Reserved Judgment

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition No. 1954 of 2011 (M/S)

Amrish R. Kilachand ……. Petitioner

Versus

Madhvi Harsh Kilachand & others ……. Respondents

Mr. B.M.Pingal, Advocate for the petitioner.
Mr. Arvind Vashistha, Senior Advocate assisted by Mr. Siddhartha Sah, Advocate for respondent no. 2.

List of cases referred:

1. (2019) 3 SCC 191, Bhimabai Mahadeo Kambekar (Dead) through L.R. Vs. Arthur Import and Export Company and others
2. 2019 SCC OnLine SC 372, Raghwendra Sharan Singh Vs Ram Prasanna Singh (dead) by LRs
3. (2017) 13 SCC 174, Madanuri Sri Rama Chandra Murthy Vs Syed Jalal
4. (2018) 6 SCC 422, Chhotanben and another Vs Kiritbhai Jalkrushnabhai Thakkar & others
5. Bahu Ram Vs Janak Singh and others, (2012) 8 SCC 701
6. (2011) 8 SCC 670, State of Uttaranchal and another vs. Sunil Kumar Vaish and others.

Per: Hon'ble Lok Pal Singh, J.

Writ petition under Article 227 of the Constitution of India is directed against the judgment and order dated 10.06.2011, passed by the District Judge, Nainital, in Civil Revision no. 64 of 2010, Smt. Madhvi Harsh Kilachand Vs Amrish R. Kilachand, whereby the said court allowed the revision filed by respondent no. 1.

2) Facts leading to the present writ petition, in brief, are that petitioner / plaintiff instituted an Original Suit no. 105 of 2009, seeking a relief of prohibitory injunction as well as the relief of mandatory injunction / declaring the sale deed executed by respondent no. 2 in favour of respondent no. 1 as

null and void. It is averred in the plaint that the plaintiff purchased the land in dispute through registered sale deed dated 22.02.1993 and is registered owner in possession of the suit property. Respondent no. 2 claiming himself to be the Power of Attorney holder of the plaintiff executed a registered sale deed in favour of respondent on. 1, whereof the plaintiff did not execute any Power of Attorney in favour of respondent no. 1. It is alleged that on the basis of non-existent Power of Attorney the sale deed has been executed in favour of respondent no. 1. When the plaintiff came to know that a sale deed has been executed by respondent no. 2 in favour of respondent no. 1 showing the Power of Attorney of the plaintiff which the plaintiff never executed, he obtained the copy of khatauni on 18.05.2009 and also the copy of the sale deed dated 06.05.1994 and instituted the suit on 07.09.2009 with the following prayers:

i) That a decree for a permanent prohibitory injunction be passed in favour of the plaintiff as against the defendants, their servant, agents, associates and assignees by restraining them forever in intervening or otherwise alienating the land under suit of khata no. 4 admeasuring 30 Nali 12 Muthies land situated in Village Satbunga, Patti Satbunga, Pargana Ramgarh, Tehsil and District Nainital forever,

ii) That a mandate be also passed in favour of the plaintiff as against the defendants by declaring effectless, null and void the alleged instruments registered in the office of Sub Registrar, Nainital on 06.05.1994 regarding the land under suit executed by defendant no. 2 in favour of defendant no. 1 in Zild no. 1 part 94 page 133-150 sl. No. 226/94 in the office of Sub Registrar, Nainital, more details in Annexure “C”.

iii) That the cost of the suit be also decreed in favour of the plaintiff and as against the defendants jointly and severally.

iv) That any other relief which the Hon'ble court deems just and proper in the circumstances of the case be also passed in favour of the plaintiff and as against the defendants.

3) Defendant no. 1 / Respondent no. 1 filed her written statement denying the plaint averments. Respondent no. 1 stated that she purchased the said land from respondent no. 2 and her name has been mutated in revenue records. It is further stated that suit has been under valued. It is contended that she is lawful owner in possession of the suit property. It is further contended that the suit is barred by limitation as the suit has been instituted on 07.09.2009 seeking declaration of the sale deed dated 06.05.1994 null and void. It is also contended that since the plaintiff is having knowledge of the sale deed and the suit has not been filed within three years for cancellation of the sale deed from the date of knowledge, therefore, the suit is barred by limitation. For ready reference paragraph 24 of the written statement is excerpted hereunder:

> 24. That the plaintiff's suit is barred by Law of Limitation, because the said sale deed, which has been challenged in the instant suit is dated '06.05.1994', whereas the above suit has been filed as late as on 07.09.2009 although the limitation for seeking cancellation of sale deed / for declaration of said sale deed as void, is only three years, from the date of the said sale deed.

