IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 16th OF JUNE, 2025

Civil Revision No.705 of 2024

SUGRA BEGUAM AND OTHERS

Versus

STATE OF MADHYA PRADESH

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Appearance :

Shri Shubham Manchani - Advocate for the applicants.

Shri Ajay Ojha – Government Advocate for the respondent/State.

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Reserved on : 24.04.2025

Pronounced on : 16.06.2025

ORDER

Pleadings are complete. With the consent of learned counsel for the parties, the matter is finally heard.

2. This civil revision is filed under Section 115 r/w Section 151 of the Code of Civil Procedure challenging the order dated 15.07.2024 (Annexure-P/11) passed in a pending civil suit i.e. RCSA No.147/2023 (State of Madhya Pradesh v. Sugra Begum and others) whereby an application filed by the applicants under Section 11 of CPC has been rejected by the trial Court.

3. By the impugned order, the trial Court has rejected the application

filed under Section 11 of CPC raising a ground that suit is barred by *res judicata* because issue raised in civil suit has already been settled up to the Supreme Court, therefore, for the same issue and even for the same relief, second suit is barred and, therefore, it is not maintainable. However, the trial Court has rejected the application by the impugned order holding therein that it is not possible to ascertain that the suit is barred by *res judicata* and observed that it can be decided only after framing the issue and recording the evidence of the parties.

4. Learned counsel for the applicants has submitted that the trial Court has not properly considered the application and on a general perception, decided the same saying that the question of *res judicata* shall be decided only after recording the evidence of the parties but it cannot be decided at initial stage whereas the suit could have been decided and dismissed on the basis of averments made in the plaint which clearly indicate that the suit is not maintainable because earlier also for the same relief, the suit travelled up to the Supreme Court and the issue involved therein has been decided.

5. Although, the counsel for the State has supported the order passed by the trial Court and relied upon several judgments of the Supreme Court and also of this High Court saying that it is settled principle of law that the issue of *res judicata* has to be decided after recording the evidence of the parties because it is the main question of facts and law.

6. Considering the rival contentions of learned counsel for the parties and judgments relied upon by them, to answer the questions that emerge

to be adjudicated, it is apposite to mention the necessary facts of the case, which are as under:-:-

(6.1) On 10.12.1999, an *ex parte* judgment and decree for declaration of title and possession as well as permanent injunction was passed by the First Civil Judge Class-II, District Satna (MP) in respect of a land situated over Survey Nos.502, 506, 507, 508, 532 and 533 at Tahsil Raghurajnagar, District Satna. The said judgment and decree is available on record as Annexure-P/2.

(6.2) Thereafter, that judgment and decree was appealed under Section 96 of the CPC and the Fifth Additional District Judge, Satna, has decided the said appeal preferred by respondent/State vide judgment and decree dated 21.07.2005 (Annexure-P/3) setting aside the judgment and decree passed by the trial Court.

(6.3) The judgment and decree passed by the first Appellate Court was again assailed by the present applicants by filing a second appeal i.e. S.A. No.1913/2005 (Sugra Begum and others Vs. State of M.P.) decided by judgment and decree dated 23.02.2017 (Annexure-P/4) allowing the same setting aside the judgment and decree passed by the first Appellate Court and restored the judgment and decree passed by the trial Court on 10.12.1999.

(6.4) Though against the said judgment and decree, the State

preferred an SLP(C) Diary No(s).4591/2018, but the Supreme Court vide order dated 19.02.2018 (Annexure-P/5) has dismissed the same on the ground of delay.

(6.5) On 16.03.2023, the plaintiff/respondent herein has filed a fresh suit i.e. RCSA No.147/2023 in respect of the same property before the First Civil Judge (Junior Division) Satna with a prayer to set aside the judgment and decree dated 10.12.1999 (Annexure-P/2) which was passed in favour of present applicants. The ground of challenge was that the said judgment and decree was obtained by playing a fraud and also seeking relief that it be declared that the suit land belongs to plaintiff/respondent herein.

