



IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE ALOK AWASTHI

CIVIL REVISION No. 765 of 2025

*SIMTED OVERSEAS PRIVATE LIMITED THROUGH DIRECTOR
ABHAY GUPTA*

Versus

NARESH GUPTA AND OTHERS

.....
Appearance:

*Shri Veer Kumar Jain - learned Senior Advocate alongwith Shri Rizwan
Nizam, learned counsel for the petitioner.*

Shri Ashutosh Nimgaonkar, learned counsel for the respondent [R-1].

.....
RESERVED ON : 03.11.2025
PRONOUNCED ON : 16.12.2025
.....

ORDER

1 . The present revision petition has been filed being aggrieved by the order dated 04.07.2025 passed by the learned XIth Additional District Judge, Indore (M.P.) in Civil Suit No. RCS A-658/2021, whereby the application under Order VII Rule 11 of CPC seeking rejection of the plaint as the suit is clearly barred by law, has been dismissed.

2. Shorn of unnecessary details, relevant facts are that the respondent No.1 /plaintiff has filed a civil suit against the petitioner/defendant for declaration and permanent injunction by setting aside Sale Deed dated 18.06.2008. As per plaint averment, the respondent No. 1 is claiming himself



to be the owner of the land bearing the Survey No. 509/1 total area 2.433 hectare situated at village - Khajrana, Indore (M.P.). The respondent No. 2, on the basis of a forged and fabricated Power of Attorney, illegally and fraudulently executed a registered sale deed bearing No. 1A/1614 dated 18.06.2008 in favour of petitioner/defendant. It is further pleaded that the aforesaid land in question is duly recorded in the name of the petitioner in revenue records in compliance of the order passed in mutation Case No. 186-A/06/2007-08 dated 11.09.2008 and since then, the petitioner is in lawful possession of the property in question. Being aggrieved by the said order of mutation, respondent No. 1 filed an appeal before the Sub-Divisional Officer in the year 2009-2010. Vide order dated 17.08.2011, the Sub-Divisional Officer, remanded the mutation case to the Tehsildar with a direction to decide the matter afresh after affording due opportunity of hearing to all concerned parties. In the plaint, the respondent No. 1 has admitted that a notice was issued to the government officer (defendant in the said plaint) on 19.03.2012 in relation to the registered Sale Deed No. 1614 dated 18.06.2008, executed in favour of the appellant. Thereafter, the respondent No. 1 filed a Civil Suit No. 16-A/2013 before the Court of XIIth Civil Judge, Class-II, Indore (M.P.) seeking cancellation of the aforesaid sale deed. The said suit was dismissed vide judgment dated 29.03.2014 on the ground of non-payment of Court fee as well as on jurisdictional ground. Subsequently, after the dismissal of the first suit, respondent No. 1 filed another Civil Suit in the year 2021 for declaration and permanent injunction and further seeking the relief of cancellation of the same sale deed executed on the basis of



forged and fabricated Power of Attorney.

3 . Thereafter, the petitioner submitted an application under Order VII Rule 11 of CPC seeking dismissal of the suit on the ground that the present suit, instituted on 05.07.2021, is clearly barred by limitation. Learned Trial Court, in utter disregard of the settled principles of law, passed an order rejecting the application, being aggrieved by said order dated 04.07.2025, present petition is preferred.

4. Shri V.K. Jain, learned Senior Counsel for the petitioners has contended that learned Trial Court has committed a grave error of law in dismissing the application filed by the petitioner under Order VII Rule 11 of CPC as it did not properly consider the fact that respondent No.1/plaintiff himself has admitted the fact that first cause of action arose in the year 2008.

