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

**BEFORE  
HON'BLE SHRI JUSTICE HIRDESH**

**ON THE 4<sup>th</sup> OF MARCH, 2024**

**CIVIL REVISION No. 821 of 2023**

**BETWEEN:-**

**ANIL S/O SHRI SHANTI PRIYA DOSHI OCCUPATION:  
BUSINESS 43, UTKARSH VIHAR, INDORE (MADHYA  
PRADESH)**

**....PETITIONER**

***(BY SHRI VEER KUMAR JAIN – SENIOR ADVOCATE WITH SHRI VAIBHAV JAIN  
– ADVOCATE)***

**AND**

- 1. PAPPU S/O SHRI PARMANAND PATEL, AGED  
ABOUT 42 YEARS, OCCUPATION: AGRICULTURE  
NIHARPUR MUDI, BIJALPUR RAJENDRA NAGAR,  
INDORE (MADHYA PRADESH)**
- 2. RADHESHYAM S/O PANNALAL KHATI  
OCCUPATION: BUSINESS PATWARI CHOWK,  
BIJALPUR, RAJENDRA NAGAR, INDORE (MADHYA  
PRADESH)**
- 3. MUNNALAL S/O SHRI MULCHAND THANORE  
OCCUPATION: BUSINESS 12/1, MALI MOHALLA, MOG  
LINES, INDORE (MADHYA PRADESH)**
- 4. SMT. PUSHPA BAI W/O LATE SHRI SHIVAJI RAO  
HOLKAR, OCCUPATION: HOUSHOLD 1315/B SECTOR,  
SCHEME NO. 71, INDORE (MADHYA PRADESH)**
- 5. SMT. SUREKHA W/O LATE SHRI MUKESH  
BHAGWAT, AGED ABOUT 57 YEARS, OCCUPATION:  
HOUSHOLD 1315/B SECTOR, SCHEME NO. 71, INDORE  
(MADHYA PRADESH)**
- 6. SMT. JAYMALA W/O SHRI YOGESH NAJAM, AGED  
ABOUT 37 YEARS, OCCUPATION: HOUSEHOLD 1315/B  
SECTOR, SCHEME NO. 71, INDORE (MADHYA  
PRADESH)**

7. **SMT. JAYSHREE W/O PRAVEEN, AGED ABOUT 32 YEARS, OCCUPATION: HOUSEHOLD 1315/B SECTOR, SCHEME NO. 71, INDORE (MADHYA PRADESH)**
8. **SAURAV S/O SHRI MUKESH BHAGWAT, AGED ABOUT 29 YEARS, OCCUPATION: NOT KNOWN 1315/B SECTOR, SCHEME NO. 71, INDORE (MADHYA PRADESH)**
9. **BHAYYU S/O SHRI MUKESH BHAGWAT, AGED ABOUT 27 YEARS, OCCUPATION: NOT KNOWN 1315/B SECTOR, SCHEME NO. 71, INDORE (MADHYA PRADESH)**

**.....RESPONDENTS**

**(SHRI AMIT BHATIA, LEARNED COUNSEL FOR THE RESPONDENT NO.1)**

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

### **ORDER**

This Civil Revision has been filed by the petitioner/defendant being aggrieved by the order dated 15.09.2023 passed by 5<sup>th</sup> Civil Judge, Senior Division, Indore in R.C.S.No.54-A/2016 whereby the application under Order 7 Rule 11 of CPC filed by the petitioner has been rejected.

2. The brief facts of the case are that late Shri Basant Rao was the owner of several land including land bearing survey no.689 area 3.977 hectares of village Nihalpur Mundi. Shri Basant Rao had expired and he was survived by wife Smt. Leela Bai, son Mukesh and daughter Smt.Pushpa. Smt.Leela Bai and Mukesh had also expired and they are survived by respondents no.5 to 9. Late Smt. Leelabai, late Shri Mukesh and Smt. Pushpabai had executed a registered general power of attorney on 16.01.1997 in favour of Shri Munnalal, respondent no.3. The entire area of Survey no.689 except 1.406 hectare was already sold to various persons. On the basis of the aforesaid power of attorney, the respondent no.3 sold the remaining land i.e. 1.406 hectares to Shri Radheshyam, respondent no.2 by registered sale deed the possession thereof

was handed over to him by registered sale deed 26.12.1998 and thereafter his name was also mutated in the revenue record. Thereafter, Leelabai, Mukesh and Smt.Pushpa Bai cancelled the said registered power of attorney by a registered cancellation deed dated 30.12.1998. Thereafter, Radheshyam, respondent no.2 who was also owner of survey no.689/1/2/2 along with 689/1/1 area respectively 0.050 hectare and 1.406 hectare had sold the said land by registered sale deed dated 31.03.2006 to the petitioner. It may also be mentioned that the said land was duly recorded in the name of the petitioner in the revenue record and the petitioner is in possession thereof.