(6.6) After perusal of averments made in the plaint, the present applicants being defendants have moved an application before the trial Court for rejection of the plaint and dismissal of suit alleging therein that it is barred by Section 11 of CPC, but that application has been rejected by the trial Court vide the impugned order dated 15.07.2024.

7. As per the stand taken by the plaintiff/respondent herein that the original decree dated 10.12.1999 has been obtained by the present applicants fraudulently and concealing material facts. In the plaint dated 16.03.2023 (Annexure-P/8), it is repeatedly averred that the judgment and decree dated 10.12.1999 has been obtained by fraud suppressing material facts, but nowhere it is shown as to what type of fraud has been

played by the present applicants and what type of material facts have been suppressed by them. It is also averred that even the Supreme Court has not decided the SLP on merit, but it got dismissed on the ground of delay.

8. In the plaint itself, it is admitted by the plaintiff/respondent herein about the fact that the suit of similar nature even between the same parties has been decided upto the Supreme Court, but after almost six years from the date of the order passed by the Supreme Court, the second civil suit has been filed. In paragraph-12 of the plaint, it is mentioned that the cause of action accrues in favour of the plaintiff/respondent herein only when a Government Advocate has given opinion to file a civil suit and then the suit has been filed. Thus, it is clear from the plaint itself that undisputably the issue travelled upto the Supreme Court in respect of the same property and also for the relief claimed therein and cause of action accrues in favour of the plaintiff/respondent herein only from the date of opinion given by the Government Advocate. It is also clear from the plaint itself that second civil suit has been filed seeking setting aside the judgment and decree dated 10.12.1999 as the same had been obtained by playing a fraud and concealing material facts.

9. However, I am surprised as to how a cause of action would accrue in favour of the plaintiff/respondent herein from the date on which the opinion was given by the Government Advocate. This analogy is unacceptable because law nowhere provides such type of cause of action and the date of starting point of limitation, therefore, in my opinion, the

cause of action as has been averred in paragraph-12 of the plaint, is no cause of action in the eyes of law. The suit could have been dismissed also on the ground that no cause of action survives.

10. From the averments made in the plaint, it is clear that the second suit has been filed on the ground that the judgment and decree dated 10.12.1999 was obtained fraudulently and concealing material facts, but the plaint nowhere speaks as to what fraud has been played and what type of material facts have been suppressed by the present applicants whereas the plaintiff/respondent herein had filed an appeal against the said judgment and decree and their first appeal was allowed but in second appeal before this Court, the judgment and decree of the first Appellate Court was set aside, meaning thereby, on each and every occasion, they contested the matter and they were present before the Courts even before the Supreme Court. When they preferred the SLP, they could convince the Supreme Court that the judgment and decree dated 10.12.1999 since obtained fraudulently by concealing material facts, therefore, the limitation would not come in their way for dismissing the SLP.

11. However, from the orders of the Courts and even from the order of Supreme Court, it does not reveal that the State has ever taken a ground of fraud and concealing material facts by the present applicants. In my opinion, if the respondent/State is allowed to continue to file such type of suit then it would create a very absurd position under the law because this attitude of the parties would be endless and there would be no end of litigation. It may be continued only alleging the fraud against the

party that the previous litigation was decided without considering the material facts. This practice is highly unacceptable. Even otherwise, in my opinion, Order 6 Rule 4 of CPC specifically provides the requirement to make an averment if the suit is filed seeking setting aside a judgment and decree on the same issue alleging fraud and then only it has to be specifically pleaded as to what type of fraud has been committed. As such, the plaint filed by the plaintiff/respondent herein is not tenable as the same does not fulfill the requirement of Order 6 Rule 4 of CPC.

12. The counsel for the respondent/State has placed reliance upon a judgment reported in **2023 LiveLaw (SC) 799 (Keshav Sood v. Kirti Pradeep Sood & Ors.)**, in which the Supreme Court has observed that the issue of *res judicata* could not have been decided on an application filed under Order 7 Rule 11 of CPC because while deciding such application, the Court has to see the averments made in the plaint.