The respondent No.1, has clearly admitted in the plaint that he was well aware of the registered sale deed dated 18.06.2008 as early as in the year 2009-10 and several proceeding initiated by him in various Courts. He has also contended that suit is barred by limitation under Article 58 of the Limitation Act, 1963, and as such, the plaint is liable to be rejected under Order 7 Rule 11(d) of CPC. Article 58 and 59 of the Limitation Act, 1963 provides that for a suit seeking any declaration, the period of limitation is three years from the date "when the right to sue first accrues." In the instant case, the plaintiff/respondent No.1 is seeking the relief declaration that the registered sale deed dated 18.06.2008 be declared null and void on the ground that the Power of Attorney was forged and fabricated. However, from the averments in the plaint itself, it is evident that the plaintiff had actual



knowledge of the sale deed as early as 2009-10, and had also issued a legal notice in the year 2012, followed by prior suit in 2013 concerning the same cause of action, which was dismissed on 29.03.2014 but the judgment & decree remained unchallenged, therefore, the right to sue, if any, accrued no later than 2008 or at most by 2009-10, despite this, the present suit was instituted only on 05.07.2021. The impugned order passed, is even otherwise illegal, inappropriate and against the settled principal of law and also against the law laid down by the Hon'ble Supreme Court of India and various High Courts. On the aforesaid grounds, he has prayed that the present petition be allowed and dismissed the Civil Suit No. RCS 658-A/2021.

5 . He has also placed reliance upon the judgments **Anil Vs. Pappu** reported in 2024 (3) MPLJ 279, **Khatri Hotels Pvt. Ltd. and Another Vs. Union of India and Another** reported in (2011) 9 SCC 126, **Arivandandam Vs. T.V. Satyapal** reported in AIR 1977 SC 2421, **Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) dead through Legal Representatives and Others** reported in (2020) 7 SCC 366 and **Sudhirdas Vs. United Church of D Canada** reported in 2020 (1) MPLJ.

6. Learned counsel for the respondents has vehemently opposed the prayer and argued in support of the order impugned. A prayer has been made that the revision be dismissed.

7. Having considered the rival submissions of the learned counsel for the parties, I have perused the record available.

8. For ready reference, Order VII Rule 11 of CPC, is reproduced hereunder:-



“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.”

9. In the present case, the only issue which requires consideration by this Court is that, as to when the plaintiff /respondent No. 1 came to know the fact of registration of sale deed, by which, the right to sue first accrues to him ?

10. It is narrated in the plaint filed by plaintiff/respondent No. 1 that the land owned and possessed by plaintiff i.e. Khasra No. 509/1 Paki, measuring 0.335, i.e., 40,128 sq. ft. (3729.36 sq. meters), was illegally and unauthorizedly sold by defendant No. 1/respondent No. 2 to Defendant No. 2/petitioner through Registered Sale Deed No. 1614, dated 18.06.2008, on the basis of a forged Power of Attorney. The original copy of which is in the possession of defendant No. 2, and certified copy has been attached as Annexure-P/5. A copy of Power of Attorney has also been obtained from Tehsildar in a mutation case, which was commended in the year 2008 and an appeal was also filed by the plaintiff/respondent No. 1 for cancellation of mutation and a prayer was made that in place of name of respondent No. 2, name of petitioner be mutated, which reflects that the plaintiff/respondent No. 1 was aware about the sale deed of 2008.

11. In para 5 of the plaint, it was pleaded by the plaintiff that when the plaintiff came to know in respect of execution and registration of sale



deed dated 18.06.2008, plaintiff addressed a legal notice dated 19.03.2012 to the petitioner, respondent Nos. 2, 3 & 4, according to which plaintiff was well aware of the execution proceedings as well as of registered sale deed, however, in spite of knowing the aforesaid fact, subsequent suit was filed after a lapse of 9 years and 4 months. Plaintiff/respondent No. 1 also made a complaint to the Sub-Registrar on 09.08.2010 regarding cancellation of sale deed.

12. A bare perusal of the plaint also shows that plaintiff filed a suit in the year 2013 for declaring the 2008 sale deed as null and void. The said suit was dismissed vide order dated 29.04.2014 (Annexure-11), which also proves the awareness of the plaintiff about execution and registration of sale deed 2008.