3. It appears that on 09.01.2002 in connivance with respondent no.1 the respondents no.4 to 9 illegally, fraudulently and without any authority had sold 1 hectare of land out of survey no.689/1/1 to respondent no.1. Thereafter, respondent no.1 applied for mutation. In mutation proceedings, the petitioner filed objections. After considering the objections, Tehsildar vide order dated 14.06.2006 rejected the mutation application filed by the respondent no.1. It has also been held that the respondents no.4 to 9 had no subsisting title to the land and respondent no.1 should file a civil suit and get the sale deeds set aside.

4. Respondent no.1 filed an appeal before the Sub Divisional Officer. The said appeal was also dismissed on 16.07.2007. Thereafter, respondent no.1 filed a second appeal before the Additional Commissioner, which was also dismissed on 08.06.2015. Thereafter, respondent no.1 filed a revision before the Revenue Board, Gwalior. The revision was also dismissed on 14.06.2016. Respondent no.1 filed the present civil suit for setting aside the sale deeds, declaration and permanent injunction on the ground that power of attorney dated 16.01.1997 was cancelled on 30.12.1998, therefore, the sale deed executed by respondent no.3 in favour of respondent no.2 was illegal.

5. After notice, the petitioner appeared before the trial Court and filed application under Order 7 Rule 11 of CPC on the ground that the present suit filed in the year 2016 is clearly barred by time under the provisions of the Limitation Act because in any case the respondent no.1 was aware about the

sale deeds in the year 2006, but the respondent no.1 has sought to challenge the registered sale deeds of the year 1998 and 2006 by filing the suit in 2016. After taking the reply and hearing the learned counsel for the both the parties, the trial Court rejected the application filed by the petitioner/defendant holding that it is mixed question of fact and law which can be decided after taking the evidence of both the parties.

6. Being aggrieved by the aforesaid impugned order, the petitioner has filed this revision on the ground that the impugned order passed by the trial Court is perverse, contrary to law and facts and circumstances. The trial Court has failed to properly and legally exercise its jurisdiction vested in it by law. It appears clearly by perusal of the plaint that the suit is barred by limitation and trial Court committed gross error of law in dismissing the application filed under Order 7 Rule 11 of CPC. Hence, prays for allowing the revision by setting aside the impugned order and consequently the plaint may be rejected and the suit filed by respondent no.1 be dismissed.

7. On the other hand, learned counsel for the respondent opposes the revision petition and prays for its rejection.

8. Learned counsel for the petitioner has relied on the judgment in the case of **T.Arivandandam Vs. T.V. Satyapal and another** reported in **(1977) 4 SCC 467** wherein it has been held as under:-

“The trial Court 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 (Munsif) should exercise his power under Order VII rule11, C.P.C. taking care to see that the round mentioned therein fulfilled. And, if clever drafting has created the illusion of a cause of action, it should be nipped in the bud at the first hearing by examining the party searchingly under Chapter X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first hearing so that bogus litigation can be shot-down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Ch.XI) and must be triggered against them.”

9. He also relied on the judgment in the case of **Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) dead through L.Rs and others (2020) 7 SCC 366** wherein it has been held as under :-

“26. Articles 58 and 59 of the Schedule to the 1963 Act, prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, which reads as under :

Description of suit	Period of limitation	Time from which period begins to run
58. To obtain any other declaration	Three years	When the right to sue first accrues.
59. To cancel or set aside an instrument or decree or for the rescission of a contract.	Three years	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

The period of limitation prescribed under Articles 58 and 59 of the 1963 Act is three years, which commences from the date when the right to sue first accrues.

27. In **Khatri Hotels Pvt. Ltd. &Anr. v. Union of India &Anr.**, this Court held that the use of the word ‘first’ between the words ‘sue’ and ‘accrued’, would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed, if it is beyond the period of limitation counted from the date when the right to sue first accrued.

28. A three-Judge Bench of this Court in **State of Punjab v. Gurdev Singh**, held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words “right to sue” means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order VII Rule 11(d) provides that

where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.”

10. He also relied on another judgment in the case of **Sudhirdas Vs. United Church of D Canada India, Dhar Beneficiary and others (2020) 1 MPLJ 714** wherein it has been held as under: -

“10. The Court below, after hearing both the parties has rejected the said application on the ground that the grounds raised by the petitioner in the application are mixed question of law and facts and so far as the ground no.(i) regarding limitation is concerned, admittedly, plaintiffs in their plaint has stated that the sale-deed has been executed on 17/06/2009 and the suit has been filed in Year 2017 i.e. after more than 8 years while limitation for challenging the registered sale-deed is 3 years. Thus, on the basis of pleadings made by the petitioner in the plaint itself the suit is barred by limitation.”

