

A.F.R.

Judgment Reserved on- 19.03.2026

Judgment Delivered on- 25.03.2026

Neutral Citation No. - 2026:AHC:61524

Court No. - 39

Case :- FIRST APPEAL No. - 44 of 2026

Appellant :- Rajesh Kumar

Respondent :- Rakesh Kumar Sharma And 4 Others

Counsel for Appellant :- Mohit Kumar Shukla, Sr. Advocate

Counsel for Respondent :- Anjul Dwivedi, Mohit Kumar, Sai Girdhar, Sanjay Agrawal, Vandana Mishra

Hon'ble Sandeep Jain, J.

1. The instant appeal has been filed by the plaintiff under Section 96 CPC against the impugned judgment and decree dated 15.11.2025 passed by the court of Civil Judge(Senior Division)/FTC, Bulandshahr in O.S. No. 863 of 2020 Rajesh Kumar vs. Rakesh Kumar and others whereby defendant no.1's application no.125-C2 under Order VII Rule 11 CPC was allowed and consequently, the plaint was rejected.

Plaint case

2. Factual matrix is that the plaintiff/appellant filed O.S.no. 863 of 2020 against defendant of the 1st part Rakesh Kumar Sharma(defendant no.1) and defendants of the 2nd part Dinesh Kumar Sharma, Mukesh Kumar Sharma, Naresh Kumar Sharma and Urmi Sharma(defendants no.2 to 6) with the averments that the plaintiff and defendants are real brothers and sister, the defendants of the 2nd part are formal parties, against whom no relief has been claimed. It was further averred that the instant suit has been filed seeking declaration of Will dated 17.8.1998 and family settlement dated 25.4.2006.

3. It was further averred that the plaintiff 's mother Late Kamal Rani Sharma wife of Late Ramkrishan Sharma from her personal ornaments, stridhan, etc., purchased disputed property no.1 through sale deed dated 16.10.1962 and the disputed property no. 2 was purchased by the funds provided by plaintiff, plaintiffs father Late Ramkrishan Sharma and defendant of the 1st part, in the name of plaintiffs and defendant of the 1st part 's maternal uncle Durga Prasad through sale deed on 9.11.1967. It was further averred that plaintiffs father Ramkrishan Sharma died on 2.12.2005 and plaintiffs mother Late Kamal Rani Sharma died on 17.9.1991.

4. It was further averred that in the year 1971 late Ramkrishan Sharma

and defendant of 1st part jointly constituted a firm for conducting the business of Vishal cinema and for this the defendant of the 1st part and plaintiffs maternal uncle Durga Prasad transferred the disputed property no. 2 and the plot of land towards east of this property measuring 245 square yard to firm Vishal Enterprises on 21.9.1976 and thereafter, the plaintiff, plaintiffs father Ramkrishan Sharma, defendant of the 1st part Rakesh Kumar Sharma and defendant no. 3 Mukesh Kumar Sharma became its partners. It was further averred that on 17.12.1976 the sale deed of the above vacant plot measuring 245 square yard was executed by the firm in favour of defendant no.2 Dinesh Kumar Sharma, of which he is the sole owner in possession.

5. It was further averred that late Ramkrishan Sharma for managing the entire property of the family made a oral family settlement on 31.12.2003 in the presence of plaintiff, defendants and their relatives, which was made with the consent of all, so as to avoid any dispute in future. The above oral family settlement was reduced into writing as a memorandum in the presence of relatives on 25.4.2006, according to which the half portion of disputed property no.1 towards South was given to plaintiff and the remaining half portion towards North was given to defendant no.3 Mukesh Kumar Sharma and similarly, in disputed property no. 2 Dinesh Kumar Sharma and Rakesh Kumar Sharma became owners in possession of 1/2 –1/2 portion. It was further averred that the above family settlement was acted upon and in accordance with it, the respective parties are in possession of their respective shares as owners.

6. It was further averred that 5 – 6 years after the death of Ramkrishan Sharma, the intention of defendant of the 1st part became malafide, who intended to usurp the disputed property no.1 and 2, who began to assert his ownership in the above property, in respect of more share than he was entitled to. It was further averred that the defendant of the 1st part disclosed to the plaintiff for the 1st time on 7.10.2020 that in the year 1998 a Will was executed by Ramkrishan Sharma in his favour, who rejected the ownership of plaintiff, to which the plaintiff was surprised. The plaintiff got inspected the records of the registrar office, Bulandshahr and applied for the certified copy of the alleged Will dated 17.8.1998, which was obtained on 13.10.2020, then the plaintiff became aware of all the facts regarding the above Will.