13. **Objection for rejection of plaint under Order VII Rule 11 CPC should be raised as early as possible:** Power to summarily reject the plaint under Order VII Rule 11 CPC can be exercised by the Court at the threshold of the proceedings and this power is also available thereafter in the absence of any restrictions statutorily placed. However, a preliminary objection as to the rejection of plaint should be raised as early as possible, though the power of the court to consider the same at a subsequent stage is not taken away. See:

(i) **Vithalbhai (P) Ltd Vs. Union Bank Of India, (2005) 4 SCC 315.**

(ii) **Samar Singh Vs. KedarNath, 1987 suppl. SCC 663.**

14. **Order 7, Rule 11 (d) CPC applies only where the statement as made in the plaint without any doubt or dispute shows that the suit is barred**



by any law: Order 7, Rule 11 (d) CPC applies only where the statement as made in the plaint without any doubt or dispute shows that the suit is barred by any law in force. It does not apply in case of any disputed question. Rejection of the plaint under Order 7, Rule 11 CPC does not preclude the plaintiff from presenting a fresh plaint in terms of Rule 13 of Order 7 CPC. Order 7, Rule 11 CPC is applicable at any stage of the suit subject to above position of law. Order 7, Rule 11 CPC even casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Order 7, Rule 11 CPC even without the intervention of the defendant. See:

(i) **Popat and Kotecha Property Vs. State Bank of India staff Association**, (2005) 7 SCC 510.

(ii) **Sopan Sukhder Cable Vs. Assistant Charity Commissioner**, (2004) 3 SCC 137

(iii) **Saleem Bhai Vs. State of Maharashtra**, (2003) 1 SCC 557

(iv) **ITC Ltd. Vs. Debt Recovery Appellate Tribunal**, (1998) 2 SCC 70

(v) **T. Arivandandandam Vs. T.V.Satyapal**, (1977) 4 SCC 467

(vi) **Rooplal Sathi Vs. Nachhattar Singh Gill**, (1982) 3 SCC 487

(vii) **Raptakos Brett & Co. Ltd. Vs. Ganesh Property**, (1998) 7 SCC 184.

(viii) **Bruce Vs. Odham Press Ltd.**, (1936) 1 KB 697.

15. It is a settled principle of law that the application under Order VII Rule 11 of CPC is to be decided on the basis of averment made in the plaint and the document annexed therewith. Since the suit itself is barred by



limitation, the same is liable to be rejected. In this regard, the law laid down by Hon'ble Apex Court in the case of **Ram Prakash Gupta Vs. Rajiv Kumar Gupta** reported in (2007) 10 SCC 59, is condign to quote here as under:-

"Evidence by way of affidavit of the plaintiff (appellant herein) was filed on which cross examination of the appellant was closed. In the cross-examination, no question on limitation was asked by the respondents. It is at this stage, the respondent moved an application under Order 7 Rule 11(d) C.P.C. for rejection of the plaint on the ground of suit being barred by law of limitation. Reply to the said application was filed. The trial Court dismissed the suit of the appellant herein merely on the basis of the limitation"

16. In another judgment delivered in the case of **Kamala and Others Vs. K.T. Eshwara Sa & Others** reported in (2008) 12 SCC 661, Hon'ble Apex Court has observed as under :-

"Order VII, Rule 11 of the Code provides for rejection of plaint, clause (d) whereof specifies "where the suit appears from the statement in the plaint to be barred by any law"

Order VII, Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the



averments made in the plaint. Different clauses in Order VII, Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order VII, Rule 11 of the Code is the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order VII, Rule 11 of the Code is one, Order XIV, Rule 2 is another.

For the purpose of invoking Order VII, Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject matter of an order under the said provision.



.....The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

.....But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact of law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject matter thereof, the application for registration of plaint should be entertained."

