



2026:AHC:87101

AFR

HIGH COURT OF JUDICATURE AT ALLAHABAD

CIVIL REVISION No. - 38 of 2025

Amarkant Vijaywar and 6 Other

.....Revisionist(s)

Versus

Vipnesh Kumar and 3 Other

.....Opposite Party(s)

Counsel for Revisionist(s) : Amit Kumar Asthana, Ved Prakash Shukla, Vineet Kumar Singh
Counsel for Opposite Party(s) : Neeraj Dwivedi, Pankaj Agarwal, Vivek Saran (elevated)

Court No. - 5

HON'BLE KSHITIJ SHAILENDRA, J.

1. Heard Shri Vineet Kumar Singh, learned counsel for the applicants in revision (revisionists), Shri Pankaj Agarwal, learned counsel for the respondent no. 1 (respondent) and Shri Neeraj Dwivedi, learned counsel for the proforma respondents no. 2, 3 and 4.

THE CHALLENGE

2. The instant revision under Section 115 CPC at the instance of defendants in O.S. No. 394 of 2023 (re-numbered as 22 of 2023), raises challenge to the order dated 24.01.2025, whereby the learned Additional District and Sessions Judge/Fast Track Court, Agra has rejected an application 31-C filed on behalf of the revisionists under Order VII Rule 11 CPC, consequence whereof is that the plaint of the suit survives as on date.

BRIEF FACTS

3. The property in dispute was allotted in favour of the revisionists by Awas Vikas Parishad on 02.01.1993/28.02.2023. The allotment was cancelled and a fresh allotment was made in favour of the respondent on 03.03.1993. The revisionists earlier filed an Original Suit No. 252 of 1993 claiming relief for declaring the auction made in favour of respondent as null and void and for declaring the allotment made earlier in favour of the revisionists as valid. The suit was decreed ex-parte on 18.10.1996. The decree was put into execution, wherein the respondent filed objections under Section 47 CPC. The same were rejected, against which a revision was preferred, which was also dismissed and Writ-C No. 9100 of 2015 filed by him was also dismissed on 16.02.2015.

4. After dismissal of the said writ petition, a suit being O.S. No. 296 of 2015 was filed by the respondent seeking setting aside of the ex-parte decree dated 18.10.1996. The plaint of the said suit was rejected under Order VII Rule 11 CPC holding the suit as barred by limitation. Civil Appeal filed thereagainst was dismissed and now the matter is pending before this Court in the form of Second Appeal.

5. Another suit being O.S. No. 394 of 2023 (re-numbered as 22 of 2023) giving rise to this revision was filed by the respondent with a prayer to declare the allotment order dated 28.02.2023 passed in favour of the revisionists as illegal, invalid, void and liable to be recalled, set aside and quashed. A further prayer was made to restrain the defendants in the suit, i.e. the Awas Vikas Parishad and its officials, from executing any sale deed and delivering possession in favour of the revisionist.

6. In the meantime, a fresh allotment was made and a sale deed was also executed in favour of the revisionists on 05.04.2023 in execution of the decree drawn in previous O.S. No. 252 of 1993 and challenge laid to the execution proceedings at the behest of the Awas Vikas Parishad was turned down upto Hon'ble Supreme Court.

SUBMISSIONS ON BEHALF OF THE REVISIONISTS

7. It is contended on behalf of the revisionists that, based upon the finality attached not only to the allotment but also the sale deed executed

in furtherance of order passed by the executing court even before institution of the suit giving rise to the present revision, the suit is barred by law and, therefore, the plaint was liable to be rejected. It is further submitted that the plaint has been amended by the respondent and the relief which has now been claimed by way of amendment, could be claimed even at the time of filing of earlier suit in the year 2015 and, therefore, the plaint was liable to be rejected under Order VII Rule 11 (d) CPC as the suit was barred by Order II Rule 2 CPC and Section 34 of the Specific Relief Act, 1963 and, therefore, the order impugned be set aside and the plaint be rejected.

8. It is further submitted that though all the pleas raised by the revisionists were discussed by the trial court, an erroneous finding has been recorded that the suit is not barred by limitation and, then, after observing that the questions raised by the revisionists are mixed questions of fact and law and that the same shall be decided after framing proper issues, the application has been illegally rejected.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

9. Learned counsel for respondent submits that every adjudication made in favour of the revisionists is ex-parte qua the respondent in the sense that the first Suit No. 252 of 1993 was filed by the revisionists only against the officials of Awas Vikas Parishad and, therefore, the decree obtained by the revisionists and consequences flowing therefrom are not binding against the respondent.

10. It is further submitted that the objections filed by the respondent under Section 47 CPC were not decided on merits, rather the same were rejected only on the ground that he was not a party to the proceedings. It is, therefore, contended that since the pleas raised by the respondent in execution proceedings were rejected, he had no option but either to raise his claim under Order XXI Rule 97 CPC as observed by this Court while deciding Writ-C No. 9100 of 2015 or by way of a separate suit which he filed in the year 2015 but plaint thereof was rejected, however, the matter is now subjudice before this Court in the form of Second Appeal.

11. It is further submitted that the sale deed relied upon by the revisionists is without delivery of possession in respect whereof specific averments have been made in the amended plaint, particularly para 15(f) thereof, and, therefore, all the questions raised inter se parties require adjudication on merits.

