



**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL REVISION No.10 of 2021**

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- 1.1. Arun Singh, Son of late Hanuman Singh, Presently residng at House of Dinesh Prasad Singh, Pankaj Poltry Firm, New L.I.C. Colony, Shivpuri, P.O. and P.S. Lal Bahadur Shastrinagar, District- Patna.
- 1.2. Shashi Shekhar Singh, Son of late Hanuman Singh, Presently residng at House of Dinesh Prasad Singh, Pankaj Poltry Firm, New L.I.C. Colony, Shivpuri, P.O. and P.S. Lal Bahadur Shastrinagar, District- Patna.
- 1.3. Shri Krishna Singh, Son of late Hanuman Singh, Presently residng at House of Dinesh Prasad Singh, Pankaj Poltry Firm, New L.I.C. Colony, Shivpuri, P.O. and P.S. Lal Bahadur Shastrinagar, District- Patna.
- 1.4. Anjani Kumar Son of late Hanuman Singh, Presently residng at House of Dinesh Prasad Singh, Pankaj Poltry Firm, New L.I.C. Colony, Shivpuri, P.O. and P.S. Lal Bahadur Shastrinagar, District- Patna.
- 1.5. Amar Kumar Singh, Son of late Hanuman Singh, Presently residng at House of Dinesh Prasad Singh, Pankaj Poltry Firm, New L.I.C. Colony, Shivpuri, P.O. and P.S. Lal Bahadur Shastrinagar, District- Patna.
2. Anand Raj Singh @ Anand Raj Son of Late Awadhpati Mahto @ Awadhpati Singh resident of village and Post office- Boulipu, P.s.- Jagdishpur, District- Bhojpur.

... .. Petitioner/s

Versus

1. Udai Shankar Singh son of late Rampati Singh resident of village/post office- Boulipur, P.S.- Jagdishpur, District- Bhojpur.
2. Sumitra Devi wife of late Mukund Raj resident of village/post office- Boulipur, p.s.- Jagdishpur, District- Bhojpur.
3. Abhinash Kumar son of late Mukund Raj resident of village/post office- Boulipur, P.O.- Jagdishpur, District- Bhojpur.
4. Ritik Kumar son of late Mukund Raj resident of village/post office- Boulipur, P.S.- Jagdishpur, District- Bhojpur.

... .. Respondent/s

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For the Petitioner/s	:	Mr. Pandit Jee Pandey, Advocate Mr. Ramendra Pati Tripathy, Advocate
For the Respondent No. 1	:	Mr. Rajesh Kumar, Advocate Mr. Sunil Kumar, Yadav, Advocate





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**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA**  
CAV ORDER

12 07-05-2026 Heard the learned counsel for the petitioners and the learned counsel for the respondents.

2. This Civil Revision application is filed under Section 115 of the Code of Civil Procedure (hereinafter referred to as 'CPC') against order dated 24.06.2020 passed by the learned Sub-Judge, Jagdishpur, Bhojpur (hereinafter referred to as 'Trial Court') whereby and where under the petition dated 12-06-2019 filed on behalf of petitioners under Order VII rule 11(a) of the CPC was rejected.

3. Factual matrix giving rise to the present case is that the Opposite Party No. 1 (plaintiff) instituted Title Suit No. 119 of 2018 before the learned Trial Court, seeking declaration, injunction and other consequential reliefs, *inter alia*, on the assertion that the parties are descendants of three brothers, namely, Rampati Singh (father of the plaintiff), Awadhpati Singh and Hanuman Singh (defendant no. 1), and that there had been a partition of the joint family properties, which was reduced into writing by way of a Memorandum of Partition dated 24.03.1983. The plaintiff, while acknowledging the said partition, alleged that there were irregularities in the allotment





of shares and further pleaded that certain lands described in Schedule-I of the plaint were entrusted to defendant no.1 for cultivation and for liquidation of a loan taken for purchase of agricultural implements, with an understanding that after repayment of the loan, the said lands would be divided equally among the three branches. It is further the case of the plaintiff that defendant no.1, in collusion with others, alienated the Schedule-I lands, including the alleged share of the plaintiff, and in lieu thereof, provided lands described in Schedule-II to the plaintiff, over which he claims to be in possession. The plaintiff has further alleged that in the year 2018, the defendants attempted to interfere with his possession over Schedule-II lands, which gave rise to the present cause of action for filing the suit.