4) After filing the written statement respondent no. 1 filed an application (paper no. 12C) under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code'). It is stated in the application that the suit does not disclose any cause of action and the plaintiff has deliberately concealed the real and true facts with regard to the present suit

property and the suit has been filed on frivolous, vexatious and mala fide ground. Also, the suit is highly barred by limitation as the plaintiff has admitted in the suit that he lodged the FIR no. 29 of 2005 on 23.07.2005 being the Power of Attorney holder of his mother Smt. Ramila R. Kilachand. It is contended that name of respondent no. 1 is entered in the khatauni. The suit is under valued and is liable to be rejected under Order 7 Rule 11 of the Code.

5) Another application (paper no. 15C) was filed by respondent no. 1 stating therein that the application under Order 7 Rule 11 of the Code be decided first.

6) Petitioner / plaintiff filed his objection against the application filed under Order 7 Rule 11 of the Code by respondent no. 1, stating therein, that the plaintiff has mentioned the cause of action in the suit. The defendant (respondent no. 1 herein) is trying to delay the hearing of the suit. The suit has been filed for injunction and mandatory injunction. It is an obligation of the plaintiff to prove its case by adducing evidence. The averments made in the application have been made on wrong facts. The application filed by the defendant is liable to be rejected.

7) Learned trial court having heard learned counsel for the plaintiff and defendants and having considered the provisions contained in Order 7 Rule 11 of the Code and also having considered the rules governing the field in regard to the applicability of Order 7 Rule 11 of the Code, rejected the application vide its order dated 09.10.2010. The trial court has recorded the finding that the suit has been properly valued and also having considered the judgment of Hon’ble Apex Court rendered in AIR 2010 (S.C.) 2807, Suhreed Singh vs Randhir

Singh and others, has observed that as the plaintiff is not the executant of the sale deed in question, he had paid the court fee for the relief of prohibitory injunction as well as for declaration of the deed effectless and null & void, whereof the sale deed has been executed by defendant no. 2 in favour of defendant no. 1. The plaintiff need not have to file the suit for cancellation of the sale deed. Suit for injunction itself includes the declaration of rights.

8) Feeling aggrieved by order dated 29.10.2010, passed by Civil Judge (Senior Division), Nainital, respondent no. 1 preferred civil revision no. 64 of 2010 before the District Judge, Nainital. Respondent no. 2 neither filed any written statement nor moved an application under Order 7 Rule 11 of the Code. Since the application filed by respondent no. 1 was rejected by the trial court, the respondent no. 1 preferred said revision. Learned District Judge by judgment and order dated 10.06.2011, allowed the revision and set aside the order passed by the trial court. The reason assigned by the revisional court that the plaintiff has stated in the plaint that he came to know about the sale deed in the month of May 2009, whereof from a perusal of the copy of khatauni it would reveal that the order was passed by the Tehsildar on the sale deed. A suit for cancellation of sale deed ought to have been filed within three years from the date of execution of sale deed. The plaintiff has the knowledge since 1995, therefore, in view of the judgment passed by the High Court in the case of *Udaseen Panchayati Bada Akhara and another vs Mahant Dooj Das and another, reported in 2006 UD 717*, the suit has been filed after three years, therefore, on a perusal of the copy of khatauni, the suit is liable to be dismissed being barred by time.

9) Heard Mr. B.M. Pingal, learned counsel for the petitioner / plaintiff and Mr. Arvind Vashistha, learned Senior Counsel appearing on behalf of respondent no. 2 and perused the documents brought on record. None is present on behalf of respondent no. 1.