7. It was further averred by the plaintiff that the above Will of Ramkrishan Sharma dated 17.8.1998 was a forged and void document because Late Ramkrishan Sharma during his lifetime, never discriminated between his sons, but the Will was discriminatory, in which illegally plaintiff and defendants Mukesh and Naresh were excluded. It was further averred that Late Ramkrishan Sharma

himself on 20.9.1997 partitioned the family property among all the heirs and subsequently, on 31.12.2003 again an oral family arrangement was made in which all his legal heirs were given equal rights in the property. It was further averred that the above alleged Will was a benami transaction in which wrongly in the annexed map, the eastern part of property no.1 was shown to be included in property no. 2 and also the plot of defendant Dinesh Kumar Sharma, was not shown in the map. It was further averred that the map annexed with the alleged Will was against the actual ground situation. It was further averred that in the alleged Will wrong reason was assigned by Ramkrishan Sharma to exclude plaintiff and defendants Mukesh Kumar Sharma and Dinesh Kumar Sharma from the property. It was further averred that the alleged Will was disclosed after about 15 years, which was never acted upon, which itself makes it suspicious. It was further averred that Late Ramkrishan Sharma was not the owner of the property disclosed in the alleged Will, he was only the head of the family, who had no right to execute the Will regarding the family property. It was further averred that at the time of the alleged execution of the above Will, Late Ramkrishan Sharma, was very old and infirm, whose mental capacity was very weak, as such, he could not have executed the alleged Will. It was further averred that from the year 1998 till the year 2005, Ramkrishan Sharma never disclosed to the family about the alleged Will, which also makes it suspicious. It was further averred that the defendant of the 1st part, being an advocate, by taking advantage of the weak mental condition of Ramkrishan Sharma has managed to prepare a fraudulent Will, which was rather in the nature of a family settlement, regarding which the consent of legal heirs was not taken.

8. It was further averred that the alleged Will dated 17.8.1998 was a forged, fabricated and void document, which was prepared by the defendant of the 1st part in order to usurp the disputed property. It was further averred that the memorandum of oral family settlement dated 25.4.2006 was a valid and legal document regarding which declaration needs to be claimed from the court. It was further averred that the suit has been filed within limitation from the date of knowledge of the alleged Will. In the above backdrop, the plaintiff claimed the following reliefs from the court :-

(i) By a declaratory decree passed in favour of the plaintiff against the defendant of the 1st part, the alleged Will dated 17.8.1998, which is registered in the office of registrar Bulandshahr be declared void and ineffective document and its information be sent to the concerned registrar.

(ii) By decree of declaration made in favour of plaintiff, it be declared that regarding the disputed property the oral family memorandum dated 25.4.2006 is valid and effective document, which is binding on the parties.

Defendant's application under Order VII Rule 11 CPC

9. During the pendency of the suit the defendant of the 1st part Rakesh Kumar Sharma moved an application no.125-C2 under Order VII Rule 11 CPC with the averments that the instant suit has been filed for cancellation of the Will and for declaring valid the alleged family settlement, which has been insufficiently valued, on which advalorem court fees is to be paid, which is to be determined in the issue that has been framed regarding its valuation, as such without paying the appropriate court fees the suit is barred under Order VII Rule 11(c) CPC. It was further averred that the plaintiff has got no cause of action, since the property no. 2 is a cinema hall, the ownership of which lies with Rakesh Kumar Sharma and Durga Prasad . It was further averred that Durga Prasad in his statement to the court, had stated himself to be the benami, the real owner being Ramkrishan Sharma, whereas in the alleged Will, Rakesh Kumar Sharma was disclosed to be its owner, as such, regarding this property the plaintiff has got no right to sue. It was further averred that in the plaint, the plaintiff has disclosed that the above cinema was constructed with the assistance of plaintiff, plaintiffs father Ramkrishan Sharma and defendant of the 1st part Rakesh Kumar Sharma, but no evidence has been led regarding this fact. From the papers filed by the plaintiff, it was proved that Rakesh Kumar Sharma was the owner in possession of the above property.

10. It was further averred that the alleged family settlement was neither registered nor duly stamped, as such, it was inadmissible in evidence ,which has also not been signed by all the members of the family, which has also not been acted upon till date, because as per the settlement it was agreed that every son(brother) shall give an amount of ₹ 7.50 lakh to his sister Urmila Sharma, which was never paid, which does not bear the signature of Rakesh Kumar Sharma and Urmila, which was time barred since the limitation for seeking its declaration was only 3 years.

11. It was further averred that the Will was dated 17.8.1998, a copy of which was sent to the plaintiff by Ramkrishan Sharma through registered post, which was also published in the newspaper, letters were written to the defendant Rakesh Kumar Sharma in this regard, a reply was also submitted by the plaintiff through his counsel Sheel Kumar Garg, the documentary evidence of which has been filed by the defendant in the suit, which proves that the plaintiff was aware of the alleged Will since the year 1998, and for getting cancelled any document the limitation under Article 59 was only 3 years, as such, the relief of cancellation of the alleged Will was time barred, due to which the plaintiff 's suit was not legally maintainable. With these

averments, it was prayed that the suit be rejected.

