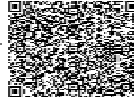




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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-5029-2024(O&M)
Reserved on: 04.02.2026
Pronounced on: 17.04.2026
Uploaded on: 17.04.2026

Amra and another

..... Petitioners

Versus

Aasam Khan and others

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present: Mr. Jai Vir Yadav, Senior Advocate, with
Mr. Ashutosh Sharma, Advocate, for the petitioners.

Mr. Ashish Aggarwal, Senior Advocate, with
Mr. Anmol Rattan S. Dhillon, Advocate, and
Mr. Devansh Verma, Advocate, for the respondents.

VIKRAM AGGARWAL, J.

The instant petition, preferred under Article 227 of the Constitution of India, assails the order dated 24.05.2024 (Annexure P.4), passed by the Court of Civil Judge (Junior Division), Nuh, vide which the application filed by the petitioners-defendants (hereinafter referred to as 'the petitioners') under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (for short 'the CPC') for rejection of the plaint, was dismissed.

2. The respondents-plaintiffs (hereinafter referred to as 'the respondents') instituted a suit (Annexure P-1) for declaration to the effect that judgment and decree dated 10.12.1997 passed in Civil Suit No. 19 of 1995, was illegal, null and void and was

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obtained by fraud and misrepresentation and sale deed dated 01.02.2006 and mutation Nos. 3079, 3080, 3028 and 3029, were not binding on the rights of the plaintiffs. Consequential relief of possession and permanent injunction was also sought.

2.1 It was claimed that one Mohd. Ishq @ Ishaq and Rahim Khan had purchased land measuring 9 bighas from Sardar Khan vide sale deed dated 25.03.1958. After consolidation proceedings, land measuring 38 kanals 9 marlas (fully detailed in the plaint) situated within the revenue estate of village Rewasan, Tehsil Nuh, District Nuh, Gurgaon, was allotted to Mohd. Ishaq @ Ishaq and Rahim Khan. The said sale deed was challenged by Amra son of Sardar Khan by way of a civil suit, which was dismissed by the trial Court on 29.12.1961, but the appeal filed against the said decision was allowed by the Court of Additional District Judge, Gurugram on 07.03.1963. The predecessors of plaintiff Nos. 6 to 14 filed RSA- 709-1963 before the High Court, which was decided on 29.07.1973 and defendant No.1 and others (successors-in-interest of Sardar Khan) were held entitled to take possession of the land after depositing a sum of Rs.6503/-.

2.2 It was further averred that on the basis of the decision in the aforesaid Regular Second Appeal, defendant No. 1 and others filed Civil Suit No. 19 of 1995, which was decreed *ex parte* by the Court of Civil Judge (Junior Division), Nuh, vide judgment and decree dated 10.12.1997. The said judgment and

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decree was sought to be declared as illegal, null and void on the ground that it was obtained by fraud and misrepresentation.

3. An application (Annexure P-3) was moved under Order 7 Rule 11 CPC by the petitioners seeking rejection of the plaint. It was averred that the suit filed by the plaintiffs was barred under Order 2 Rule 2 CPC and by res-judicata as the judgment and decree passed in the earlier suit regarding the land in dispute between the parties, was upheld upto the Hon'ble Supreme Court and the same had attained finality. It was further averred that the suit filed by the respondents-plaintiffs was also barred by limitation.

4. Vide the impugned order, the said application was rejected, leading to the filing of the present revision petition.

5. Learned counsel for the parties were heard.

6. It was strenuously urged by learned Senior Counsel, representing the petitioners that the trial Court had erred in dismissing the application for rejection of the plaint. It was argued that the suit filed by the respondents was barred by limitation and the pleas taken in the civil suit were totally vague. Reference was made to para No.9(vi) of the plaint, wherein it was mentioned that the respondents-plaintiffs had played fraud upon the petitioners and when they learnt about it, the suit was filed.

6.1 It was further argued by learned Senior Counsel for the petitioners that the earlier judgment and decree was passed on 10.12.1997, whereas the instant suit was filed on

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23.07.2024. While drawing the attention of this Court to the vague pleas of the respondents as regards limitation, it was argued that having remained in slumber for more than two decades, the suit filed by the respondents-plaintiffs was hopelessly barred by limitation and, thus, the approach of the trial Court in rejecting the application filed by the petitioners, was not tenable in the eyes of law. It was also argued that the cause of action, at best, had arisen to the plaintiffs when the Regular Second Appeal was dismissed by this Court and/or when the SLP was dismissed by the Hon'ble Apex Court. It was further argued that the trial Court had erred in law in holding that the question of limitation being mixed question of law and facts was to be decided on the basis of the evidence to be led by the parties. It was, thus, argued that in the present case, keeping in view the stated facts, it cannot be said that limitation is a mixed question of law and facts. In support of his contentions, learned counsel placed reliance upon the decisions rendered by the Hon'ble Supreme Court of India in **T. Arivandandam v. T.V. Satyapal, 1977 AIR (SC) 2421; Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by LRs., 2019 AIR (SC)1430; Pathupati Subba Reddy (Died) by L.Rs. & Ors. v. The Special Deputy Collector (LA), 2024(4) SCR 241; and Ramisetty Venkatanna & Anr. v. Nasyam Jamal Saheb & Ors., 2023(2) Law Herald (SC) 1005.**