10) Indisputably, the sale deed has been executed by respondent no. 2 in favour of respondent no. 1 claiming himself to be the Power of Attorney holder of the plaintiff / petitioner. A perusal of the sale deed impugned would reveal that respondent no. 2 claiming himself to be the Power of Attorney holder of plaintiff has executed by sale deed in favour of respondent no. 1. The translated version of the necessary assertion made in the sale deed dated 06.05.1994 is excerpted hereunder:

> "I Prakash Chandra Mathur, aged major, s/o Sri Murli Manohar Mathur, General Manager, Kesar Enterprises Pvt. Ltd., Baheri, District Bareilly is executing the sale deed in favour of Smt. Madhvi Harsh Kilachand w/o Sri R. Kilachand r/o Sunita Apartments, Ridge Road, Bombay. I am the General Power of Attorney holder of vendor Sri Amrish R. Kilachand s/o Sri R.A. Kilachand r/o village Satbunga, Patti Satbunga, Tehsil and District Nainital and executing the sale deed being the Power of Attorney holder of Sri Amrish R. Kilachand in respect of the land admeasuring 30 Nali 12 Muthi of khatauni khata no. 4 situated in village Satbunga, Patti Satbunga, Tehsil and District Nainital."

11) Neither the date of general Power of Attorney nor the fact whether the same is a registered Power of Attorney or not is mentioned in the sale deed. It is mere an assertion in the sale deed that respondent no. 2 has claimed himself to be the general Power of Attorney holder of the plaintiff without there being any document of Power of Attorney in his favour. The beneficiary of the sale deed is the respondent no. 1.

12) Before further discussion it is apt to quote here the relevant provisions contained in Order 7 Rule 11 of the Code. The same reads as under:

> "**ORDER VII- PLAINT**
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> 11. Rejection of plaint— The plaint shall be rejected in the following cases:—
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> (a) where it does not disclose a cause of action;
>
> (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
>
> (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
>
> (d) where the suit appears from the statement in the plaint to be barred by any law:
>
> Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature form correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

13) Indisputably, the suit has been filed seeking decree of prohibitory injunction against the respondents. Second prayer is for a decree of mandatory injunction declaring the sale deed dated 06.05.1994 null and void in regard to the property in dispute.

14) The word 'Power of Attorney' has been defined in Section 1-A of the Powers of Attorney Act, 1882. Section 1-A is extracted hereunder:

> "1-A. Definition. –In this Act, "Powers of Attorney" include any instrument empowering a specified person to act for and in the name of the person executing it."

15) Section 2 of the Powers of Attorney Act, 1882, provides the execution under power-of-attorney which empowers a Power of Attorney holder to execute any

instrument in exercise of the powers to do something. A Power of Attorney holder cannot go beyond the power assigned to him.

16) On a perusal of the record it would reveal that there is no whisper in the sale deed in regard to empowering respondent no. 2, as the agent of the plaintiff.

17) Section 33 of the Registration Act, 1908 is in regard to the Power of Attorney recognizable for purposes of Section 32. Section 34 of the Registration Act is reproduced as under:

> "34. Enquiry before registration by registering officer –(1) Subject to the provisions contained in this Part in Sections 41, 43, 45, 69, 75, 77, 88 and 89, no document shall be registered under this Act, unless the persons executing such document, or their representatives, assigns or agents authorized as aforesaid, appear before the registering officer within the time allowed for presentation under Sections 23, 24, 25 and 26:
>
> Provided that, if owing to urgent necessity or unavoidable accident all such persons do not so appear, the Registrar, in cases where the delay in appearing does not exceed four months, may direct that on payment of a fine not exceeding ten times the amount of he proper registration fee, in addition to the fine, if any, payable under Section 25, the document may be registered.
>
> (2) Appearances under sub-section (1) may be simultaneous or at different times.
>
> (3) The registering officer shall thereupon –
>
> (a) enquire whether or not such document was executed by the persons by whom it purports to have been executed;
>
> (b) satisfy himself as to the identity of the persons appearing before him and alleging that they have executed the document; and
>
> (c) in the case of any person appearing as a representative, assign or agent, satisfy himself of the right of such person so to appear.
>
> (4) Any application for a direction under the proviso to sub-section (1) may be lodged with a Sub-Registrar, who shall forthwith forward it to the Registrar to whom he is subordinate.
>
> (5) Nothing in this section applies to copies of decrees or orders."

