Morena.

3. Upon service of notice, the petitioners (Defendant No.14 to 18) appeared and filed an application under Order 7 Rule 11 CPC seeking rejection of plaint on the ground that an earlier suit for the same relief, based on the same cause of action, had already been dismissed as abated under Order 22 Rule 9 CPC. They, therefore, prayed for rejection of the plaint under clauses (a) & (d) of Order 7 Rule 11 CPC. The respondents filed reply opposing the application. It was contended that the earlier suit was not decided on merits and, therefore, the principle of *res*



judicata is not attracted. It was further submitted that the issue of *res judicata* cannot be adjudicated at the stage of deciding an application under Order 7 Rule 11 CPC. The plaintiffs also contended that the present suit is based on a fresh cause of action.

4. The learned Trial Court, vide the impugned order dated 13.09.2022, accepted the contentions of the plaintiffs and rejected the application, holding that the issue of *res judicata* involves mixed questions of law and facts which should be decided as a preliminary issue. the learned Trial Court also observed in its order that from the order dated 18.08.2021, passed in previous suit, it is not clear as to whether it was in relation to same property or not. It was further observed that while deciding an application under Order 7 Rule 11 CPC, only the averments made in the plaint are to be considered. Aggrieved by the said order, the present petition has been filed.

5. Learned counsel for the petitioners challenged the impugned order on the ground that the plaintiffs had earlier filed a suit on identical grounds in respect of the same property. By referring to the plaint of the earlier suit as well as the present suit, it was submitted that the claim of the plaintiffs in both suits is based on adverse possession over the suit property. Referring to the order dated 18.08.2021, it was submitted that the earlier suit was dismissed as abated due to failure on the part of the plaintiffs to bring on record the legal heirs of plaintiff no.1 and defendant no.6. It was argued that in view of Order 22 Rule 9 CPC, the present suit is barred. It was further submitted that the cause of action in the present suit is essentially the same as in the earlier suit, and that by clever drafting, an attempt has been made to project it as a fresh cause of action. Accordingly, it was contended that the plaint is liable to be rejected as being



barred under Order 22 Rule 9 CPC.

6 . *Per contra*, learned counsel for the plaintiffs submitted that the application under Order 7 Rule 11 CPC was filed invoking principle of *res judicata*. It is his submission that the issue of *res judicata* cannot be decided at the initial stage in the absence of evidence. It was further submitted that the plaintiffs have fairly disclosed the factum of filing and disposal of the earlier suit in the present plaint. It was contended that the present suit is based on a distinct and subsequent cause of action and, therefore, the plaint cannot be rejected. It was also argued that the application filed by defendants was not specifically based on Order 22 Rule 9 CPC, as has been contended by the petitioners. On these grounds, dismissal of the petition was prayed for.

7. Considered the arguments and perused the record.

8. The controversy involved in this case centers around the provisions of Order 7 Rule 11 CPC which provides for rejection of plaint on the grounds enumerated in clause (a) to (d). The Apex Court has dealt with this provision in the case of *Dahiben vs. Arvinbhai Kalyanji Bhanusali* reported in (2020)7 SCC 366 . Exhaustively dealing with the provision, the Apex Court held as under:

"23.1. We will first briefly touch upon the law applicable for deciding an application under Order 7 Rule 11 CPC, which reads as under:

11. Rejection of plaint.—The plaint shall be rejected in the following cases :

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;*
- (c) where the relief claimed is properly valued but*



the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of Rule 9:

Provided that the time fixed by the court for the correction of the valuation or supplying of the requisite stamp-papers shall not be extended unless the court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-papers, as the case may be, within the time fixed by the court and that refusal to extend such time would cause grave injustice to the plaintiff.”

(emphasis supplied)

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.

23.3. 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.

23.4. In Azhar Hussain v. Rajiv Gandhi [Azhar Hussain v. Rajiv



Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words : (SCC p. 324, para 12)

“12. ... The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation, the court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

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.

23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] , read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.7. Order 7 Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under:

“14. Production of document on which plaintiff sues or relies.—(1) Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in court when the plaint is presented by him and



shall, at the same time deliver the document and a copy thereof, to be filed with the plaintiff.

(2) Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3) A document which ought to be produced in court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

(4) Nothing in this Rule shall apply to document produced for the cross-examination of the plaintiff's witnesses, or handed over to a witness merely to refresh his memory.”

(emphasis supplied)

23.8. Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

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 on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]

23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction



with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC 512] which reads as : (SCC p. 562, para 139)

“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.12. In Hardesh Ores (P) Ltd. v. Hede & Co. [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 v. 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 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to



trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823].