6.2 While emphasizing that the suit filed by the respondents was hit by the principle of res-judicata, it was

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argued that Civil Suit No.19 of 1995 between the parties was decided vide judgment and decree dated 10.12.1997 by the trial Court. Regular Second Appeal No. 478 of 1998 against the said judgment and decree was dismissed by this Court on 19.08.2001 and even the SLP was also dismissed by the Hon'ble Apex Court on 19.10.2001. It was argued that the findings recorded in the said judgment and decree having attained finality, it was not open to the respondents-plaintiffs to file a fresh civil suit on the same cause of action.

6.3 It was also argued that the plaintiffs had concealed material facts from the Court inasmuch as it was not disclosed that another case i.e. Civil Suit No.158 of 1999 was also filed on 30.10.1999 by Khubi Ahmed (predecessor-in-interest of plaintiff Nos. 12 to 14) etc. The said suit was dismissed on 16.11.1999 and one of the grounds for dismissal of the said civil suit was that it was barred by provisions of Order 2 Rule 2 CPC. It was argued that it is settled law that one who seeks equity must do equity. However, in the instant case the plaintiff did not disclose material facts before the Court and, therefore, the plaint was liable to be rejected.

6.4 It was also argued that the plaintiffs had taken intermingling pleas in the present proceedings. While making reference to the decision in RSA-709-1963 (arising out of the earlier civil suit) and Civil Suit No.158 of 1999, it was argued that the latter suit was filed by the predecessors-in-interest of some of the plaintiffs and the trial Court, while dismissing the

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said suit vide judgment and decree dated 16.11.1999, had categorically recorded a finding that the same was barred by the provisions of Order 2 Rule 2. It was argued that once it was held by the trial Court that Civil Suit No. 158 of 1999 was barred by the provisions of Order 2 Rule 2 CPC, the instant suit too was hit by the principle of res-judicata and therefore the very approach of the learned trial Court in rejecting the application filed by the petitioner was totally erroneous.

6.5. It was also argued that Banni Khan (predecessor-in-interest of plaintiffs No.1 to 4) had also filed objections to the execution of the judgment and decree dated 10.12.1997 passed in Civil Suit No.19 of 1997, but the same were dismissed by the Court concerned. It was also argued that this vital fact was also not disclosed by the plaintiffs while filing the instant suit.

7. Per contra, Mr. Ashish Aggarwal, learned Senior counsel representing the respondents, submitted that there is no irregularity in the impugned order, warranting interference in revisional jurisdiction. It was argued that the respondents-plaintiffs had challenged the judgment and decree dated 10.12.1997 on the ground of fraud and misrepresentation and as fraud vitiates everything, there is no limitation prescribed to challenge such an act. It was, thus, argued that the suit filed by the respondents-plaintiffs was not barred by limitation.

7.1 It was further argued that in the earlier suit, Asan Khan and Islam Khan, were not parties and, therefore, the decision in the previous suit would not operate as res-judicata in



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the present proceedings. Reliance was placed upon the judgment of the Hon'ble Apex Court in **Pandurangan Vs. T. Jayarama Chettiar & Another, 2025(3) RCR (Civil) 659** and **Keshav Sood Vs. Kirti Pradeep Sood and others, 2023 SCC Online SC 2459**.

7.2 It was further submitted that apart from the relief of declaration, the relief of permanent injunction had also been sought and, therefore, the plaint could not have been rejected by invoking the provisions of Order 7 Rule 11 CPC. Learned Senior counsel submitted that, at best, a preliminary issue can be framed as regards limitation, and the same can be decided as per law. In support of his contentions, learned Senior counsel placed reliance upon the decisions rendered by the Hon'ble Supreme Court of India in **Kum. Geetha, D/o Late Krishna & Ors. v. Nanjundaswamy & Ors., 2023 AIR SC 5516; Kulabandhu Ram Adarsh Sharma v. Nam Estates Private Limited and Anr. [CA-11413-2025, decided on 02.09.2025 (LFID: 2789332)]; Babasaheb Ramdas Shirole & Ors. v. Rohit Enterprises & Ors., 2026(1) RCR (Civil) 60; Sri Boyenepally Srijayavardhan v. V. Nirupama Reddy & Ors. [CA-9904-2025, decided on 29.07.2025 (LFID: 27770460]**, and this Court in **Baljeet and others v. Prem Chand and others, 2025(2) RCR (Civil) 591; Jagbir Singh v. Roshni and others, 2025(2) RCR (Civil) 625**.