18) On a conjoint reading of Sections 1-A and 2 of the Powers of Attorney Act and in view of the mandatory requirement of executing sale seed it is apparent that the so

called Power of Attorney holder has to satisfy the conditions laid in Section 32 and 34 of the Registration Act, which has not been done in the present case.

19) Since the respondent no. 2 is claiming himself to be the Power of Attorney holder of the plaintiff, on lodging of an FIR against respondent no. 2 in regard to committing fraud, the first investigation was carried out, but unfortunately the Investigating Officer submitted the final report in the matter. The protest petition was allowed by the trial court. Criminal revision was allowed by the same District Judge, who has passed the order impugned. Feeling aggrieved the petitioner preferred criminal misc. (C-482) petition no. 378 of 2011 before this Court. The then Chief Justice of this Court passed the following order on 03.05.2011 on said C-482 petition. The same is reproduced below:

> "Mr. Manoj Tiwari, Senior Advocate assisted by Mr. J.S. Virk, Advocate for the applicant.
>
> Mr. Nandan Arya, Assistant Government Advocate for the State / respondent nos. 1 to 3.
>
> Let notice be served upon respondent nos. 4 to 6.
>
> List after service.
>
> Respondent no. 3 is directed to produce before this Court, the alleged forged power of attorney, on the next date of listing."

20) Despite the order passed by the Court, the respondent no. 2 did not produce the alleged Power of Attorney, allegedly executed in his favour. This Court has made a query to the learned Senior Counsel appearing on behalf of respondent no. 2 as to whether his client is having the Power of Attorney which has been referred in the sale deed dated 06.05.1994, so that the same be placed before this Court. Learned Senior Counsel appearing on behalf of respondent no. 2 having consulted with his client would submit that the Power of Attorney is not with the respondent no. 2. He has shown his inability to produce the alleged Power of Attorney before the

Court. The burden lies upon respondent no. 2, who claims that the plaintiff has executed the Power of Attorney in his favour and on the basis of which respondent no. 2 executed the sale deed in favour of respondent no. 1. It is not a case that the plaintiff has instituted the suit on frivolous grounds. Rather, it is a case that respondent no. 2, who claims himself to be the Power of Attorney holder of the plaintiff has executed the sale deed in favour of respondent no. 1. Respondent no. 1 is the beneficiary of the sale deed. Burden lies upon her to first satisfy the Court that there was a Power of Attorney executed by the plaintiff / petitioner in favour of respondent on. 2 and in exercise of the agency granted to respondent no. 2, he executed a sale deed in favour of respondent no. 1. Respondent no. 1 is claiming the rights on the basis of the sale deed dated 06.05.1994 executed by the respondent no. 2 in her favour apparently without authority of law. Apparently, the sale deed appears to be executed by respondent no. 2 in favour of respondent no. 1 without authority of law which does not confer any right upon them and the document is *void ab initio*.

21) Hon'ble Supreme Court in **Chhotanben**[4] has held as under:

> "14. After having cogitated over the averments in the plaint and the reasons recorded by the trial court as well as the High Court, we have no manner of doubt that the High Court committed manifest error in reversing the view taken by the trial court that the factum of suit being barred by limitation, was a triable issue in the fact situation of the present case. We say so because the appellant-plaintiffs have asserted that until 2013 they had no knowledge whatsoever about the execution of the registered sale deed concerning their ancestral property. Further, they have denied the thumb impressions on the registered sale deed as belonging to them and have alleged forgery and impersonation. It the context of totality of averments in the

plaint and the reliefs claimed, which of the articles from amongst Articles 56, 58, 59, 65 or 110 or any other article of the Limitation Act will apply to the facts of the present case, may have to be considered at the appropriate stage.

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….

16. The High Court on the other hand, has considered the matter on the basis of conjectures and surmises and not even bothered to analyse the averments in the plaint, although it has passed a speaking order running into 19 paragraphs. It has attempted to answer the issue in one paragraph which has been reproduced hitherto (in para 10). The approach of the trial court, on the other hand, was consistent with the settled legal position expounded in Saleem Bhai Vs State of Maharashtra, (2003) 1 SCC 557; Mayar (H.K.) Ltd. Vs Vessel M.V. Fortune Express (2006) 3 SCC 100 and also T. Arivandanam Vs T.V. Satyapal, (1977) 4 SCC 467."