4. Upon appearance, the defendants (petitioners herein) filed an application under Order VII Rule 11 of the CPC, praying for rejection of the plaint on the grounds that the suit is vexatious and does not disclose any cause of action and is barred by law, particularly by limitation and principles of estoppel, inasmuch as the admitted partition dated 24.03.1983 had been fully acted upon by the parties for more than three decades without any objection, and the present suit is an attempt





to reopen a concluded partition. The plaintiff, however, opposed the said application by filing a rejoinder denying the contentions of the defendants.

5. Considering the facts and circumstances of the case and after hearing the parties, the learned Trial Court, *vide* order dated 24.06.2020, rejected the application filed under Order VII Rule 11 of the CPC, holding that the plaint could not be rejected at that stage, which order is under challenge in the present Civil Revision Application.

6. Learned counsel for the petitioners submitted that the learned Trial Court committed a manifest illegality in rejecting the application filed under Order VII Rule 11(a) of the CPC, and that the impugned order is illegal, improper, and contrary to the mandatory provisions of law, and is therefore liable to be set aside. It was submitted that the learned Trial Court wholly failed to appreciate that the plaintiff, in the plaint itself, has unequivocally acknowledged the partition among the brothers of his father, which was reduced to writing on 24.03.1983. It was further submitted that the learned Trial Court failed to take into consideration the undisputed fact that the said partition of 1983 was fully accepted and acted upon by all parties thereto, including the father of the plaintiff and the





plaintiff himself, for a period of approximately thirty-five years, and that the plaintiff cannot now be permitted to resile from the said arrangement, as he is estopped from doing so under the principles of estoppel and the provisions of Section 115 of the Indian Evidence Act, given that the arrangement has been fully acted upon by all concerned parties.

**6.i.** It was further submitted that the reliefs sought by the plaintiff in the present suit are plainly barred by the law of limitation in view of Articles 58 and 59 of the Schedule to the Limitation Act, 1963, which prescribe a period of three years for filing a suit to cancel or set aside an instrument or a decree, for recession of a contract, or for obtaining any other declaration. It was accordingly submitted that the suit being barred by limitation and estoppel, the same constitutes a valid and sufficient ground for rejection of the plaint under Order VII Rule 11(d) of the CPC. It was further submitted that the learned Sub-Judge illegally confined his consideration only to Order VII Rule 11(a) of the CPC, thereby ignoring the bar under clause (d) thereof, which is equally applicable and cannot be treated as redundant.

**6.ii.** It is further submitted that the learned Trial Court failed to appreciate that the plaintiff, in the plaint itself, has





clearly and unambiguously acknowledged the partition among his father's brothers vide the Memorandum of Partition dated 24.03.1983, and that neither the plaintiff nor his father had ever challenged the recitals, schedules, or allotment of lands made under the said partition during a period of approximately 35 years prior to the filing of the present suit in 2018. It was submitted that such admission in the plaint has conferred a perfected right and possession upon the respective shareholders, which cannot be disturbed after such an inordinate lapse of time, and that this renders the plaint liable to rejection on the ground of limitation and estoppel under Order VII Rule 11(d) of the CPC.

**6.iii.** It was further submitted that the learned Trial Court failed to consider that the plaintiff has sought to set up a vexatious and fictitious case with the sole intent of reopening the partition effected among his father's brothers in the year 1983, and that the plaintiff's case as set out in the plaint is directly contrary to the recitals and schedules of the Memorandum of Partition dated 24.03.1983, which clearly indicate that the Schedule-1 lands were allotted to defendant No. 1 in lieu of repayment of the joint family debt, subject to subsequent division among the parties upon repayment of the loan.





**6.iv.** It was further submitted that the learned Trial Court failed to appreciate that the Memorandum of Partition dated 24.03.1983 constitutes an instrument within the meaning of the relevant provisions of law, and that Article 59 of the Schedule to the Limitation Act, 1963 prescribes a period of three years for filing a suit to cancel or set aside such an instrument or for rescission of a contract, which period has long since expired.