7.3 As regards the principle of res-judicata, it was argued that it is settled principle in law that the issue of res-

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judicata cannot be decided in an application under Order 7 Rule 11 CPC and the same requires a detailed examination of the pleadings, issues and the decision in the previous suit. Reliance was placed upon the judgments of the Hon'ble Apex Court in **Pandurangan Vs. T. Jayarama Chettiar & Anr., 2025(3) RCR (Civil) 659** and **Keshav Sood Vs. Kirti Pradeep Sood and others, 2023 SCC Online SC 2459**.

8. I have considered the submissions made by learned counsel for the parties.

9. Before advertng to the merits of the case, it would be apposite to examine the principles that are required to be kept in mind while dealing with an application moved under Order 7 Rule 11 CPC. It is well settled that for the purpose of deciding an application for the rejection of plaint, only the contents of the plaint as also the documents annexed thereto, are to be looked into, and the material produced by the parties, be it in the application for rejection of the plaint or in reply thereto is not to be considered. Reference in this regard can be made to the judgment of Hon'ble Apex Court in the case of **Kuldeep Singh Pathania v. Bikram Singh Jaryal, 2017 AIR SC 593**.

10. As regards the issue of limitation, the law is well settled that limitation is not a pure question of law and, therefore, unless, a plaint, on the face of it, is barred by limitation, it should not be rejected at the threshold on the ground of limitation. While taking such a view, the Hon'ble Apex Court in ***Kulabandhu Ram Adarsh Sharma's case (supra)***,



held that limitation is a mixed question of law and facts, and that normally an application under Order 7 Rule 11 CPC should not be dismissed on the ground of limitation, especially when the trial Court has taken a view and has dismissed the same. In ***Babasaheb Ramdas Shirole & Ors.'s case (supra)*** also, the Hon'ble Apex Court held that limitation is a mixed question of law and facts, and unless the same is patently and unequivocally clear, it cannot form a ground under Order 7 Rule 11 CPC for non-suiting the plaintiff:-

“7. As regards the first aspect, it is well settled that limitation is a mixed question of law and fact and unless the same is patently and unequivocally clear, it cannot form a ground under Order VII Rule 11 of the CPC for non-suiting a plaintiff. In the case on hand, perusal of the plaint indicates that the plaintiffs claimed that the cause of action arose in October 2023, when defendant No. 1 started quarrelling with them for the first time, showing his true colors by trying to grab the suit properties and interfering with their peaceful possession over the same.”

11. In the case of **C.S. Ramaswamy v. V.K. Senthil and others, 2022(4) RCR (Civil) 426**, the Hon'ble Apex Court had upheld the rejection of a plaint on the ground of limitation holding that the plaintiffs cannot be permitted to bring suits within the period of limitation by clever drafting, which otherwise are barred by limitation. A view was taken that if the suit, on the face of it, from the averments of the plaint, appears



to be barred by limitation, the same was not required to be continued only on the ground that limitation was not a pure question of law. The view, which, therefore, emerges is that normally limitation being a mixed question of law and facts, a plaint should not be rejected on the ground of limitation unless the plaint, on the face of it, appears to be barred by limitation.

12. In the case of ***Kum. Geetha. D/o Late Krishna & Ors.' s case (supra)***, it was held that the plaint cannot be rejected in part:-

“11. There is yet another reason why the judgment of the High Court is not sustainable. In an application under Order VII Rule 11, CPC a plaint cannot be rejected in part. This principle is well established and has been continuously followed since the 1936 decision in Maqsd Ahmad v. Mathra Datt & Co AIR 1936 Lahore 1021. This principle is also explained in a recent decision of this Court in Sejal Glass Ltd. v. Navilan Merchants (P) Ltd, (2018) 11 SCC 780 which was again followed in Madhav Prasad Aggarwal v. Axis Bank Ltd. (2019) 7 SCC 158. The relevant portion of Madhav Prasad (supra) is extracted hereinunder:

10. We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11 (d) CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power under Order 7 Rule 11 (d) CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in Sejal Glass Ltd. [Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., (2018) 11 SCC 780:



(2018) 5 SCC (Civ) 256) is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11 (d) CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the Director's Defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against Defendant 1 company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11 (d) CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can and other plaintiffs to have patience as lot of documents and revenue entries have to be updated before dividing the suit schedule properties and give separate possession to each sharers including plaintiffs.”