13. However, this law of the Supreme Court even otherwise does not go against the present applicants because from the averments of the plaint, it is clear that the judgment and decree dated 10.12.1999 has been affirmed upto the Supreme Court and the application of *res judicata* could have been decided on the basis of averments made in the plaint itself.

14. He has further placed reliance upon a judgment reported in **(2021) 12 SCC 809 (Vaish Aggarwal Panchayat v. Inder Kumar and others)** in which also, the Supreme Court has observed that the issue of *res*

judicata if on the basis of plaint alone cannot be decided, then the same cannot be rejected and the issue has to be decided by conducting trial, but again, this analogy is not applicable in the present case because all the facts are being gathered and taken note of on the basis of averments made in the plaint.

15. In a case reported in **(2021) 9 SCC 99 (Srihari Hanumandas Totala v. Hemant Vithal Kamat and others)**, the Supreme Court has again reiterated the same analogy that if on the basis of plaint's averments, question of *res judicata* cannot be decided, then it is required to be taken into account the other aspects of the matter by conducting trial.

16. Further, in a case reported in **(2010) 8 SCC 383 (Meghmala and others v. G. Narasimha Reddy and others)**, the Supreme Court has observed that if an order/judgment is obtained by fraud then such order or judgment is not sustainable. The observation made in the said case is as under:-

> "28. It is settled proposition of law that where an applicant gets an order/office by making misrepresentation or playing fraud upon the competent authority, such order cannot be sustained in the eye of the law. "Fraud avoids all judicial acts, ecclesiastical or temporal." (Vide *S.P. Chengalvaraya Naidu v. Jagannath* [(1994) 1 SCC 1 : AIR 1994 SC 853] .) In *Lazarus Estates Ltd. v. Beasley* [(1956) 1 QB 702 : (1956) 2 WLR 502 : (1956) 1 All ER 341 (CA)] the Court observed without equivocation that : (QB p. 712) "No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything."

> 29. In *A.P. State Financial Corpn. v. GAR Re-Rolling Mills* [(1994) 2 SCC 647 : AIR 1994 SC 2151] and *State of Maharashtra v. Prabhu* [(1994) 2 SCC 481 : 1994 SCC (L&S) 676 : (1994) 27 ATC 116] this Court observed that a writ court, while exercising its equitable jurisdiction, should not act as to prevent perpetration of a legal fraud as the courts are obliged to do justice by promotion of good faith. "Equity is always known to defend the law from crafty evasions and new subtleties invented to evade law."

17. However, as per the submissions made by the counsel for the applicants and their stand before this Court that mere recital of fraud in the plaint by adopting clear drafting does not give rise to the cause of action that too after six years from the date of order passed by the Supreme Court in SLP. They have also relied upon a judgment reported in **2022 SCC OnLine SC 1330 (C.S. Ramaswamy v. V.K. Senthil and others)** and other connected appeals, and in a case of **Srihari Hanumandas Totala** (supra).

18. I have heard the rival contentions of learned counsel for the parties and perused the material available on record so also the judgments on which reliance has been placed by them.

19. I have already observed that what averments have been made in the plaint and whether the application and objection raised by the present applicants before the Court could have been decided only on the basis of averments of the plaint, then in my opinion '**YES**', it can be decided because everything has been narrated in the plaint and subsequent suit has been filed only on the ground that the decree was obtained by fraud and concealing material facts.

20. Although, the counsel for the respondent/State has placed reliance upon several judgments of the Supreme Court and on that aspect, this Court does not have any distinct opinion but at the same time, the Court has to see the analogy laid down by the Supreme Court in a case reported in **(1998) 3 SCC 573 (K.K. Modi v. K.N. Modi and others)**, in which the Supreme Court has observed as under:-

