

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

***BEFORE***

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

**ON THE 1<sup>st</sup> OF APRIL, 2023**

**CIVIL REVISION No. 478 of 2022**

**BETWEEN:-**

**SUNIL S/O SHRI GOPAL KRISHNA SHARMA,  
AGED ABOUT 52 YEARS, OCCUPATION:  
VAKALAT REWAS DEWDA ROAD, RAMTEKRI  
MANDSORE (MADHYA PRADESH)**

**.....PETITIONER**

***(BY SHRI VISHAL BAHETI, ADVOCATE)***

**AND**

**BASHIR KHAN S/O LATE GULSHER KHA JI,  
AGED ABOUT 57 YEARS, OCCUPATION:  
1. AGRICULTURE VILLAGE BULGADI TEHSIL  
AND DISTRICT MANDSAUR (MADHYA  
PRADESH)**

**MOHAMMAD AAMIN S/O NAHAR KHA JI,  
AGED ABOUT 46 YEARS, OCCUPATION:  
2. AGRICULTURE VILLAGE ACHERI TEHSIL AND  
DISTRICT MANDSAUR (MADHYA PRADESH)**

**FAQKIR MOHAMMED S/O LATE GULSHER KHA  
JI, AGED ABOUT 82 YEARS, OCCUPATION:  
3. AGRICULTURE VILLAGE DAULATPURA TEHSIL  
AND DISTRICT MANDSAUR (MADHYA  
PRADESH)**

**ALIYAAR KHAN S/O LATE GULSHER KHA JI,  
AGED ABOUT 62 YEARS, OCCUPATION:  
4. AGRICULTURE VILLAGE DAULATPURA TEHSIL  
AND DISTRICT MANDSAUR (MADHYA  
PRADESH)**

**5. THE STATE OF MADHYA PRADESH THROUGH  
COLLECTOR MANDSAUR (MADHYA PRADESH)**

**.....RESPONDENTS**

***(SHRI RISHIRAJ TRIVEDI, ADVOCATE FOR RESPONDENT NO.1)***

*This revision coming on for admission this day, the court passed the following:*

## ORDER

1] This revision petition has been filed by the petitioner/defendant No.2 under Section 115 of the Code of Civil Procedure against the order dated 15/06/2022, passed by the Third Civil Judge, Junior Division, Mandsaur (M.P.) in RCSA No.301-A/2020 whereby the application filed by the petitioner under Order 7 Rule 11 of CPC has been dismissed.

2] In brief, the facts of the case are that the respondent No.1/plaintiff filed a civil suit for declaration of title and permanent injunction against the present petitioner and the respondents No.2 to 5 in respect of the agricultural land situated at Village Daulatpura, Tehsil and District Mandsaur on the ground that the disputed lands belong to Late Gulsher Kha, the father of the plaintiff who had also filed a case in the Court of Tehsildar, Mandsaur against Hurmat Kha S/o Kale Kha under Section 38 of Jamindar Abolition Act claiming his title under the said Act. The aforesaid case was decided by the Tehsildar vide its order dated 22/03/1960 and the *Bhumi Swami* rights were given to Late Gulsher Kha being the *Pakka Krishak*. The case of the plaintiff is that the aforesaid land is in continuous possession of the plaintiff after the death of Gulsher Kha, which land has never been transferred by Gulsher Kha in any manner. It is further the case of the plaintiff that on 12/10/2020, the defendant No.2 came to him and informed him that he has purchased the disputed land and asked him to vacate the same, and when the plaintiff asked the defendant No.2 about the document regarding his ownership, through which the defendant No.1 has sold the land to defendant No.2, he was shown the sale deed dated

02/12/1991. The plaintiff's case is that his grand father Hurmat Kha had died issueless but despite this fact, the defendant No.1 while claiming that he is the son of Nahar Kha, has sold the land regarding which he had no right, title or authority. Thus, the civil suit was filed for declaration that the sale deeds executed by defendant No.1 in favour of defendant No.2 are not binding on the plaintiff and also that defendants No.1 and 2 be restrained from interfering in the possession of the plaintiff.

3] In the aforesaid suit, an application under Order 7 Rule 11 of CPC was filed by the defendant No.2 on the ground that no cause of action has arisen to the plaintiff to file the suit especially after more than 50 years. The aforesaid application of the defendant No.2 has been rejected by the learned Judge of the Trial Court holding that it is not a case where any of the provisions of Order 7 Rule 11 of CPC can be invoked when the plaintiff has stated that the cause of action has arisen to him on 12/10/2020.

4] Learned counsel for the petitioner has submitted that the learned Judge of the Trial Court has erred in not considering the fact that the suit was hopelessly barred by limitation and no cause of action arose to the plaintiff to file the suit. In support of his contentions, Shri Baheti has also relied upon the decision rendered by the Supreme Court in the case of *T. Arivandandam Vs. T.V. Satyapal and another reported as AIR 1977 SC 2421*.

5] Learned counsel appearing for the respondent, on the other hand, has opposed the prayer and it is submitted that no interference is called for. Counsel has also submitted that the defendant No.2 has not even

taken the plea that the suit is barred by limitation which is also apparent from their application filed under Order 7 Rule 11 of CPC.

6] In rebuttal, Shri Vishal Baheti, learned counsel appearing for the petitioner has submitted that the plea of limitation may not have been taken in specific words but on a perusal of the application under Order 7 Rule 11 of CPC clearly reveals that the defendant No.2 has pleaded that no cause of action has arisen to the plaintiff after 50 years. Thus, it is submitted that the plea of limitation is already taken in the said application.

7] Heard learned counsel for the parties and perused the record.

8] From the record, this court finds that the application filed by the defendant no.2 under Or.7 rule 11 of CPC runs into 4 pages whereas the plaint itself runs into 4 pages only, and on perusal of the said application, it is apparent that the defendant no.2 has referred to various facts leading to his possession of the disputed property.

9] This court is aware of the fact that the question of limitation is a mixed question of law and fact but a suit can still be dismissed if the court comes to the conclusion that on the averments of the plaint it can be safely concluded that the suit is barred by limitation. However, mere drafting of the application under Or.7 rule 11 of CPC is such that it is difficult to decipher exactly how, on the averment of the plaint itself, the suit can be held to be barred by limitation, and on the contrary it compels this court to believe that it is a case where the issue of limitation is a mixed question of law and fact. It appears that just to bring the case within the ambit of Or.7 rule 11(a) of CPC, i.e., where

the suit does not disclose a cause of action, the application has been drafted in such a manner so as to wrap the question of limitation with the issue of lack of cause of action, which this court is not able to appreciate, and thus, the petition is liable to be dismissed.

10] This court is also of the considered opinion that an application under Or.7 rule 11 of CPC should be drafted with clarity and in simple manner, restricting it to the averments made in the plaint only, the lengthier it gets, the more likely it is to lead the case in to the arena of disputed question of facts, and thereby to its imminent dismissal.

11] In the facts and circumstances of the case, the decision relied upon by Shri Baheti, counsel for the petitioner is of no avail to him as the same is distinguishable.

12] Resultantly, the petition being devoid of merits is hereby *dismissed*.

(SUBODH ABHYANKAR)  
JUDGE

krjoshi