13. A similar view was taken by the Hon'ble Apex Court in ***Sri Boyenepally Srijayavardhan's case (supra)***.

14. As regards the issue of res-judicata, it is now well settled that the same cannot be decided in the proceedings under Order 7 Rule 11 CPC and it requires consideration of pleadings of the parties, the issues and previous decision. It is further well settled that at the stage of an application under Order 7 Rule 11 CPC, the Court can look only into the averments made in the plaint and at best, documents produced along with the plaint and the defence of the defendant and documents relied upon cannot be looked into.

15. The Hon'ble Apex Court in ***Panduranga's case (supra)***, held that the issue of res-judicata cannot be decided



merely on the assertions made in the application seeking rejection of the plaint and such adjudication is beyond the scope of Order 7 Rule 11. It was held as under:-

“8. In *Srihari Hanumandas Totala v. Hemant Vithal Kamat & Ors*, (2021) 9 SCC 99, this court held that the adjudication of the plea of res judicata is beyond the scope of Order VII, Rule 11 CPC, the court held:

"25. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7, Rule 11 (d) can be summarised as follows:

25.1. To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to.

25.2. The defence made by the defendant in the suit must not be considered while deciding the merits of the application.

25.3. To determine whether a suit is barred by res judicata, it is necessary that (i) the "previous suit" is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.

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.

(emphasis supplied)

9. Issue relating to whether the ex parte decree is obtained by collusion, or whether the defendant No. 1, as alleged, has played fraud by filing a suit in a court having no jurisdiction or whether the



appellant is a bonafide purchaser or not need to be examined in detail. This Court has held that such circumstances require an in-depth examination of the previous decree, and its impact on the second suit. *Res judicata* cannot be decided merely on assertions made in the application seeking rejection of plaint. As held by this Court in *V. Rajeshwari v. T.C. Saravanabava*, (2004) 1 SCC 551. identifying similarity in causes of action should be a matter for trial where documents from the first suit are studied and analysed. *Res judicata* cannot be a matter of speculation or inference. In *Keshav Sood v. Kirti Pradeep Sood*, Civil Appeal No. 5841 of 2023. this 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."

A similar view was taken by the Hon'ble Apex Court in **Keshav Sood's** case (supra).

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16. Reverting to the facts of the instant case, the respondents-plaintiffs had filed a suit for declaration, possession and permanent injunction. Such declaration had been sought in respect of the previous judgment and decree dated 10.12.1997 being null and void and not binding and effective qua the rights of the respondents-plaintiffs. Apart from the said relief, the respondents-plaintiffs had also sought declaration to the effect that the sale deed dated 01.02.2006 was also wrong, illegal, null and void and ineffective qua their rights. No doubt, in the earlier round of litigation, predecessor(s) of some of the plaintiffs were parties, but all the respondents-plaintiffs were not parties in the said civil suit and, therefore, any decision in the previous civil suit, cannot be the basis to hold that the instant suit is barred by res-judicata. Apart from that, the respondents-plaintiffs also pleaded that the said judgment and decree had been obtained by fraud. Such pleas can only be decided by the trial Court on the basis of evidence to be led by the parties and not on an application under Order 7 Rule 11 CPC.

17. Though the submission of learned Senior counsel for the petitioners as regards the pleas taken by the respondents-plaintiffs as to when they had come to know about the alleged fraud committed upon them, appears to be attractive at the first blush, yet the fact remains that the respondents-plaintiffs have raised the plea of fraud and misrepresentation in respect of the judgment and decree dated 10.12.1997 and have also sought the relief of declaration in respect of the sale deed dated 01.02.2006.

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The question of limitation being mixed question of law and facts, the plaint cannot be rejected on the ground of limitation on an application under Order 7 Rule 11 CPC. The plaint, on the face of it, does not appear to be barred by limitation which may have led to its rejection at the threshold. The trial Court may, however, frame preliminary issues as regards limitation and res-judicata, if so warranted in law and then proceed to decide them in accordance with law.

18. I have gone through the judgments relied upon by learned counsel for the parties. The judgments referred to by learned counsel for the petitioners deal with law as regards the rejection of a plaint and where the plaint had been rejected on the ground of limitation. However, the same had been done in the peculiar facts of those cases. Under the circumstances, the said judgments would not come to the aid of the petitioners.

19. Consequently, the instant revision petition is found to be devoid of merit and is accordingly dismissed.

20. Pending application(s), if any, also stands disposed of.

(VIKRAM AGGARWAL)
JUDGE

April 17, 2026
ds

Whether speaking / reasoned: Yes
Whether Reportable : Yes