



132 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR-4043-2024 (O&M)

Date of decision : 06.08.2025

Sunil Kumar & ors.

..... Petitioners

Versus

Satish & ors.

.... Respondents

**CORAM : HON'BLE MR.JUSTICE PANKAJ JAIN**

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Present :- Mr. S.K.Verma, Advocate  
for the petitioners.

Mr. Sandeep K.Sharma, Advocate  
for respondents No.1 to 4.

Mr. Rajiv Malhotra, DAG, Haryana  
for respondents No.10 to 12.

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**PANKAJ JAIN, J. (ORAL)**

1 Challenge is to the order dated 03.05.2024 (Annexure P-3) passed by Civil Judge, Jr. Division, Meham whereby an application filed under Order VII Rule 11 CPC by petitioner No.1 stands dismissed.

2 Petitioners are defendants in a suit filed by respondents seeking decree of declaration with further relief of permanent injunction.

3 As per the averments made in the plaint Padam Kaur wife of Rai Sahib Daryao Singh became owner in possession of agricultural land measuring 262 Bighas 7 Biswa. Malho wife of Bharat Singh claimed that she has been gifted 1/6<sup>th</sup> share of the land by said Padam Kaur vide gift deed dated 09.09.1957. Padam Kaur filed Civil suit challenging the gift deed dated



09.09.1957. The *lis* went upto Supreme Court. The claim of the Malho was accepted vide judgment dated 01.12.1976. In present case, it has been claimed that Padam Kaur being big land owner, part of land in her hands was declared surplus. Padam Kaur died on 12.01.1966 and after taking into factor her land declared surplus. Malho is left with 16 bigas of land. Challenge in the plaint is to the mutation No.1506 & 2780.

4 Application was filed under Order VII Rule 11 CPC by defendants claiming that the entitlement of the Malho having already been decided upto Supreme Court, the present suit is barred by *res-judicata*. The application has been dismissed vide impugned order holding that plea of *res-judicata* has to be decided taking into account evidence and thus the plaint cannot be rejected at this initial stage.

5 Counsel for the petitioners has assailed the findings recorded by the Trial Court. He submits that as per settled proposition of law a vexatious litigation needs to be nipped in the bud. Malho having already faced *lis* upto Supreme Court, another round of litigation cannot be allowed by impugning mutation once the gift deed has been held to be legal and valid. Mr. Verma, Advocate further submits that the plaint neither discloses cause of action nor the point of time when the limitation commenced in favour of the plaintiff. He thus submits that the impugned order cannot be sustained as the same deserves to be set aside as the plaint deserves to be rejected under Order VII Rule 11 CPC.

6 *Per contra*, Mr. Sharma, Advocate submits that in the previous litigation the gift deed in favour of Malho having attained finality, the issue of surplus land in the hands of Padam Kaur needs to be ascertained. Pro rata



cut has to be applied on land in hands of Malho. It is on this ground that the present suit was filed challenging *fard-badar*, *jamabandi* and the consequential mutation.

7 I have heard learned counsel for the parties and have gone through the records of the case.

8 The provision as contained under Order VII Rule 11 CPC has been interpreted elaborately by Supreme Court in the case of ***Dahiben Vs. Arvindhbai Kalyanji Bhanusali (Gajra) (D) through LRs & ors., 2020 INSC 450*** observing as under :-

*“23.2. The remedy under Order 7 Rule 11 is an independent and special remedy, wherein the court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.*

*23.3. The underlying object of Order 7 Rule 11(a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.*

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



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

*23.5. The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order 7 Rule 11 are required to be strictly adhered to.*

*23.6. Under Order 7 Rule 11, a duty is cast on the court to determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint [Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success 1, (2004) 9 SCC 512], read in conjunction with the documents relied upon, or whether the suit is barred by any law.*

*23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.*

*23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. [Sopan Sukhdeo Sable v. Charity Commr., (2004) 3 SCC 137]*

*23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I [Liverpool &*



*London S.P. & I Assn. Ltd. v. M.V. Sea Success 1, (2004) 9 SCC 512] which reads as: (SCC p. 562, para 139)*

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

*23.12. In Hardesh Ores (P) Ltd. v. Hede & Co. [Hardesh Ores (P) Ltd. v. Hede & Co., (2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman [D Ramachandran v. R.V. Janakiraman, (1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941).*

*23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.*

*23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra [Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [Azhar Hussain v. Rajiv Gandhi, 1986 Supp SCC 315. Followed*