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (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."

9. From the aforesaid pronouncement of law by Apex Court, it is evident that the plaint alongwith the documents filed by plaintiff can be considered while considering the application under Order 7 Rule 11 CPC. The defence taken in written statement and the documents relied upon by defendants cannot be looked into at this stage. Further, the conditions enumerated in the provision are required to be strictly adhered to as the power being exercised by the Court is a drastic one. The Court has further laid down that, if the Court comes to a conclusion that the plaint does not disclose any cause of action and/or is barred under some law, the same is mandatorily required to be rejected. Keeping into account, the aforesaid legal position, the facts of the present case are required to be examined.

10. The main thrust of argument of learned counsel for the petitioners is that the present suit is barred under Order 22 Rule 9 CPC. For that, the learned counsel compared, before this Court, the pleadings of the earlier suit with those of the present suit and submitted that even from a bare reading of the two plaints, it is evident that the earlier suit was between the same parties, was in respect of the same property and based on the same cause of action. From the order dated 18.08.2021, it is evident that the suit was dismissed as abated. He also argued that plaintiffs have no cause of action and for that purpose, the Court can rely upon the



undisputed documents, such as the order passed by the Court.

11. However, the copy of plaint of earlier suit as also the order, dated 18.08.2021, passed in in earlier suit are not filed by plaintiff but have been filed by defendants. Therefore, the same cannot be looked into for purposes of decision of the application under Order 7 Rule 11 CPC. Even though the plaintiff has not specifically denied genuineness of these documents, as held by Apex Court, the conditions of Order 7 Rule 11 CPC are to be strictly followed, the documents relied upon by defendants cannot be relied upon at this stage.

12. Subject to proof of pleadings and order passed in earlier suit, the Court is further required to look into following aspect of the matter.

13. In the present suit, the plaintiffs have averred in para 7 of the plaint that, during pendency of earlier suit, there was out of court settlement between the parties to the suit. The plaintiffs have pleaded as under in para 7 of the present suit:

"7 (सात)- यहकि दौराने विधारण उक्त बाद वादी कं० 01 के पति एवं वादी कं० 02 के पिता जोरवार का स्वर्गवास हो जाने के उपरांत वादीगण एवं प्रतिवादीगण के मध्य न्यायालय के बाहर परस्पर स्वेच्छयापूर्वक राजीनामा होकर उक्त तथाकथित विकयपत्र दिनांक 05/06/2010 (पांच/छ /दो हजार दस) नविस्ते वैजंतीदेवी वाहक लक्ष्मीनारायण प्रभावहीन व निष्प्रभावी होना स्वीकार करते हुये, विचाराधीनवाद को वापस लेने के पश्चात् पृथक से लिखतम लिखा जाना तय होने से मुताबिक समझौता विचाराधीन बाद को प्रथमतः वापस लेने की शर्त के अनुकम में बादीगण के द्वारा मुताबिक समझौता माननीय न्यायालय के समक्ष दिनांक 01/04/2021 को एक आवेदन उक्त बाद को वापस लिये जाने हेतु अंतर्गत आदेश 23 नियम 01 सहपठित धारा 151 शि०प्र०संहिता का प्रस्तुत किया गया जिसके विचाराधीन रहते बिना किसी गुण-दोषों के आधार पर केवल तकनीकी आपारो पर दिनांक 18/08/2021 को बाद निराकृत कर दाखिल रिकॉर्ड कर दिया गया।"

14. The plaintiffs, in para 8 of plaint, then pleaded that despite pendency of application under Order 23 Rule 1 CPC, the suit was disposed of without



consideration of merits. Taking disadvantage of the same and contrary to the settlement reached, the defendant no.1 in collusion with other defendants, started interfering with their possession of suit property. Thereafter, in para 9 of the plaint, the cause of action is stated to have arisen on 25.12.2021.

15. Thus, if the factum of out of court settlement is established by plaintiffs in the present suit, then alone they can have a fresh cause of action, else the suit would be barred under Order 22 Rule 9 CPC.

16. In view of aforesaid, this Court is of the opinion that the learned Trial Court is justified in rejecting the application under Order 7 Rule 11 CPC and holding that the issue can be tried as preliminary issue.

17. The impugned order, dated 13.09.2022 passed by the learned 5th Civil Judge, Junior Division, Morena in RCS-A No.45/2022, is accordingly **upheld**. The learned Trial Court is however, directed to try the issue of maintainability of present suit by framing suitable preliminary issue.

18. With the aforesaid, the petition stands **disposed of**.

(ASHISH SHROTI)
JUDGE

bj/-