**Plaintiffs objection to the above application under Order VII
Rule 11 CPC**

12. The plaintiff filed his objection paper no.126-C2 in the trial court in which it was averred that the issue of court fees was yet to be decided by the court. It was further averred that only after evidence of plaintiff, the facts alleged by the defendant could be decided. It was further averred that the issue of limitation was a mixed question of law and fact, which can only be decided after evidence of the parties. It was specifically denied by the plaintiff that he ever received any notice regarding the alleged Will, which was a concocted story set up by the defendant, which can only be proved after evidence of the parties. It was further averred that since the alleged Will was not in the knowledge of the plaintiff as such, the suit for the cancellation of the alleged Will has been filed within a period of 3 years from the date of its knowledge, which was well within the prescribed period of limitation. It was further averred that the application has only been filed by the defendant in order to delay the disposal of the suit, which was not legally maintainable, which was liable to be dismissed with costs of at least ₹ 20,000/-, so that the defendant may not be able to delay the disposal of the suit on one pretext or the other.

Conclusion of the trial court

13. The trial court considered that since on the basis of pleadings of the parties issues in the suit have already been framed on 19.7.2022, and issue no. 7 related to whether the suit of the plaintiff was barred under Order VII Rule 11 CPC, as such it was appropriate to examine the evidence on record.

14. The trial court considered that since the original Will dated 17.8.1998 was available on record, regarding which a registered notice was sent to the plaintiff on 5.9.1998, a photo copy of the postal receipt was filed on record by the defendant, a reply to that notice was submitted by plaintiff through his counsel on 6.10.1998, which was not denied by the plaintiff in his objection, which duly proved that the plaintiff was aware of the alleged Will dated 17.8.1998 after the receipt of the notice dated 5.9.1998, but in spite of the knowledge of the above Will, a suit was not filed seeking its cancellation, whereas, the limitation for filing a suit for getting declared a document void was 3 years from the date of its knowledge. The trial court opined that since the suit was filed by the plaintiff on 7.12.2020, whereas, the plaintiff became aware of the alleged Will on 6.10.1998, as such, the suit was filed 19 years after the expiry of the prescribed period of limitation. On this reasoning, the trial court concluded that

the suit seeking relief of cancellation of the alleged Will dated 17.8.1998 was barred by limitation.

15. It was further concluded by the trial court that since the primary relief was sought regarding the cancellation of the alleged Will, which was barred by limitation, as such, the ancillary relief seeking declaration of the memorandum of family settlement was also time barred. In view of the above reasoning, issue no. 7 was decided against the plaintiff, in favour of defendant and consequently, the defendant's application under Order VII Rule 11 CPC was allowed, whereby the suit was dismissed, aggrieved against which, the plaintiff has filed the instant appeal under Section 96 CPC.

Submissions of the learned counsel of the parties

16. Sri Tarun Agarwal learned Senior Counsel for the plaintiff appellant submitted that it is well settled that an application Order VII Rule 11 CPC is to be decided only on the basis of plaint averments and documents submitted by the plaintiff, and for its disposal, the written statement and the documents submitted by the defendants cannot be considered by the court, but in the instant case, the trial court has relied upon the documents submitted by the contesting defendant, which were denied by the plaintiff, which were never proved in accordance with law. Learned counsel further submitted that at no stage there was any admission by the plaintiff that he was aware of the alleged Will in the year 1998, as such, the trial court has erred in presuming that the plaintiff has admitted that it had knowledge of the Will wayback in the year 1998. It was further submitted that a categorical denial about the knowledge of the Will was made in the objection submitted by the plaintiff to the defendants Order VII Rule 11 CPC application, but still, the trial court has presumed that denial to be an admission on the part of the plaintiff, which is a perverse finding, which is legally unsustainable.

17. It was further submitted that although on the basis of pleadings of the parties, issues were framed by the trial court on 19.7.2022, but no evidence was led by either of the parties, as such, no evidence was available to decide the issue of limitation. Learned counsel further submitted that since no oral evidence was led by the parties as such, the trial court could not have decided the issue of limitation, which was a mixed question of law and fact. Learned counsel further submitted that the trial court has only decided the issue as to whether the suit was barred under Order VII Rule 11 CPC, which can only be decided on the basis of plaint averments and the documents submitted by the plaintiff.

18. Learned counsel further submitted that the trial court has made a

fundamental error in considering the documentary evidence of the defendant for deciding the issue, whereas, it could not have been legally considered, since, the parties had not led any oral evidence till that stage. Learned counsel further submitted that had the trial court considered the oral and documentary evidence of the parties and thereafter, decided the issue of limitation, then the position would have been different, but in this case, no such course was adopted by the trial court. It was further submitted that on the basis of plaint averments, it was proved that the plaintiff only became aware of the alleged Will on 07.10.2020, and after obtaining its certified copy, the suit for its cancellation has been filed on 7.12.2020, which is well within the prescribed period of limitation from the date of its knowledge. Learned counsel further submitted that the contesting defendant will get opportunity to adduce contrary evidence, and after considering the oral and documentary evidence on record, certainly the issue of limitation can be decided against the plaintiff. With these submissions, it was prayed that the appeal be admitted for hearing, allowed and the defendant's application under Order VII Rule 11 CPC be rejected. In support of his submission, the learned counsel has relied upon the case law of *Kuldeep Singh Pathania vs. Bikram Singh Jaryal (2017) 5 SCC 345*.