22) Learned Senior Counsel appearing on behalf of respondent no. 2 placed reliance upon a judgment rendered by Hon'ble Apex Court in **Raghwendra Sharan Singh**[2]. Paragraphs 22 and 26 of said judgment are relevant in the context of present case. The same are excerpted hereunder:

"22. In the case of T. Arivandandam Vs T.V. Satyapal (1977) 4 SCC 467, while considering the very same provision i.e. Order 7 Rule 11 of CPC and the decree of the trial court in considering such application, this Court in para 5 has observed and held as under:

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly

resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits…."

26. In the case of *Madanuri Sri Rama Chandra Murthy*[3], this Court has observed and held as under:

"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The

> averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show hat the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

23) The judgment relied by learned Senior Counsel appearing on behalf of respondent no. 2 is not applicable on the facts and circumstances of the present case.

24) A careful perusal of the plaint would reveal that it was not merely a suit for cancellation of sale deed. Rather the plaintiff has filed the suit seeking decree of permanent prohibitory injunction in regard to the suit property. Further mandatory injunction has been sought to declare the sale deed dated 06.05.1994 effectless, null and void. The main thrust of respondent no. 1 is that since the petitioners was having knowledge of the sale deed dated 06.05.1994 as the mutation has been carried out in her favour on the basis of sale deed and subsequently the plaintiff has lodged the FIR against the respondents in regard to the alleged fraudulent action of respondents, therefore, the suit instituted by the plaintiff on 07.09.2009 is barred by limitation as contended in para 24 of the written statement. It would be apt to note here that an issue of limitation is a mixed issue of law and fact and is not purely an issue of law, whereof Order 7 Rule 11 of the Code stipulates that the suit is liable to be dismissed at the threshold when it is

barred by law. A careful perusal of the order passed by the trial court dismissing the application would reveal that the learned trial court has categorically assigned reasons to arrive at its conclusion in rejecting the application under Order 7 Rule 11 of the Code, whereof the learned District Judge without reversing / setting aside the findings recorded by the trial court, on surmises and conjectures, allowed the revision by a cryptic order.

25) It is settled proposition in law that appellate or revisional court should not set aside a judgment and order unless the appellate or revisional court set aside the findings recorded by the trial court. A judgment is known for its reasoning. If there is no reasoning it cannot be considered as a judgment. A perusal of the order impugned would reveal that the revisional court has allowed the revision by a cryptic order which is against the settled proposition of law.

26) The Hon'ble Apex Court in **Sunil Kumar Vaish**[6] has deprecated such practice of deciding the cases by judicial or quasi-judicial authorities in a cursory and cryptic manner without assigning any reasons. Paragraph nos. 18, 19 and 20 of said judgment are excerpted hereunder:

> *"18. Judicial determination has to be seen as an outcome of a reasoned process of adjudication initiated and documented by a party based mainly on events which happened in the past. Court's clear reasoning and analysis are basic requirements in a judicial determination when parties demand it so that they can administer justice justly and correctly, in relation to the findings on law and facts. Judicial decision must be perceived by the parties and by the society at large, as being the result of a correct and proper application of legal rules, proper evaluation of the evidence adduced*

and application of legal procedure. The parties should be convinced that their case has been properly considered and decided."

19. Judicial decisions must in principle be reasoned and the quality of a judicial decision depends principally on the quality of its reasoning. Proper reasoning is an imperative necessity which should not be sacrificed for expediency. The statement of reasons not only makes the decision easier for the parties to understand and many a times such decisions would be accepted with respect. The requirement of providing reasons obliges the judge to respond to the parties' submissions and to specify the points that justify the decision and make it lawful and it enables the society to understand the functioning of the judicial system and it also enhances the faith and confidence of the people in the judicial system."

20. We are sorry to say that the judgment in question does not satisfy the above standards set for proper determination of disputes. Needless to say these types of orders weaken our judicial system. Serious attention is called for to enhance the quality of adjudication of our courts. Public trust and confidence in courts stem, quite often, from the direct experience of citizens from the judicial adjudication of their disputes."