17. Similar view has been taken by the High Court of Delhi, in the case of **Ram Prakash Gupta Vs. Rajiv Kumar Gupta**, (2007) 10 SCC 59.

18. **Presumption of knowledge of execution of document from the date of its registration for purposes of rejection of plaint under Order VII Rule 11 of CPC:** When a document is required to be registered and is got registered as per the law, then the whole world comes to know (by way of



constructive notice) about the execution and registration of such document from the date of its registration. Referring to Explanation I to Section 3 of the Transfer of Property Act, 1882, it has been held by the Supreme Court that knowledge of execution and registration of such document for purposes of limitation starts from the date of its registration. Plaint can be rejected by the Court under Order VII Rule 11 of CPC, if it is found to be barred by limitation.

19. It is also settled position of law that the limitation for filing a suit seeking cancellation of a registered sale deed is 3 years from the date of registration of such sale deed or at the most from the date of the knowledge of the registration of the sale deed.

20. In this regard, the following ratio held by Co-ordinate Bench of this Court in the case of **Anil (Supra)** is worth to quote here :-

"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."

21. Admittedly, the present suit has been filed on 05.07.2021 i.e. after a lapse of 13 years. The date of registration of the sale deed is 18.06.2008 and the knowledge of its execution and registration was well within the knowledge of the plaintiff as discussed above.

22. Thus, what is the delay in filing of the present suit so far as the challenge to the sale deed is concerned, can be summarized as, it is indisputably and admittedly clear that the present suit challenging the sale deed which was executed in the year 2008, is clearly barred by the law of



limitation, which is only 3 years under Article 56, 58 & 59 of the Limitation Act and the same is apparently clear from the plaint averments itself and the documents filed by the Plaintiff.

23. Further, the position of law regarding limitation to file suit or deciding the application under Order VII Rule 11 of CPC, has been considered by Hon'ble Apex Court in the case of **T. Arivandandam (supra)**, relevant portion of the case, is reproduced below :-

"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 rule 11, 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."

25. To deal with the issue at hand, it would be apposite to discuss about **Article 56, 58 & 59 of the Limitation Act**. For ready reference, the



same are reproduced below :-

| Description of suit | Period of limitation | Time from which period begins to run |
|--|---|--|
| PART III-SUITS RELATING TO DECLARATIONS | | |
| 56 | To declare the forgery of an instrument issued or registered Three years | When the issue or registration becomes known to the plaintiff. |
| 58 | To obtain any other declaration Three years | When the right to sue first accrues |
| PART IV-SUITS RELATING TO DECREES AND INSTRUMENTS | | |
| 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 |

26. While dealing with the issue of limitation, the Apex Court has discussed the Article 58 and 59 of the Limitation Act in the case of **Dahiben (supra)**, the Article 58 and 59 of the Limitation Act, are as under :-

"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 Time
from which limitation period begins to run*



58. To obtain any Three years When the right to other declaration. sue first accrues.

59. To cancel or set Three years When the facts aside an instrument entitling the plaintiff or decree or for the to have the rescission of a instrument or decree contract. 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.

In Khatri Hotels Pvt. Ltd. & Anr. v. Union of India & Anr, (2011) 9 SCC 126, 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 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.

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."

27. Another judgment, relating to the same issue, **Sudhirdas (supra)**, wherein it has been observed thus :-

“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.”

28. Apart from the aforesaid dictum of the Apex Court, it is also significant to note that a plaintiff, while filing the suit is required to state/plead that when cause of action arose and how the suit is within prescribed period of limitation. If the plaint is filed after expiry of period of limitation prescribed under the law and the plaintiff is seeking exemption from law of limitation, the plaintiff shall state ground of claiming such exemption.

29. A bare perusal of the plaint as it is, it is apparent that nowhere in the entire plaint it is stated the present suit is filed within the prescribed period of limitation. From the plaint averments and the documents filed along with the plaint, it is crystal clear that the present suit is filed beyond the period prescribed in law of limitation. For this purpose, no evidence in this regard is required because from the plaint averments itself, the present suit is barred by law of limitation, thus, deserved to have been rejected/dismissed at the threshold.