19. Per contra, learned counsel for the contesting defendant/respondent Rakesh Kumar Sharma submitted that a vague denial about the knowledge of the alleged Will was made by the plaintiff in his objection paper no.126-C2, whereas a specific denial should have been made to the defendants application under Order VII Rule 11 CPC, which amounts to an admission that the plaintiff had knowledge of the Will since the year 1998, as such, the trial court has not erred in dismissing the plaintiff's suit being barred by limitation. Learned counsel in support of his submissions has relied on the following case law :

(i)*Badat & Co. Bombay vs. East India Trading Co. 1964 AIR SC 538 (By 3 Judges)*.

(ii)*Karam Kapahi and others vs.M/S Lal Chand Public Charitable Trust & Another (2010) 4 SCC 753*.

20. I have heard the learned counsel of the parties, perused the impugned order and documents submitted with the appeal. **Appeal is admitted.**

21. On the basis of the submissions of the learned counsel of the parties, the following questions arise for determination in this appeal :-

(i)*Whether the trial court erred in considering the objection and documents of the contesting defendant, for deciding the application under*

Order VII Rule 11 CPC ?

(ii) Whether in the absence of oral evidence on record, the issue of limitation, being mixed question of law and fact, could have been decided by the trial court at the threshold under Order VII Rule 11 CPC ?

(iii) Whether the provisions of Order VIII Rule 5 CPC are applicable on the objection paper no. 126-C2 submitted by the plaintiff to the defendants application under Order VII Rule 11 CPC?

Conclusion of this Court

22. The Apex Court in the case of ***Vinod Infra Developers Ltd. vs. Mahaveer Lunia and others 2025 INSC 772*** has held that at the preliminary stage of deciding Order VII Rule 11 CPC application, the court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected.

23. The Apex Court in the case of ***Keshav Sood vs. Kirti Pradeep Sood and others 2023 SCC OnLine SC 2459*** has held that the 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 defendant and documents relied upon by him cannot be looked into while deciding such application.

24. It is apparent from the above law laid down by the Apex Court in the case of ***Vinod Infra*** (supra) and ***Keshav Sood*** (supra) that at the time of deciding Order VII Rule 11 CPC application, the court has to look into only the averments made in the plaint and the documents submitted by the plaintiff. The court has not to examine the written statement of the defendant or the documents submitted by it. Further, the court has also not to examine the plaintiffs case on merit to determine whether he is going to succeed or not ? It is also apparent that if any triable issue arises out of the pleadings of the plaintiff, then the plaint cannot be summarily rejected.

25. The Apex Court in the case of ***Sri Biswanath Banik and another vs. Sulanga Bose and others (2022)7 SCC 731***, while discussing the issue of suit being barred by limitation under Order VII Rule 11 CPC, held as under:-

“7. Now, so far as the issue whether the suit can be said to be barred by limitation or not, at this stage, what is required to be considered is the averments in the plaint. Only in a case where on the face of it, it is seen that the suit is barred by limitation, then and then only a plaint can be rejected under Order 7 Rule 11(d)CPC on the ground

of limitation. At this stage what is required to be considered is the averments in the plaint. For the aforesaid purpose, the Court has to consider and read the averments in the plaint as a whole. As observed and held by this Court in Ram Prakash Gupta (2007) 10 SCC 59 , rejection of a plaint under Order 7 Rule 11(d)CPC by reading only few lines and passages and ignoring the other relevant parts of the plaint is impermissible. In the said decision, in para 21, it is observed and held as under: (SCC p. 68)

“21. As observed earlier, before passing an order in an application filed for rejection of the plaint under Order 7 Rule 11(d), it is but proper to verify the entire plaint averments. The abovementioned materials clearly show that the decree passed in Suit No. 183 of 1974 came to the knowledge of the plaintiff in the year 1986, when Suit No. 424 of 1989 titled Assema Architect v. Ram Prakash was filed in which a copy of the earlier decree was placed on record and thereafter he took steps at the earliest and filed the suit for declaration and in the alternative for possession. It is not in dispute that as per Article 59 of the Limitation Act, 1963, a suit ought to have been filed within a period of three years from the date of the knowledge. The knowledge mentioned in the plaint cannot be termed as inadequate and incomplete as observed [Ram Prakash Gupta v. Rajiv Kumar Gupta, 2006 SCC OnLine Del 488] by the High Court. While deciding the application under Order 7 Rule 11, few lines or passages should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. We are of the view that both the trial court as well as the High Court failed to advert to the relevant averments as stated in the plaint.”

7.1. From the aforesaid decision and even otherwise as held by this Court in a catena of decisions, while considering an application under Order 7 Rule 11CPC, the Court has to go through the entire plaint averments and cannot reject the plaint by reading only few lines/passages and ignoring the other relevant parts of the plaint.”

