

**IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE  
BEFORE**

**HON'BLE SHRI JUSTICE PRAKASH CHANDRA GUPTA**

**ON THE 12<sup>th</sup> OF MAY, 2023**

**CIVIL REVISION No. 432 of 2022**

**BETWEEN:-**

- 1. SALMABI W/O USMAN  
OCCUPATION: HOUSEHOLD  
MALHAR BAAG, NEAR CITY POLICE STATION SENDHWA  
DISTRICT BARWANI (MADHYA PRADESH)**
- 2. MOHAMMAD SAEED S/O USMAN  
OCCUPATION: BUSINESS  
MALHAR BAAG, NEAR CITY POLICE STATION SENDHWA  
DISTRICT BARWANI (MADHYA PRADESH)**
- 3. MOHAMMAD AMEEN S/O USMAN  
OCCUPATION: BUSINESS  
MALHAR BAAG, NEAR CITY POLICE STATION SENDHWA  
DISTRICT BARWANI (MADHYA PRADESH)**

**.....PETITIONERS**

***(SHRI NITIN PHADKE, ADVOCATE FOR THE PETITIONERS)***

**AND**

**VIMLABAI W/O MURLIDHAR MANDOWARA  
AGED ABOUT 69 YEARS, OCCUPATION: HOUSEHOLD  
OPPOSITE OLD NAGAR PALIKA  
NIVALI ROAD SENDHWA  
DISTRICT BARWANI (MADHYA PRADESH)**

**.....RESPONDENT****(NONE)**

*This revision coming on for admission this day, **Hon'ble Shri Justice Prakash Chandra Gupta** passed the following:*

**ORDER**

The petitioners/defendants have filed the present civil revision under Section 115 of the Code of Civil Procedure, 1908 (in short “the CPC”) being aggrieved by the order dated 01.08.2022 passed by the Civil Judge, Junior Division, Sendhwa, District Barwani (M.P.) in Civil Suit No.29-A/2021, whereby learned Trial Court has rejected an application under Order 7 Rule 11 of CPC filed by the petitioners.

2. The respondent/plaintiff has filed a suit for declaration of title and injunction in respect of suit land. In the said suit, after appearance, the present petitioners filed an application under Order 7 Rule 11 of CPC on the following grounds:-

- i. There is no cause of action to file present civil suit.*
- ii. The respondent/plaintiff has not sought relief of possession, therefore the suit is not maintainable as provided under Section 34 of Specific Relief Act, 1963.*
- iii. The suit is barred by limitation.*

3. The application was opposed by the plaintiff. Learned Trial Court vide impugned order dated 01.08.2022 has dismissed the application firstly, on the ground that the cause of action is present in the suit. Secondly, the petitioners are illegally trying to encroach upon the suit land by fixing iron pole hence, question of maintainability of suit can be decided after taking evidence. Thirdly, question of limitation is a mixed question therefore, this objection also can be decided after taking evidence of both the parties.

4. Learned counsel for the petitioners submits that the respondent/plaintiff has filed revenue record bearing survey No.81/38 alongwith the suit, but there is no pleading in respect of the aforesaid land in the entire plaint, while survey No.81/38 is in the title of the petitioners. Learned Trial Court has passed the impugned order without considering the provision of Article 58 of the Schedule to the Limitation Act, which prescribes limitation of 03 years for a declaratory suit. The suit was not tenable without seeking the relief of the possession as provided u/S 34 of the Specific Relief Act, 1963. Provisions of Order 7 Rule 11 has not been considered properly. The impugned order suffers from perversity, irregularity and illegality. Therefore, the impugned order is liable to be set aside. Learned counsel has placed reliance in the case of *ITC Ltd. V Debt Recovery Appellate Tribunal and Ors.* [AIR 1998 SC 634] and *Saleem Bhai and Ors. V State of Maharashtra and*

**Ors. [AIR 2003 SC 759].**

5. I have heard learned counsel for the petitioners and perused the record.

6. It is apposite to reproduce here provision of Order 7 Rule 3 of CPC:-

*“3. Where the subject-matter of the suit is immovable property-  
Where the subject-matter of the suit is immovable property, the  
plaint shall contain a description of the property sufficient to  
identify it, and, in case such property can be identified by  
boundaries or numbers in a record of settlement or survey, the  
plaint shall specify such boundaries or numbers.”*

7. On perusal of copy of the plaint, it appears that though respondent/plaintiff has given particular of suit land by mentioning the *chouhaddi of suit land*, which is supported by registered sale deed, and has not given survey number in the plaint, but as provided in the above discussed provision, it is not necessary to mention survey number of the suit land in the plaint if the description of the boundary is sufficient to identify it. Therefore, on the aforesaid ground it cannot be said that the suit is not maintainable.

8. In the case of *ITC Ltd. (Supra)*, the Apex Court has held in paragraph-16 as under:-

*“16. Question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of order 7 rule 11, CPC. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. See T. Arivandandam V T.V. Satyapal, (1977) 4 SCC 466 : (AIR 1977 SC 2421).”*

9. The Apex Court in the case of **Saleem Bhai and Ors (Supra)** has held in paragraph-9 as under:-

*“9. A perusal of Order VII Rule 11 C.P.C. makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 C.P.C. at any stage of the suit-before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII C.P.C. the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 C.P.C. cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”*

10. From the observation given in the aforementioned judgements and settled principle of law, the averments in the plaint alone are to be examined while considering an application under Order 7 Rule 11 of

CPC. No other extraneous factor can be taken into consideration. Similarly, creation of an illusion in plaint by setting out a cause of action in shadow of clever drafting is also not permissible.

**11.** As per paragraph-11 of the plaint, the cause of action arose on 04.11.2021 when the petitioners tried to encroach the suit land by fixing iron pole. The suit was filed on 16.11.2021 i.e. within 03 years. It also appears that the plaint contains sufficient cause of action. Prima-facie, the suit is within limitation and the respondent/plaintiff is in possession of the suit land therefore, the suit is maintainable.

**12.** Therefore, from the foregoing analysis, learned Trial Court has rightly rejected the application under Order 7 Rule 11, CPC. There is no illegality, perversity or irregularity in the findings recorded by learned Trial Court.

**13.** Accordingly, the petition filed u/S 115 of CPC is hereby dismissed.

**(PRAKASH CHANDRA GUPTA)**  
**JUDGE**

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