30. So far as the principle of *res-judicata* is concerned, Hon'ble Apex Court in the case of **Madan Mohan Mishra Vs. Chandrika Pandey (dead)** by LRs reported in (2009) 3 SCC 720 has observed as under :-

12. The order dated 17.7.1973 directing abatement of the said suit has attained finality.



Appellant did not question the correctness or otherwise of the said order. He also did not file any objection in the consolidation proceedings contending that the same involved non-agricultural lands. It is in the aforementioned premise, we may consider the nature of the suit filed by the plaintiff in the year 1994 being suit No.510 of 1994, paragraph 2 whereof reads as under :-

"That the plaintiff is the owner in possession of the Plot Nos.15/1.260, 16/289, 82/600, 140/745, 274/67, 488/117, 489/68, 423,55, 439/489, 323/122, 14/30, 46/31, 148/325, 260/54, 491/115, 835/398 as co-khatedar and successor since prior to the zamindari abolition and are cultivating the land."

13. It is not in dispute that the term 'co-khatedar' means 'co-tenure holder'. It is not only that for the first time in the plaint an averment was made that deed of gift, inter alia, contained some house properties, further averments made in the said plaint revealed that the name of the respondent herein had been entered in the records of the consolidation proceedings in respect of Plot No.153/08, 185/148, 504, 1.360, 611/304.

The reliefs prayed for therein are as under :-

"(a) That this Hon'ble Court may graciously be pleased to pass a decree of permanent injunction in favour of the plaintiff and against the defendant pertaining to the suit property. The defendant may be ordered to



not transfer the Araj No.153/87, 185/148, 504, 1.360, 611/304 which is in possession of the plaintiff."

We have noticed hereinbefore that the Araj lands are agricultural lands.

14. Suit No.510/94 covers the same property which was the subject matter of Suit No.550 of 1969. As noticed hereinbefore, the said suit has abated by an order dated 17.7.1973. Another suit by the appellant, therefore, would not only be barred by *res judicata* but also under Order II Rule 2 of the Code of Civil Procedure. Furthermore, appellant had not filed any objection in the consolidation proceedings, which again go to show that it was accepted that the lands in question were agricultural lands."

31. In the present case the respondent No. 1/plaintiff had filed a Civil Suit No. 16-A/2013 before the Court of XIIth Civil Judge, Class-II, Indore (M.P.) seeking cancellation of the aforesaid sale deed. The said suit was dismissed vide judgment dated 29.03.2014 on the ground of non-payment of Court fee as well as on jurisdictional ground. The operative para No. 6 & 7 of the judgment required to be quoted here as under :-

"6. प्रकरण में प्रदर्शित दस्तावेजों के अवलोकन से इस प्रकरण में मांगी गयी सहायता के संबंध में पंजीबद्ध विक्रय पत्र जो फर्जी आम मुख्त्यार के आधार पर प्रतिवादी क्र. 2 को पंजीकृत विकल लेख क. 1614