26. The Apex Court in the case of ***Daliben Valjibhai & Ors. vs. Prajapati Kodarbhai Kachrabhai & Anr.*** 2024 SCC OnLine SC 4105, while discussing whether the period of limitation is to be calculated from the date of knowledge of the sale deed, regarding which cancellation of suit was filed, held as under:-

“11. This Court had to deal with a similar situation in P.V. Guru Raj Reddy v. P. Neeradha Reddy (2015) 8 SCC 331. A suit instituted by the plaintiff in the year 2002 for cancellation of sale deed of year 1979 on the ground that the knowledge of fraud was acquired only in 1999, was objected to by the defendant in an application under Order 7 Rule 11 on the ground that it is barred by limitation. This Court held:

“5. Rejection of the plaint under Order 7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil

action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

6. In the present case, reading the plaint as a whole and proceeding on the basis that the averments made therein are correct, which is what the Court is required to do, it cannot be said that the said pleadings ex facie disclose that the suit is barred by limitation or is barred under any other provision of law. The claim of the plaintiffs with regard to the knowledge of the essential facts giving rise to the cause of action as pleaded will have to be accepted as correct. At the stage of consideration of the application under Order 7 Rule 11 the stand of the defendants in the written statement would be altogether irrelevant.”

12. Further, in Chhotanben v. Kirtibhai Jalkrushnabhai Thakkar(2018) 6SCC 422 where again a suit for cancellation of sale deed was opposed through an application under Order 7 Rule 11, on ground of limitation, this Court specifically held that limitation in all such cases will arise from date of knowledge. The relevant portion is as follows:

“15. What is relevant for answering the matter in issue in the context of the application under Order 7 Rule 11(d) CPC, is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order 7 Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18-10-1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellant-plaintiffs is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers, original Defendants 1 and 2, in favour of Jaikrishnabhai Prabhudas Thakkar or Defendants 3 to 6. They acquired that knowledge on 26-12-2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the

suit, had approached their brothers (original Defendants 1 and 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (½) portion of the land so designated towards their share. However, when they realised that the original Defendants 1 and 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the trial court opined that it was a triable issue and declined to accept the application filed by Respondent 1-Defendant 5 for rejection of the plaint under Order 7 Rule 11(d). That view commends to us.

...

19. In the present case, we find that the appellant-plaintiffs have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original Defendants 1 and 2 by keeping them in the dark about such execution and within two days from the refusal by the original Defendants 1 and 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the trial court that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order 7 Rule 11(d) CPC.”

27. The Apex Court in the case of *Salim D. Agboatwala & Others vs. Shamalji Oddhavji Thakkar & Others (2021) 17 SCC 100* while discussing rejection of plaint on the ground of bar of limitation under Order VII Rule 11 CPC, held as under:-

“8. Insofar as the rejection of the plaint on the ground of limitation is concerned, it is needless to emphasise that limitation is a mixed question of fact and law. It is the case of the appellant-plaintiffs that only after making inspection of the records in connection with the suit land available in the office of Defendant 3 (Court Receiver) that they came across the correspondence and documents relating to the transactions and that the proceedings before ALT were collusive, fraudulent and null and void. The appellant-plaintiffs have even questioned the authority of the Court Receiver to represent them in the tenancy proceedings.

9. The above averments may or may not be true. But if the plaintiffs succeed in establishing the above averments, the issue of limitation cannot be put against the plaintiffs. Generally a party, who never had any notice of a particular proceeding before a quasi-judicial authority, is entitled to

approach the court upon gaining knowledge of the proceedings. Limitation cannot be put against such a party.

10.*****

11. *As observed by this Court in P.V. Guru Raj Reddy v. P. Neeradha Reddy [(2015) 8 SCC 331 : (2015) 4 SCC (Civ) 100] , the rejection of plaint under Order 7 Rule 11 is a drastic power conferred on the court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation. When a plaintiff claims that he gained knowledge of the essential facts giving rise to the cause of action only at a particular point of time, the same has to be accepted at the stage of considering the application under Order 7 Rule 11.*

12. *Again as pointed out by a three-Judge Bench of this Court in Chhotanben v. Kiritbhai Jalkrushnabhai Thakkar [(2018) 6 SCC 422 : (2018) 3 SCC (Civ) 524] , the plea regarding the date on which the plaintiffs gained knowledge of the essential facts, is crucial for deciding the question whether the suit is barred by limitation or not. It becomes a triable issue and hence the suit cannot be thrown out at the threshold.”*

28. The Apex Court in the case of ***P.Kumarakurubaran vs. P.Narayanan and others 2025 SCC OnLine SC 975***, while considering the issue of limitation at the threshold stage under Order 7 Rule 11 CPC, held as under:-

“12.1. However, we are of the considered view that the issue as to whether the appellant had prior notice or reason to be aware of the transaction at an earlier point of time, or whether the plea regarding the date of knowledge is credible, are matters that necessarily require appreciation of evidence. At this preliminary stage, the averments made in the plaint must be taken at their face value and assumed to be true. Once the date of knowledge is specifically pleaded and forms the basis of the cause of action, the issue of limitation cannot be decided summarily. It becomes a mixed question of law and fact, which cannot be adjudicated at the threshold stage under Order VII Rule 11 CPC. Therefore, rejection of the plaint on the ground of limitation without permitting the parties to lead evidence, is legally unsustainable.....”