**6.v.** It was further submitted that the learned Trial Court, while passing the impugned order, wholly failed to consider that the right to sue, if any, to challenge or seek any declaration in relation to the said partition, first accrued to any party thereto within three years from the date of the Memorandum of Partition, i.e., from 24.03.1983, as prescribed under Article 58 of the Schedule to the Limitation Act, 1963, and accordingly the present suit is hopelessly barred by limitation.

7. Learned counsel for the opposite party submitted that the impugned order has no infirmity and illegality. The petition of defendant 1<sup>st</sup> party under Order VII Rule 11 (a) of the CPC is not maintainable in the eyes of law as well as on fact. He further submitted that for deciding the petition under Order VII





Rule 11 (a) of the CPC the court has to look entire averments made in the plaint because cause of action is bundle of fact and at this stage the written statement or evidence of any of the parties is not permissible in law to be considered. He further submitted that while deciding the application of rejection of plaint the court has to look only to the allegations to the plaint and should assumed then to be correct for the time being and then to ascertain whether these allegations disclose a cause of action or not.

**7.i.** It is also submitted that the plaint, on a meaningful reading, clearly discloses a cause of action inasmuch as the plaintiff has specifically pleaded entrustment of Schedule-I land, its subsequent unauthorized alienation by defendant no. 1 (petitioners herein), and adjustment by way of Schedule-II land over which the plaintiff is in possession. It is further submitted that the allegation of interference with such possession in the year 2018 constitutes a fresh and subsisting cause of action, justifying institution of the suit.

**7.ii.** He further submitted that in paragraph 10 of the plaint Defendant No. 1 is attempting to interfere with the plaintiff's possession over the Schedule-2 land, which necessitated the filing of the present suit, and the cause of action therefore arose on





16.05.2018 and 08.06.2018. Learned counsel submitted that the pleas raised by the defendants with regard to limitation, estoppel and the effect of the Memorandum of Partition dated 24.03.1983 cannot be decided at the stage of Order VII Rule 11 of the CPC, as the same involve disputed and complex questions of fact requiring evidence. Learned counsel further submitted that the plaintiff is not seeking to set aside the partition simpliciter, rather his claim is based on subsequent transactions and arrangements *inter se* the parties, the validity and effect of which can only be adjudicated upon trial. Therefore, it is submitted that the application filed by the defendants was rightly rejected.

**7.iii.** It is lastly submitted that the scope of interference in revisional jurisdiction is limited and unless there is patent illegality or jurisdictional error, this Court ought not to interfere with the discretionary order passed by the learned Trial Court. According to the learned counsel, no such illegality or material irregularity is made out in the present case and, as such, the present Civil Revision Application is fit to be dismissed.

**8.** Having considered the rival submissions advanced on behalf of the parties and have perused the materials available on record, including the impugned order and the plaint filed before the learned Trial Court, the point that arises for





determination in the present revision is “*whether the learned Trial Court erred in law in rejecting the application under Order VII Rule 11 of the CPC seeking rejection of the plaint?*”

9. Before advertng to the rival contentions on merits, it would be apposite to notice the scope of interference in exercise of revisional jurisdiction under Section 115 of the CPC. This Court does not sit as a court of appeal over the order of the subordinate court; interference is warranted only where the learned Trial Court has exercised a jurisdiction not vested in it by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, unless the finding recorded by the learned Trial Court is shown to suffer from a patent error of law or jurisdictional infirmity, this Court would be slow to substitute its own view merely because another view is possible.

10. The contours of revisional jurisdiction under Section 115 of the CPC have been authoritatively delineated by the Hon’ble Apex Court in *Shiv Shakti Coop. Housing Society v. Swaraj Developers and Ors.*, reported in (2003) 6 SCC 659, wherein it has been held that the revisional power is supervisory in nature and cannot be equated with appellate jurisdiction; interference is permissible only where the subordinate court has





acted without jurisdiction or with material irregularity in the exercise of such jurisdiction. Similarly, in *Hindustan Petroleum Corporation Ltd. v. Dilbahar Singh*, reported in (2014) 9 SCC 78, the Hon'ble Apex Court reiterated that re-appreciation of facts or substitution of a possible view is impermissible in revision unless the impugned order suffers from patent illegality or perversity.