> "**44**. One of the examples cited as an abuse of the process of the court is relitigation. It is an abuse of the process of the court and contrary to justice and public policy for a party to relitigate the same issue which has already been tried and decided earlier against him. The reagitation may or may not be barred as res judicata. But if the same issue is sought to be reagitated, it also amounts to an abuse of the process of the court. A proceeding being filed for a collateral purpose, or a spurious claim being made in litigation may also in a given set of facts amount to an abuse of the process of the court. Frivolous or vexatious proceedings may also amount to an abuse of the process of the court especially where the proceedings are absolutely groundless. The court then has the power to stop such proceedings summarily and prevent the time of the public and the court from being wasted. Undoubtedly, it is a matter of the court's discretion whether such proceedings should be stopped or not; and this discretion has to be exercised with circumspection. It is a jurisdiction which should be sparingly exercised, and exercised only in special cases. The court should also be satisfied that there is no chance of the suit succeeding."

21. Thus, in view of the above observation of the Supreme Court, it is clear that the Court cannot permit any such litigation which from open eye can be said to be an abuse of process of Court. It is also observed by the Supreme Court that the Court has the power to stop such proceeding summarily and prevent the time of the public and the Court from being

wasted and in my opinion, it is not only a clear cut case of abuse of process of law but the same is a pure wastage of the precious time of the Court.

22. If the averments of the plaint are seen, then there is no extra effort required for the Court to see that such suit is not maintainable and it cannot be allowed to be continued.

23. Earlier, this Court had an occasion to consider this aspect and in case of **Municipal Council Khajuraho v. Brajkishor Agrawal and others**, **S.A. No.525 of 2015** decided vide order dated 03.10.2015, the Court has considered as to in what manner the plea of *res judicata* at the threshold can be decided and observed as under:-

> "**11**. From perusal of the averments made in the plaint itself and the application filed under Order 7 Rule 11 of CPC, it reveals that the defendant/respondent has claimed that one suit has already been decided in which the original owner, i.e. SADA was the party and, therefore, a second suit that too after such a long time is not maintainable. I find that there is nothing wrong committed by the trial Court and the legal position as has been laid down by the Supreme Court in the cases on which counsel for the appellant has placed reliance in the facts and circumstances of the case, is not applicable because it is a case in which Section 11 of CPC comes into operation. Section 11 is relevant, which reads as under:-
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> > *"***11**. ***Res Judicata.-*** No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent

suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I.-- The expression former suit shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.

Explanation II.-- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III.--The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.

Explanation IV.-- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-- Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

Explanation VI.-- Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

[*Explanation VII*.-- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue,

> shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]"

The aforesaid section very categorically provides and it starts with *non obstante* clause that 'no Court shall try any suit', meaning thereby that there is a clear binding upon the Court for not trying any suit which has already been decided and the Court cannot shut its eyes when the facts were very much clear before the Court and the Court was fully aware of the fact that the suit has already been decided and the issue involved in the case has already been dealt with earlier and the decree has been passed in that regard. Only because the SADA merged in the Nagar Palika Parishad, the subsequent civil suit cannot be entertained at the instance of Nagar Palika Parishad and if it is entertained then it would be a mockery of justice because the said civil suit is absolutely vexatious and meritless and result of the same is known to everybody. The Karnataka High Court in case of **Smt. Sofyamma K. J. Vs. Sri. Chandy Abraham** passed in **R.F.A. No. 722 of 2008** has dealt with the situation and decided the said issue observing therein the scope of Section 11 as well as Order 7 Rule 11 of CPC. The observations made by the Karnataka High Court in paras 11 to 23 are as under:-

> "11. In view of the above contentions, the question that arises for consideration of this Court is:
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> > "Whether the rejection of the plaint under the impugned order is sustainable in law?"
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> 12. The certified copies of the Judgments in O.S. No. 5693/1992, RFA No. 714/1994, C.A. No. 36/1999 and R.P. No. 1434/2004 in C.A. No. 36/1999 are produced before the trial Court and they are available in the records. They show that plaintiff claimed permanent injunction on the ground that she is the absolute owner and in possession of plaint schedule "A" and "B" properties as purchaser and in respect of plaint

schedule “C” property as prospective purchaser. She claimed that when the sale deeds and agreement of sale were executed in her favour the power of attorney executed by her mother in law in favour of her husband was in force and therefore, her sale deeds are valid. She further contended that in view of the registered sale deeds and agreement of sale in her favour, the subsequent sale deeds in favour of the defendant executed by her brother in law are invalid. Thus, it is clear that in the said proceedings the Court was called upon to decide not the issue of possession of the property simpliciter, but it was called upon to decide the plaintiff's lawful possession of the suit properties. Issue No. 1 was, “Whether the plaintiff is in lawful possession of the suit properties?”