29. From the above law laid down by the Apex Court it is evident that once the date of knowledge is specifically pleaded and forms the basis of the cause of action, the issue of limitation cannot be decided summarily. It becomes a mixed question of law and fact which cannot be adjudicated at the threshold stage under Order VII Rule 11 CPC. Therefore, rejection of the plaint

on the ground of limitation without permitting the parties to lead evidence, is legally unsustainable. It is also apparent that the plea regarding the date on which the plaintiffs gained knowledge of the essential facts, is crucial for deciding the question, whether the suit is barred by limitation or not. It becomes a triable issue and hence the suit cannot be thrown out at the threshold, unless the plaint averments itself disclose beyond doubt that the relief claimed was barred by limitation.

30. From the documents submitted with the appeal, it is evident that the trial court on 19.7.2022 framed the following issues :-

- (i) Whether the Will dated 17.8.1998 executed by Ramkrishan Sharma in favour of his sons was liable to be declared void and ineffective ?*
- (ii) Whether on 25.4.2006 a memorandum of family settlement was prepared, which was a valid document ?*
- (iii) Whether the plaintiff's suit was barred by limitation ?*
- (iv) Whether the plaintiff's suit was legally not maintainable ?*
- (v) Whether the suit has been insufficiently valued ?*
- (vi) Whether the court fees paid by the plaintiff was insufficient ?*
- (vii) Whether the suit was liable to be rejected under Order VII Rule 11 ?*
- (viii) Whether plaintiff was entitled to any relief ?*

31. The Apex Court in the case of ***Kuldeep Singh Pathania*** (supra) was considering a situation where in an election petition, preliminary issue's under Order 14 CPC were framed by the High Court, which also contained 2 issues relatable to Order 7 Rule 11 CPC, which were decided after considering the pleadings of the defendant. It was held as under :-

“6. Order 14 deals with settlement of issues and determination of suit on issues of law or on issues agreed upon. Order 14 Rule 2 provides for disposal of a suit on a preliminary issue and under sub-rule (2) of Rule 2, if the court is of opinion that a case or part thereof can be disposed of on an issue of law only, it may try that issue first, in case it relates to jurisdiction of the court or bar to entertaining the suit. After the 1976 amendment, the scope of a preliminary issue under Order 14 Rule 2(2) is limited only to two areas, one is jurisdiction of the court, and the other, bar to the suit as created by any law for the time being in force.

7. The whole purpose of trial on preliminary issue is to save time and money. Though it is not a mini trial, the court can and has to look into the entire pleadings and the materials available on record, to the extent not in dispute. But that is not the situation as far as the enquiry under Order 7 Rule 11 is concerned. That is only on institutional defects. The court

can only see whether the plaint, or rather the pleadings of the plaintiff, constitute a cause of action. Pleadings in the sense where, even after the stage of written statement, if there is a replication filed, in a given situation the same also can be looked into to see whether there is any admission on the part of the plaintiff. In other words, under Order 7 Rule 11, the court has to take a decision looking at the pleadings of the plaintiff only and not on the rebuttal made by the defendant or any other materials produced by the defendant.

8. It appears, the High Court committed a mistake in the present case, since four out of the six issues settled were taken as the preliminary issues. Two such issues actually are relatable only to Order 7 Rule 11 of the Code, in the sense those issues pertained to the rejection at the institution stage for lack of material facts and for not disclosing a cause of action. Merely because it is a trial on preliminary issues at the stage of Order 14, the scope does not change or expand. The stage at which such an enquiry is undertaken by the court makes no difference since an enquiry under Order 7 Rule 11(a) of the Code can be taken up at any stage.

9. Thus, for an enquiry under Order 7 Rule 11(a), only the pleadings of the plaintiff-petitioner can be looked into even if it is at the stage of trial of preliminary issues under Order 14 Rule 2(2). But the entire pleadings on both sides can be looked into under Order 14 Rule 2(2) to see whether the court has jurisdiction and whether there is a bar for entertaining the suit.

10. In the present case, the issue relates to an enquiry under Order 7 Rule 11(a) of the Code, and hence, there is no question of a preliminary issue being tried under Order 14 Rule 2(2) of the Code. The Court exercised its jurisdiction only under Section 83(1)(a) of the Act read with Order 7 Rule 11(a) of the Code. Since the scope of the enquiry at that stage has to be limited only to the pleadings of the plaintiff, neither the written statement nor the averments, if any, filed by the opposite party for rejection under Order 7 Rule 11(a) of the Code or any other pleadings of the respondents can be considered for that purpose.”

32. It is apparent that in the instant case by impugned order, the trial court has decided issue no. 7 which reads as under:-

(vii) Whether the suit was liable to be rejected under Order VII Rule 11 ?

33. It is further evident that till disposal of issue no. 7, no oral evidence of the parties was recorded. It is further apparent that, in the light of the law laid down by the Apex Court in ***Kuldeep Singh Pathania*** (supra) this issue which related to applicability of Order VII Rule 11 CPC, could have been decided after

considering only the plaint and documents of the plaintiff, and the Court was not supposed to examine the written statement and documents submitted by the defendants, but in the instant case the trial court has relied upon the application under Order VII Rule 11 CPC and the documents submitted by the defendant in the suit, for rejecting the plaintiff's suit under Order VII Rule 11 CPC, which is erroneous and legally unsustainable.