*in Manvendrasinhji Ranjitsinhji Jadeja v. Vijaykunverba, 1998 SCC OnLine Guj 281: (1998) 2 GLH 823].*

*23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint."*

9 In the light of afore-stated ratio laid down by Supreme Court, provision contained under Order VII Rule 11 CPC is mandatory. At this stage it is only the plaint along with documents attached thereto that needs to be perused. Issue in present revision petition is whether plaint can be rejected at nascent stage holding it to be barred by *res-judicata*. To hold that the suit is barred by *res-judicata*, Court has to be certain with respect to the issues, parties and the issue in substance involved in the previous suit and the subsequent suit. The issue arose before the Supreme Court in a case, wherein while dealing with the application filed under Order VII Rule 11 CPC seeking rejection of plaint being barred by *res judicata*, Supreme Court in '**Keshav Sood versus Kirti Pradeep Sood**', 2023(4) CCC 487 held that:-

*"4. After having heard the learned counsel appearing for the parties, we find that the plea of res judicata could not have been gone into on an application made by the appellant under Rule 11 of [Order VII of CPC](#). Apart from pleadings in the earlier suit, several other documents which were relied upon by the appellant in his application under Rule 11 of [Order VII of CPC](#) were required to be gone into for deciding the issue of res judicata.*



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.”

10 Similar observations were made in ‘**Prem Kishore v. Brahm Prakash (SC)**’ 2023(1) RCR (rent) 398 :

“34. The general principle of res judicata under [Section 11](#) of the CPC contain rules of conclusiveness of judgment, but for res judicata to apply, the matter directly and substantially in issue in the subsequent suit must be the same matter which was directly and substantially in issue in the former suit. Further, the suit should have been decided on merits and the decision should have attained finality. Where the former suit is dismissed by the trial court for want of jurisdiction, or for default of the plaintiff’s appearance, or on the ground of non-joinder or mis-joinder of parties or multifariousness, or on the ground that the suit was badly framed, or on the ground of a technical mistake, or for failure on the part of the plaintiff to produce probate or letter of administration or succession certificate when the same is required by law to entitle the plaintiff to a decree, or for failure to furnish security for costs, or on the ground of improper valuation, or for failure to pay additional court fee on a plaint which was undervalued, or for want of cause of action, or on



*the ground that it is premature and the dismissal is confirmed in appeal (if any), the decision, not being on the merits, would not be res judicata in a subsequent suit.*

35. *In the present case, before examining the defendants' ground of res judicata to oppose the eviction petition, several aspects may have to be looked into. Whether such an issue was substantively at issue in the previous suit and similar such other questions may crop up. Powers under [Order 7 Rule 11 of CPC](#) under such circumstances would not be available. The High Court therefore, committed an error in rejecting the plaint.*

36. *The seminal question that we need to decide in the present appeal is whether the first suit i.e. the Eviction Petition No. 149 of 1996 filed by late Samey Singh was dismissed on merits. To put it in other words, whether the finding recorded by the Rent Controller while dismissing the Eviction Petition No. 149 of 1996 that the eviction petition deserves to be dismissed as the plaintiff Samey Singh had failed to establish the relation of landlord and tenant between the parties could be said to be on merits so as to render the second Eviction Petition No. 136 of 2001 not maintainable on the principles of res judicata."*

11 The same view was echoed in '***Eldeco Housing and Industries Limited v. Ashok Vidyarthi***', (SC) 2023 INSC 1043:

26. *However, the fact remains that all the aforesaid documents, referred to by the respondent in support of his plea for rejection of the plaint, cannot be considered at this stage as these are not part of the record with the Court filed along with the plaint. This is the stand taken by the respondent-defendant in the application filed under [Order VII Rule 11 C.P.C.](#) As noticed above, no amount of evidence or merits of the controversy can be examined at the stage of decision of the application under [Order VII Rule 11 C.P.C.](#)*



12           Trite it is that the issue with respect to *res judicata* has to be adjudicated after appreciating the evidence on record regarding parties to the suit, findings recorded in the earlier suit and the evidence and the prayer made in the subsequent suit. This Court finds that at the initial stage, the plaintiff cannot be rejected, claiming the same to be barred by *res judicata* as it is not possible to record findings without appreciating evidence in subsequent suit in light of findings in earlier suit.

13           In view thereof finding no merits in the present appeal, the same is ordered to be dismissed.

**06.08.2025**  
*Pooja Sharma-I*

**( PANKAJ JAIN )**  
**JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No