दिनांक 18.6.08 के द्वारा विक्रय किये गये विक्रय पत्र को अवैध व शून्य प्रभावी घोषित करवाने के संबंध में फर्जी आम मुख्त्यार की प्रति प्र०पी० 6 के संबंध में उक्त मुख्त्यारनामा के आधार पर किया गया विक्रय लेख कं. 1614 अवैध व शून्य प्रभावी घोषित करने का अनुतोष मांगा गया है। साक्ष्य में किशतबंदी खतौनी वर्ष 2006-07 की दाविया जमीन के संबंध में प्रमाणित सत्यप्रतिलिपि प्र०पी० 3 के रूप में साक्ष्य में प्रदर्शित की है। उक्त विक्रय पत्र कं. 1614 पंजीबद्ध दिनांक 27.5.08 को प्रतिवादी क. 1 द्वारा प्रतिवादी कं. 2 के पक्ष में पंजीबद्ध विक्रय पत्र प्र०पी० 5 दस्तावेज साक्ष्य में प्रदर्शित किया है और इस संबंध में आम मुख्त्यारनामा जिसे फर्जी व कूटरचित होना दथित है प्र०पी० 6 के रूप में साक्ष्य में प्रदर्शित कराया है। अनुविभागीय अधिकारी का आदेश दिनांक 17.8.11 प्र०पी० 7 व इस संबंध में तहसीलदार का आदेश की प्रमाणित सत्यप्रतिलिपि प्र०पी० 8 तहसीलदार को जिला पंजीयक का पत्र की प्रति प्र०पी० 9, प्रतिवादीगण को प्रेषित सूचना पत्र प्र०पी० 10 उनकी पंजीबद्ध रजिस्ट्रीया प्र०पी० 11 से 14. आपत्ति उप पंजीयक कार्यालय में जो पेश की प्रपठी 20. आपत्ति की रसीद प्र०पी० 21. उपपंजीयक के समक्ष आपत्ति प्र०पी० 23 व हस्ताक्षर विशेषज्ञ द्वारा दी गयी रिपोर्ट दिनांक 07.02.10 प्र०पी० 24 व वादी द्वारा कमिश्नर को प्रेषित शिकायत प्र०पी० 25 साक्ष्य में प्रदर्शित की है।

7. प्रकरण में वादी की ओर से पेश दस्तावेजों में वादी के पक्ष में निष्पादित मूल पंजीबद्ध विक्रय पत्र वादग्रस्त भूमि का दिनांक 01.06.1976 मूल पेश नहीं है. भू अधिकार पुस्तिका पी० 2 भाग 2 पेश है लेकिन भू अधिकार पुस्तिका भाग 1 पेश नहीं है। प्रकरण में वादी पक्ष की ओर से हस्तलेखा परीक्षक की रिपोर्ट प्र०पी० 24 पेश की है, जिसमें रिपोर्ट दिनांक 07.2.10 में दर्शित आम मुख्त्यारनामा 30.11.88 पर दर्शित हस्ताक्षर फर्जी



कुटरचित होना या वादी नरेश गुप्ता द्वारा न लिखा होना निष्पादित न होत दर्शित किया है। लेकिन इस संबंध में हस्तलेखा परीक्षक की साक्ष्य या रिपोर्ट कोई निश्चयक साक्ष्य नहीं है। प्रकरण में प्रतिवादीगण पक्ष द्वारा उपस्थित होकर कोई प्रतिवाद प्रस्तुत न कर इस संबंध में कोई प्रतिवाद या जवाबदावा पेश नहीं किया है। प्रकरण में वादी न्यायालय से मूलतः पंजीबद्ध विक्रय पत्र दिनांक 27.05.08 जो दिनांक 18.06.08 को पंजीबद्ध किया गया है दस्तावेज क्रमांक 1614. को अवैध व शून्य प्रभावी घोषित कराना चाहता है। उक्त दस्तावेज में संपत्ति का विक्रय/व्यवहार मूल्य एक करोड़ बीस लाख रु है, जिसका दावा सुनने व निराकरण का क्षेत्राधिकार इस न्यायालय को नहीं है एवं इस विक्रय पत्र को उदघोषणा द्वारा व इस विक्रय पत्र को अवैध व शून्य घोषित करने का क्षेत्राधिकार भी इस न्यायालय को नहीं है व न्यायशुल्क भी एक करोड़ बीस लाख रु के मूल्यांकन पर ही वादी को देना होगा। इस प्रकार मांगे गये अनुतोष के संबंध में वादी की ओर से वाद का उचित मूल्यांकन कर उचित न्याय शुल्क अदा नहीं किया है एवं एक करोड़ बीस लाख रु के विक्रय पत्र को शून्य घोषित करने के संबंध में उचित क्षेत्राधिकार के न्यायालय में वाद को पेश नहीं किया है, इस न्यायालय को इस वाद की सुनवाई व निराकरण का क्षेत्राधिकार नहीं है।"

32. Since the earlier suit had already been dismissed as aforesaid, therefore, the present suit is not maintainable as the same touches the doctrine of *res judicata*.