34. It is further apparent from the plaint that it is the specific case of the plaintiff that he was not aware of the alleged Will of his Late father Ram Krishan Sharma dated 17.8.1998, and he became aware of it for the 1st time only on 7.10.2020 from defendant Rakesh Kumar Sharma, then he obtained its certified copy from the registrar office on 13.10.2020, then he became aware of all the facts, thereafter, the instant suit for cancellation of the alleged Will has been filed on 7.12.2020, which is well within the prescribed period of limitation of 3 years from the date of knowledge of the alleged Will. It is apparent that the limitation is to be calculated from the date of knowledge of the alleged Will, not from the date of its execution. It is also well settled that at this stage, the court cannot examine the veracity of the above averments of the plaintiff. It is possible that the above averments are false, but it is only to be decided after evidence has been adduced by the parties during trial. It is further pertinent to mention here that issue no. 3 is yet to be decided, which pertains to whether the suit was barred by limitation?

35. It is further apparent that plaintiff is seeking declaration of the memorandum of family settlement dated 25.4.2006. The plaintiff has alleged that during the lifetime of his father Late Ramkrishan Sharma an oral family settlement took place between the family members, which was later on recorded in the form of memorandum on 25.4.2006, which was acted upon by the family members, according to which the family members are the owners in possession of their respective share of the property. The plaintiff has sought a declaration regarding its legality and enforceability. It is apparent that the plaintiff can always seek a positive declaration of his rights in the disputed property, regarding which there is no prescribed period of limitation.

36. The Apex Court in the case of *Badat & Co. Bombay* (supra) was considering the averments of the written statement of the defendant, in the light of the provisions of Order VIII Rule 3,4 and 5 CPC, which deal with the specific and evasive denial of the plaint averments. It was held that evasive denial amounts to

admission of the plaint averments. It is apparent that the ratio of this case is applicable on the written statement of the defendants and not on any other document.

37. The Apex Court in the case of ***Karam Kapahi*** (supra) was considering the principle behind Order XII Rule 6 CPC wherein , a judgment can be passed by the court on the basis of an admission of a party. It was held as under:-

“39. In the 54th Law Commission Report, an amendment was suggested to enable the court to give a judgment not only on the application of a party but on its own motion. It is thus clear that the amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering the Judges to use it “ex debito justitiae”, a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the court always retains its discretion in the matter of pronouncing judgment.

40. If the provision of Order 12 Rule 1 is compared with Order 12 Rule 6, it becomes clear that the provision of Order 12 Rule 6 is wider inasmuch as the provision of Order 12 Rule 1 is limited to admission by “pleading or otherwise in writing” but in Order 12 Rule 6 the expression “or otherwise” is much wider in view of the words used therein, namely: “admission of fact ... either in the pleading or otherwise, whether orally or in writing”.

41. Keeping the width of this provision (i.e. Order 12 Rule 6) in mind this Court held that under this Rule admissions can be inferred from the facts and circumstances of the case (see Charanjit Lal Mehra v. Kamal Saroj Mahajan [(2005) 11 SCC 279] , SCC at p. 285, para 8). Admissions in answer to interrogatories are also covered under this Rule (see Mulla's Commentary on the Code, 16th Edn., Vol. II, p. 2177).

42. In the case of Uttam Singh Duggal & Co. Ltd. v. United Bank of India [(2000) 7 SCC 120] this Court, while construing this provision, held that the Court should not unduly narrow down its application as the object is to enable a party to obtain speedy judgment.

43. In that case it was contended on behalf of the appellant, Uttam Singh Duggal, that:

(a) Admissions under Order 12 Rule 6 should only be those which are made in the pleadings.

(b) The admissions would in any case have to be read along with the first proviso to Order 8 Rule 5(1) of the Code and the court may call upon the party relying on such admission to prove its case independently.

(c) The expression “either in pleadings or otherwise” should be interpreted ejusdem generis. (See para 11, p. 126-27 of the Report.)

Almost similar contentions have been raised on behalf of the Club. In Uttam Singh those contentions were rejected and this Court opined no effort should be made to narrow down the ambit of Order 12 Rule 6.

44. In Uttam Singh this Court made a distinction between a suit just between the parties and a suit relating to the Specific Relief Act, 1963 where a declaration of status is given which not only binds the parties but also binds generations. The Court held that such a declaration may be given merely on admission (SCC para 16 at p. 128 of the Report). But in a situation like the present one where the controversy is between the parties on an admission of non-payment of rent, judgment can be rendered on admission by the court.