13. To legitimize her possession, she traced her right through the sale deeds and agreement of sale. Therefore, in those proceedings the trial Court, the First Appellate Court and the Apex Court were required to adjudicate on the merits/legality of the sale deeds and the sale agreement. In fact the reading of the judgments show that the Courts considered the question of title to consider the lawful possession.

14. Section 11, CPC says, “No Court shall try any suit or issue in which the matter directly arid substantially in issue has been directly arid substantially in issue in a former suit between the same parties…….. has been heard arid finally decided by such Courts”. The plaintiff does not dispute the judgments in the earlier proceedings referred to supra. In those cases, though she had not filed that suit for declaration of title and that was a suit for bare injunction, the Courts decided the legality of the sale deed/title of plaintiff because the claim of possession was based on the title.

15. In this context it is necessary and relevant to refer to paragraph 16 of the judgment in RFA No. 714/1994.

“16. It is contended by Sri. Raghavachar,

learned advocate for the plaintiff relying upon certain decisions that it is necessary for this court to give finding on title of the plaintiff since the plaintiff seeks the relief prayed for in the suit basing the same on her title. On the other hand, learned counsel appearing for the plaintiff submitted that a separate suit is pending filed by the defendant for declaration and the question of title could be gone into in that proceedings. I am not inclined to accept the said submission made on behalf of the plaintiff. Plaintiff has filed this suit based on title. It is her definite case that she is the owner of the property and the defendant is interfering with her possession. On the other hand the defendant asserts that he is the owner having purchased the same from the true owner and since the purchase, he is in possession and it is the plaintiff, who is causing obstacles in his possession and enjoyment.

17. The Hon'ble Supreme Court in Corporation City of Bangalore v. M. Papaish, (1989) 3 SCC 612 : AIR 1989 SC 1809, has held that when the foundation of claim of plaintiff was title, the court has to consider the question of tide and see whether the plaintiff has established her title in order to get an order of injunction. That was also a case for perpetual injunction. In Nagarapalike v. Jagatsingh (1995) 3 SCC 426 : (AIR 1995 SC 1377), the Hon'ble Supreme Court has observed while considering similar facts that “there is no substance in the stand taken by the respondent that even if he had failed to prove his title, the suit filed on behalf of the respondents should be treated as a suit based on possession and dispossession in terms of section 6 of the Specific Relief Act. Once a suit has been filed by the respondent claiming to be the owner arid being in possession of the land in question, the suit cannot be treated as a suit based on possession and dispossession without reference to title”. The Hon'ble

Supreme Court held that in such case, the Court is to record its finding on the question of title. This court in B.P. Sadashivaiah v. Parvathamma ILR 1994 Kar 2671 has held that the court trying a suit for permanent injunction based on title has to consider the said question before it decides to decree or dismiss the suit. In this case, the plaintiff has filed the suit stating that she is the owner of the property by virtue of the sale deed and agreement and the defendant is interfering with her possession and the case of the defendant is that he is the owner by virtue of the sale deeds in his favour executed by the true owner and that he is in possession. In, view of these, it is necessary for this court to go into the title of the parties"

16. The Courts in the above said proceedings held that the power of attorney executed in favour of the plaintiff's husband by her mother-in-law did not include a clause to empower him/agent to alienate the properties. Therefore, the Courts held that the sale deeds and agreement of sale in favour of the plaintiff are null and void as the vendor had no competency to sell them. Therefore, in O.S.5693/1992 plaintiff was very clear on the point that her, right to possession is decided on the basis of her title deeds and they are so adjudicated. Therefore, it is clear that though the suit was not for declaration of title of the plaintiff on the basis of the sale deeds and agreement of sale, legality/merit of those documents was substantially an issue in the said case. Therefore, the suit is clearly hit by the principles of res judicata.