27) It is also settled proposition of law that the revenue entry does not confer any right or title over the suit property. The mutation entries are merely for fiscal purposes to collect the land revenue. Thus the mutation carried out in the name of respondent no. 1 does not create any right or title in her favour as held by Hon'ble Apex Court in the case of **Bhimabai Mahadeo Kambekar**[1]. The relevant paragraphs of said judgment are excerpted hereunder:

> "5. The law on the question of mutation in the revenue records pertaining to any land and what is its legal value while deciding the rights of the parties is fairly well settled by a series of decisions of this Court.
>
> 8. This Court has consistently held that mutation of a land in the revenue records does not create or extinguish the title over such land nor it has any presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question."
>
> (emphasis supplied)

28) There is a legal maxim *nemo dat quod non habet* which means that nobody can pass a better title then he himself has. Indisputably, there is no power of attorney executed by the plaintiff in favour of respondent no. 2 and the respondent no. 2 merely mentioning in the sale deed had executed the sale deed in favour of respondent no. 1.

29) A perusal of the impugned judgment and order would further reveal that instead of taking into account the plaint averments, the revisional court has considered the defendant's case, which is against the settled position of law that for invoking the provision of Order 7 Rule 11 of the Code, only the plaint case should be considered.

30) The law is well settled that while considering an application under Order 7 Rule 11 of the Code, the court has to examine the averments in the plaint and the pleas taken by the defendant in the written statement would be irrelevant. Hon'ble Supreme Court having considered a catena of judgments, has held in the case of **Bahu Ram**[5], as under:

> "15. The law has been settled by this Court in various decisions that while considering an application under Order VII Rule 11 CPC, the court has to

> examine the averments in the plaint and the pleas taken by the defendant in the written statements would be irrelevant. [vide C. Natrajan v. Ashim Bai and Anr., (2007) 14 SCC 183; Ram Prakash Gupta v. Rajiv Kumar Gupta and Ors., (2007) 10 SCC 59; Hardesh Ores (P) Ltd. v. Hede and Co. (2007) 5 SCC 614; Mayar (H.K.) Ltd. and Ors. v. Vessel M.V. Fortune Express and Ors. (2006) 3 SCC 100; Sopan Sukhdeo Sable and Ors. v. Assistant Charity Commissioner and Ors., (2004) 3 SCC 137 and Saleem Bhai and Ors. v. State of Maharashtra and Ors., (2003) 1 SCC 557]. The above view has been once again reiterated in the recent decision of this Court in Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust, (2012) 8 SCC 706."

31) Besides this, a perusal of the order passed by learned District Judge would reveal that the learned District Judge did not consider that it was a suit for prohibitory injunction for which no limitation is prescribed in the Indian Limitation Act. A suit for injunction involves a declaration of rights. If, in any case, the respondents claim the title on the basis of sale deed or otherwise they may contest the case on the strength of their pleadings. Since there is no limitation prescribed for filing a suit for prohibitory injunction and assuming that the second relief in the suit is barred by limitation, in such contingency, the suit should not have been dismissed in its entirety by invoking the provisions of Order 7 Rule 11 of the Code. If in a suit, one relief is not time barred and other relief is barred by limitation, the provisions of Order 7 Rule 11 of the Code should not have been invoked in dismissing the suit. The suit should be decided after framing the relevant issue of its being time barred as the issue of limitation is a mixed question of fact and law. Certainly, it was not a stage to dismiss the suit by impugned judgment and order

dated 10.06.2011 in exercise of revisional jurisdiction under Section 115 of the Code. Thus, this Court has no hesitation to hold that the learned District Judge in exercise of its revisional power has exceeded in its revisional jurisdiction and committed patent error of law in allowing the revision and in dismissing the suit which has occasioned into failure of justice with the plaintiff. The impugned judgment and order dated 10.06.2011 is, therefore, unsustainable in the eyes of law. The same is liable to be quashed. The same is hereby quashed. Writ petition stands allowed. Consequently, the suit is restored to its original number.

32) It is made clear that any observation made by this Court will not influence the trial court in any manner in deciding the suit, in accordance with law. Having considered that fact that the suit is of the year 2009, the trial court shall make an endeavour to proceed with the suit expeditiously and grant of unnecessary adjournments to either of the parties shall be avoided. Lower court record be sent back. In the facts and circumstances, the parties shall bear their own costs.

(Lok Pal Singh, J.)

Dt. November 01, 2019.
Negi