45. Order 12 Rule 6 of the Code has been very lucidly discussed and succinctly interpreted in a Division Bench judgment of the Madhya Pradesh High Court in Shikharchand v. Bari Bai [AIR 1974 MP 75] . G.P. Singh, J. (as His Lordship then was) in a concurring judgment explained the aforesaid Rule, if we may say so, very authoritatively at p. 79 of the Report. His Lordship held : (AIR para 19)

“... I will only add a few words of my own. Rule 6 of Order 12 of the Code of Civil Procedure corresponds to Rule 5 of Order 32 of the Supreme Court Rules (English), now Rule 3 of Order 27, and is almost identically worded (see Annual Practice, 1965 Edn., Part I, p. 569). The Supreme Court Rule came up for consideration in Ellis v. Allen [(1914) 1 Ch 904 : (1911-13) All ER Rep 906] . In that case a suit was filed for ejectment, mesne profits and damages on the ground of breach of covenant against sub-letting. Lessee's solicitors wrote to the plaintiff's solicitors in which fact of breach of covenant was admitted and a case was sought to be made out for relief against forfeiture. This letter was used as an admission under Rule 5 and as there was no substance in the plea of relief against forfeiture, the suit was decreed for ejectment under that Rule. Sargant, J. rejected the argument that the Rule is confined to admissions made in pleadings or under Rules 1 to 4 in the same order (same as ours) and said:

‘The Rule applies wherever there is a clear admission of facts in the face of which it is impossible for the party making it to succeed.’

Rule 6 of Order 12, in my opinion, must bear the same construction as was put upon the corresponding English rule by Sargant, J. The words ‘either on the pleadings or otherwise’ in Rule 6 enable us not only to see the admissions made in pleadings or under Rules 1 to 4 of the same order but also

admissions made elsewhere during the trial.”

(Emphasis added)

46. *This Court expresses its approval of the aforesaid interpretation of Order 12 Rule 6 by G.P. Singh, J. (as His Lordship then was). Mulla in his commentary on the Code has also relied on the ratio in Shikharchand [AIR 1974 MP 75] for explaining these provisions.*

47. *Therefore, in the instant case even though statement made by the Club in its petition under Section 114 of the Transfer of Property Act does not come within the definition of the word “pleading” under Order 6 Rule 1 of the Code, but in Order 12 Rule 6 of the Code, the word “pleading” has been suffixed by the expression “or otherwise”. Therefore, a wider interpretation of the word “pleading” is warranted in understanding the implication of this Rule. Thus the stand of the Club in its petition under Section 114 of the Transfer of Property Act can be considered by the Court in pronouncing the judgment on admission under Order 12 Rule 6 in view of clear words “pleading or otherwise” used therein especially when that petition was in the suit filed by the Trust.*

48. *However, the provision under Order 12 Rule 6 of the Code is enabling, discretionary and permissive and is neither mandatory nor it is peremptory since the word “may” has been used. But in a given situation, as in the instant case, the said provision can be applied in rendering the judgment.”*

38. It is again reiterated that the trial court could not have examined the written statement of the defendants, the contents of Order VII Rule 11 CPC application of the contesting defendant, documents filed by the defendants, for disposing the application of the defendant under Order VII Rule 11 CPC, as such, the contention of the learned counsel of the contesting defendant/ respondent that the objection paper no. 126-C2 of the plaintiff contained a vague denial of the alleged Will of Ram Krishan Sharma, amounts to admission of having knowledge of the Will since the year 1998, and on this basis, the trial court has rightly allowed the defendants application under Order VII Rule 11 CPC, cannot be accepted.

39. It is apparent that there is no admission of the plaintiff in his objection paper no.126-C2, which does not fall into the category of pleading, that he was aware of the alleged Will since the year 1998. In fact, the plaintiff has averred that the alleged Will is forged and fabricated. The plaintiff has denied receiving any notice and has termed it as a concocted defence story. In view of this, since there is no admission by the plaintiff that he was aware of the alleged Will since the year 1998, no reliance can be placed by the contesting respondent on the provisions of Order

XII Rule 6 CPC, as well as, on the case law of *Karam Kapahi* (supra) and *Badat & Co. Bombay* (supra).

40. It is apparent from the averments of the plaint, that the relief claimed by the plaintiff was not barred by limitation, as such, the plaint could not have been rejected at the threshold under Order VII Rule 11 CPC by the trial court by impugned order on the erroneous presumption that the plaintiff has accepted that he was aware of the alleged Will since the year 1998, when in fact, there was no admission of the above fact by the plaintiff. It is apparent that the trial court has passed a perverse order, without application of mind, without going through the relevant case law, in total ignorance of law, which is legally unsustainable and is liable to be set aside.

41. For the aforesaid reasons, **the instant appeal is allowed with costs throughout**. Consequently, the impugned judgment and decree dated 15.11.2025 is set aside. O.S.no. 863 of 2020 stands restored to its original number. The defendants application no.125-C2 under Order VII Rule 11 CPC stands dismissed.

42. The trial court is directed to decide the suit within 6 months from the date of production of a copy of this order, without affording unnecessary adjournment to either of the party, on merits, in accordance with law.

43. A copy of this order be sent by the Registrar General of the High Court to the concerned Judicial Officer **Archana Singh**, J.O.Code-U.P.2630 for future guidance. It is appropriate that she be imparted further training at the Judicial Training and Research Institute, Lucknow for upgrading her knowledge and understanding of the laws, otherwise she will continue passing such perverse orders, burdening the High Court with more appeals.

Order Date:- 25.03.2026

Jitendra/Himanshu/Mayank

(Sandeep Jain, J.)