SUBMISSIONS IN REJOINDER

12. In rejoinder, learned counsel for revisionists submits that once title stood vested in their favour pursuant to the sale deed, cancellation whereof has not been prayed for in appropriate terms, the challenge initially laid to the subsequent allotment made in furtherance of the execution proceedings and indirect challenge to the sale deed dated 05.04.2023 is not sustainable. It is further contended that more than Rs. 25,00,00/- (twenty five lakh) was deposited by the revisionists and even though possession has been delivered to them, they are unable to raise constructions on the plot in question as time limit fixed by the Awas Vikas Parishad for the said purpose has already expired on account of litigation pending between the parties and an order of status quo passed in F.A.F.O. No. 1104 of 2024 by this Court arising out of suit giving rise to the present revision itself.

DISCUSSION

13. I have considered the submissions made and have perused the material available on record.

14. The proceedings of different suits and the result thereof not being in dispute, the Court has to confine its adjudication within the four corners of Order VII Rule 11 CPC, which provides that when plaint, from the statement made therein, appears to be barred by any law [sub-rule (d) of Rule 11], it shall be rejected. It has been held in **Saleem Bhai vs. State of Maharashtra, (2003) 1 SCC 557** that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint and the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. In **R.K. Roja vs. U.S. Rayudu, (2016) 14 SCC 275**, it was reiterated that the

consideration of the application should not be on the basis of the allegations made by the defendant in his written statement and the court has to consider only the plaint as a whole.

15. Since bar of suit under Order II Rule 2 C.P.C. has been emphatically argued, the Court may observe that Order II Rule 2 deals with the reliefs claimed in a suit in respect of a cause of action. Order II Rule 2(1) states that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any court. Order II Rule 2(2) states that where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished. Order II Rule 2(3) states that a person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, to sue for all such reliefs, except with the leave of the court, he shall not afterwards sue for any relief so omitted.

16. '**Bar to sue**' is distinct from a '**suit being barred by any law**'. In the former, a suit cannot commence at all and, therefore, would have to be dismissed by applying Order II Rule 2 CPC, while in the latter case, a suit can commence but is not entertainable owing to a bar in law. Under Order II Rule 2, a suit can be dismissed after recording evidence depending upon the facts and circumstances of the case and on the analysis of the cause of action in a former suit and a subsequent suit.

17. Order VII Rule 11 deals with rejection of plaint and not the '**right to sue being barred**'. Qua expression "**barred by any law**", it is noted that the provision of Order II Rule 2 does not bar the filing of any suit but sub-rules (2) and (3) forbid the suing for certain claims which have been relinquished or certain reliefs which have been omitted to sue in the earlier suit in respect of which a plaintiff cannot sue for those claims or reliefs by filing a subsequent suit. Under Order II Rule 2 of the Code, the right to sue is taken away in terms of sub-rules (2) and (3) thereof which

means that the suit could not have been filed at all. On the other hand, under Order VII Rule 11(d), there is “**no bar to sue**” but “**the suit is barred by law**”. In other words, the application of Order II Rule 2 CPC to a case can result in denial of reliefs being granted to a plaintiff which may, in certain cases, also result in dismissal of the suit itself but it does not result in rejection of the plaint under Order VII Rule 11 (d) of the Code. The said legal position has been thoroughly explained by the Hon'ble Supreme Court very recently in **S. Valliammai and others Vs. S. Ramanathan and another: Civil Appeal No. 3624 of 2024**, decided on 16.04.2026.

18. In view of the above discussion, if the order impugned is perused, the Court finds partial substance in the submissions made on behalf of the revisionists that, on the one hand the Court has deferred adjudication of the pleas raised to the stage of framing issues and leading evidence, at the same time, plea of limitation has been decided in favour of the respondent. However, other submissions made that, at this stage itself, the plaint be rejected without holding trial, cannot be accepted as per the law laid down and referred.

19. Considering the record of proceedings and the scope of order under Order VII Rule 11 CPC, irrespective of the findings recorded in earlier litigations which may be germane and relevant to the controversy involved in the present suit also, the same can be considered even in the form of preliminary issues that may be framed by the trial court, if pressed. The submissions advanced in this revision go beyond the purview of Order VII Rule 11 CPC, except the findings recorded on the question of limitation at this stage.

20. As far as the grievance raised qua inability to raise constructions on account of order of status quo operating in F.A.F.O. No. 1104 of 2024, no comment can be made in these proceedings and the parties are at liberty to raise their respective pleas in the said appeal itself.

CONCLUSION

21. Consequently, the revision is **allowed in part**.

22. The finding recorded by the trial court in the order impugned only to the effect that challenge laid by the respondent is not barred by limitation, is hereby **set aside**, however, the same shall be adjudicated after framing of issues.

23. Considering the nature and length of litigation, it is directed that the trial court shall frame issues within a period of **two months** from the date a certified copy of this order is filed before it. Thereafter, the suit shall be posted for further proceedings including adjudication based upon preliminary issues, if they are framed, and the court shall make all endeavour to dispose of the proceedings in accordance with law with utmost expedition without granting unnecessary adjournment to the parties, by fixing short dates on weekly basis.

(Kshitij Shailendra,J.)

April 20, 2026

AKShukla/-