11. He relied on another judgment in the case of **Anita Jain Vs. Dilip Kumar and another 2018 (1) MPLJ 554** wherein it has been held as under: -

This Court in the case of *Leeladhar & Others Vs. Anwar Patel (Civil Revision No.275/2011 on 08/03/2016)* has held as under:-

“6- The first ground raised in the application preferred under Order VII Rule 11 CPC was that the so called agreement was executed on 10/06/1985 and the land in question was sold to the defendants No.1, 2 and 3 in the year 1995 and the suit was filed in the year 2011 for declaring the sale deed as null and void. It was further stated that in light of the judgment delivered in the case of *Suraj Lamp & Industires Pvt. Ltd. through its Director Vs. State of Haryana & Another reported in 2009(4) MPLJ 315*, the registration of the document is a notice to all concerned and therefore, as the sale deeds were executed in the year 1995 and the civil suit was filed in the year 2011 for declaration in respect of cancellation of sale deeds, was hopelessly barred by limitation.”

12. On the other hand, learned counsel for the respondent relied on the judgments in the case of **M.P. Steel Corporation Vs. Commissioner of Central Excise reported in (2015) 7 SCC 58** and **Bharat Karsondas Thakkar Vs. Kiran Construction Company and others (2008) 13 SCC 658**

and submitted that exclusion of time respondent pursuing his relief in wrong forum, held, may be advised to file separate suit by invoking provisions of the Limitation Act.

13. Heard learned counsel for both the parties and perused the record of the case. Order 7 Rule 11 of CPC reads as under:-

“Order 7 Rule 11 of CPC reads thus :-

“11. Rejection of plaint-The plaint shall be rejected in the following cases-

(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 written 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;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9;

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 for 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.”

14. In **Saleem Bhai and Ors. Vs. State of Maharashtra and ors. 2003 (1) SCC 557 Civil Appeal No.8518/2002 decided on 17.12.2002**, Apex Court held as thus :-

“Deciding application under Order 7 Rule 11, averment in the plaint can be seen not the plea taken in the written statement.”

15. In the present case, according to the plaint it was found that respondent/plaintiff filed a suit for declaration and permanent injunction of the suit land. So, according to the verdict of Apex Court, it is settled law that at the time of deciding application under Order 7 Rule 11 of CPC, only plaint averments must be seen.

16. The petitioner filed civil suit before the trial Court for cancellation of the sale deeds dated 26.12.1998 and 13.04.2006, but perusal of the pleadings in the plaint in para 3, it is found that respondent no.1 applied for mutation before the Revenue Court in 2005 and 2006. Thereafter Tehsildar vide order dated 14.06.2006 rejected the mutation application filed by respondent no.1 and stated that respondent no.1 who filed civil suit to get the sale deeds set aside, it means that respondent no.1 as well as respondents no.4 to 9 were fully aware that the said land had already been sold in the year 1998. In any case, it is undisputed that in the year 2006 respondent was well aware of the sale deed executed in favour of respondent no.2 in the year 1998 and was also aware of the sale deed executed in favour of the petitioner in the year 2006, but the respondent did not dare to file civil suit for cancellation of the sale deeds till 2016. It is true that revenue authorities have no right to cancel the sale deed and only civil Court have right to cancel the sale deed, but respondent have not filed a civil suit for cancellation of the sale deeds dated 26.12.1998 and 13.04.2006. The suit was filed on 19.07.2016 which was after a lapse of 18 years and 10 years. So this suit is clearly barred by limitation.

17. Hence, in the considered opinion of this Court, there is no need to take any evidence in this regard. It is the duty of the plaintiff to file civil suit for cancellation of the sale deeds dated 26.12.1998 and 13.04.2006 within three years of the execution of the sale deed or knowledge of the execution of the sale deed. According to the order dated 14.06.2006 passed by the Tehsildar respondents were well aware about the execution of the sale deeds in favour of respondent no.2 in the year 1998 and in favour of the petitioner in the year 2006. So, this suit is clearly barred by limitation. The trial Court has committed



error in holding that there is need to take evidence for consideration of limitation. Therefore, the impugned order passed by the trial Court is not correct in the eye of law and deserves to be set aside.

In view of the aforesaid discussions, the revision is allowed. The impugned order passed by the trial Court is set aside and the application filed by the petitioner under Order 7 Rule 11 of CPC is allowed and plaint is rejected. The suit filed by respondent no.1 is time barred and is dismissed.

**(HIRDESH)**  
**JUDGE**

RJ