11. Moreover, 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 Apex court has settled the principle and made the following observation:

***“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.*

*23.6. Under Order 7 Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I, (2004) 9 SCC512], read in conjunction with the documents relied upon, or whether the suit is barred by any law. 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. **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.** The test for exercising the power under Order VII 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 & Anr., (2004) 9 SCC512) which reads as:(SCC p.562, para 139) In 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 Vs. Dukh Haran Nath Singh, AIR 1962 SC 941]. 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.*

12. Upon overall consideration of the pleadings of the parties and perusal of the materials available on record, this Court finds that the plaintiff/Opposite Party No.1 has, in the





plaint itself, acknowledged the existence of a Memorandum of Partition dated 24.03.1983 among the three branches of the family and the consequent allotment of shares. At the same time, the plaintiff/Opposite Party No.1 has set up a distinct and subsequent case that certain lands (Schedule-I) were entrusted to defendant no. 1 (petitioners herein) for a specific purpose and, upon their alleged alienation, lands described in Schedule-II were given in adjustment, over which the plaintiff/Opposite Party No.1 claims possession. The pleadings further disclose an allegation of interference with such possession in the year 2018. Thus, the case of the plaintiff/Opposite Party No.1 is not a direct challenge to the partition simpliciter, but is founded upon subsequent transactions and alleged adjustments *inter se* the parties.

**13.** From a meaningful and holistic reading of the plaint, it cannot be conclusively inferred at this stage that the suit is barred by limitation on the face of it. Although the defendants have laid considerable emphasis on the delay of several decades from the date of partition, the plaintiff has pleaded a continuing cause founded upon subsequent dealings and alleged interference in the year 2018. Whether such pleadings are ultimately sustainable or are merely a device to





overcome the bar of limitation is a matter which would require adjudication on evidence at the stage of trial. The applicability of Articles 58 and 59 of the Limitation Act, 1963, in the facts of the present case, would therefore depend upon determination of the true nature of the claim of the plaintiff, the character of possession, and the effect of the alleged subsequent arrangement, all of which involve disputed questions of fact.

14. The Hon'ble Apex Court in *Inder Singh v. The State of Madhya Pradesh*, reported in *2025 LiveLaw (SC) 339* has settled the position with respect to limitation and has observed as under:

*“There can be no quarrel on the settled principle of law that delay cannot be condoned without sufficient cause, but a major aspect which has to be kept in mind is that, if in a particular case, the merits have to be examined, it should not be scuttled merely on the basis of limitation.”*

15. It is well settled that while considering an application under Order VII Rule 11 of the CPC, the Court is required to confine itself strictly to the averments made in the plaint and the documents relied upon therein, without embarking upon an enquiry into disputed questions or evaluating the defence of the defendants. Rejection of plaint under clause (d) is permissible only where the suit appears to be





barred by law from the statements made in the plaint itself, and such bar must be apparent and unambiguous. In the present case, the question whether the suit is barred by limitation or by principles of estoppel cannot be determined without a deeper examination of the factual matrix, and therefore, the same cannot be adjudicated at the threshold stage.

**16.** In the aforesaid circumstances, this Court is of the considered opinion that the pleas raised by the defendants-petitioners pertain to mixed questions of facts and law, which are required to be decided on the basis of evidence during the course of trial. The learned Trial Court, therefore, cannot be said to have committed any jurisdictional error or material irregularity in rejecting the application under Order VII Rule 11 of the CPC, and the impugned order does not warrant interference in revisional jurisdiction.

**17.** In view of the discussions made hereinabove, this Court is of the considered opinion that no case for interference is made out with the impugned order dated 24.06.2020 passed by the learned Sub-Judge, Jagdishpur, District-Bhojpur in Title Suit No. 119 of 2018. The learned Trial Court has rightly held that the plaint cannot be rejected at the threshold and that the issues raised require adjudication upon evidence.





**18.** Accordingly, the present Civil Revision Application, being devoid of merit, is hereby dismissed.

**19.** There shall be no order as to costs.

**20.** Let the copy of this order be transmitted to the Court concerned forthwith.

**(Ramesh Chand Malviya, J)**

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