33. The doctrine of *res judicata* is a fundamental legal principle that bars the re-litigation of a claim or issue that has already been decided by a competent court. It is a cornerstone of the justice system, rooted in public policy to ensure finality in litigation, conserve judicial resources, and protect



parties from repeated harassment over the same matter.

34. The finding of the learned trial court that whether the plaintiff had the knowledge of the 2008 sale deed since inception, is a mixed question of law and facts and for this purpose, evidence is necessary. It clear that the objection raised by defendant/petitioner with regard to the limitation was not based on any defense, but was based on the plaint averment itself and the documents filed by the plaintiff himself. Therefore, the finding that the question of limitation in the present case is a mixed question of law and facts, is wholly illegal, without jurisdiction and perverse also and it appears rather clear that the learned trial court did not even adhered to and read the plaint averments and the documents filed by the plaintiff himself.

35. Apart from the above, it may also be mentioned that the suit is also otherwise barred by law for want of claiming relief for possession, as provided in proviso to Section 34 of the Specific Relief Act. Admittedly the Plaintiff is not in possession of the suit land because he had admitted this fact in his complaint made to the Divisional Commissioner (Annexure A/10 to the Revision). Even otherwise the same is also barred by prescribed period of limitation.

36. After hearing the learned counsel for the parties and perusing the averments in the plaint, the pleadings, and the impugned order dated 04.07.2025 passed by the learned Trial Court, this Court is of the considered opinion that the present petition under Article 227 of the Constitution of India deserves to be allowed.

37. The plaintiff's own averments in the plaint unmistakably establish



that the right to sue first accrued, at the latest, in 2009-2010 upon knowledge of the Sale Deed and mutation entries, and was acted upon by way of appeal, notice in 2012, and the prior suit in 2013. No case of concealed fraud or delayed discovery of material facts is pleaded that could extend the limitation under Section 17 of the Limitation Act, 1963. The present suit, instituted on 05.07.2021, is thus *ex facie* barred by limitation, having been filed well beyond the prescribed period of three years.

38. The power under Order VII Rule 11(d) CPC is mandatory where the plaint discloses that the suit is barred by law, including limitation, on its own averments (taken as true). The learned Trial Court fell in grave error in rejecting the petitioner's application under Order VII Rule 11 CPC without appreciating these admitted facts, which render the suit manifestly hopeless and an abuse of process.

39. The prior dismissal of Civil Suit No. 16-A/2013 (seeking identical relief in respect of the same Sale Deed) further reinforces that no fresh cause of action accrued for the present suit.

40. 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 18.06.2008 within three years from the date of registration of the sale deed or knowledge of the execution of the sale deed. According to the plaint averments like, legal notice dated 19.03.2012 issued to the petitioner, respondent Nos. 2, 3 & 4, complaint made by respondent No.1/plaintiff to the Sub-Registrar and also obtained certified copy from the office of Tehsildar in a mutation case, respondent



No.1/plaintiff was well aware about the execution of the sale deeds in favour of petitioner/defendant No. 2 in the year 2008. So, this suit is clearly barred by limitation. The Trial Court has committed error of law 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.

41. *Ex-consequenti*, the impugned order dated 04.07.2025 is hereby set aside. Consequently, the application filed by the petitioner under Order VII Rule 11 CPC is hereby allowed and Civil Suit No. RCS 658-A/2021 is rejected, being barred by limitation.

42. The Civil Revision stands allowed to the extent indicated hereinabove. However, there shall be no order as to costs.

(ALOK AWASTHI)
JUDGE

Vindesh