17. So far as the contention that the trial Court ought to have framed an issue and given an opportunity to the plaintiff to adduce evidence on that issue of res judicata and trial Court should have gone through the pleadings in those cases etc., it is to be seen that Section 11, CPC creates a total bar to entertain a suit. The words employed in Section 11 are that

"No court shall try any suit". That means once if it comes to the notice of the Court that the issue in the suit was directly and substantially in issue in former suit between the same parties and such issue had been raised, heard and finally decided, Court cannot proceed with the matter. When the reading of the admitted documents viz., Judgments in the former suit, Regular First Appeal, Civil Appeal and Review Petition clearly showed that the issue in the present suit is already decided finally in the former suit, there is no question of framing an issue and trying the same as a preliminary issue. There is a total bar for trial of such suit.

18. In *Hardesh Ores Private Limited* referred to supra invoking Order VII, Rule 11 CPC the plaints were sought to be rejected on the ground of bar of limitation. There it was argued that to invoke Order VII, Rule 11 CPC defendant's case need not be considered and the matter must be decided on the basis of the averments of the plaint alone. In those cases the plea of limitation was raised in the written statement. The Trial Court rejected the plaints and the High Court upheld such rejection. The Apex Court also upheld the rejection. Therefore, the said judgment in no way advances the case of the plaintiff.

19. A reading of para 17 in *Vaish Aggarwal Panchayat's*'case shows that in that matter the former suit and the later suit were riot between the same parties and there it was alleged that the judgment in the former suit was an outcome of fraud and collusion between the parties to the said. suit. Therefore, it was held that, the finding on the issue of res judicata ought to have been given on recording the evidence. Therefore, the said judgment is not applicable.

20. Paragraph 42 of the Judgment in Ramachandra Dagdu Sonavane (Dead) by L.Rs.'s case, shows that though the, appellants contended that the question of res judicata

ought to have been decided only on the production of the pleadings and the judgments in both the suits, the same was not accepted. It was held that in the judgment of the earlier suit, the Judge in extenso had referred to the pleadings of the parties in the earlier suit and the finding on the question of res judicata is given on appreciating the copy of the judgment of the earlier suit. In this case the earlier suit viz., O.S.5693/1992 was admittedly between the same parties and it was her own suit. The copies of the Judgment in the said case right from the suit till the C.A. and Review Petition are produced before the Court and based on them the trial Court has rejected the plaint. Therefore, the judgments relied upon by the appellant are not applicable to the facts of this case.

21. In Sulochana Amma v. Narayanan Nair ((1994) 2 SCC 14 : AIR 1994 SC 152) it was held:

> "The decree passed in injunction suit wherein issue regarding title of the party was directly and substantially in issue and decided and attained finality would operate as res judicata in a subsequent suit based on title, where the same issue directly and substantially arises between the parties."

22. The T. Aravindam v. T.V. Sathyapal ((1977) 4 SCC 467 : AIR 1977 SC 2421) case the Supreme Court held:

"Where the plaint is manifestly vexatious and meritless in the sense of not disclosing the right to sue, the trial court should exercise its powers u/O. 7, Rule 11, CPC and bogus litigation should not be permitted to go on".

23. The plaint averments themselves show that the defendant claimed title to the property by virtue of the sale deed executed by her brother-in-law as the power of attorney holder of her mother-in-law. Still, she filed O.S.5693/1992 for bare injunction. She fought

> that matter for more than two decades up to the Supreme Court. It was open to her to claim the relief of declaration of title. But, she omitted to do that. Therefore, such omission on her part to include the claim for declaration of title bars the later suit by operation of Order II, Rules (2 and 3), CPC. Looked at from any angle, the impugned order of rejection of plaint does not call for interference by this Court. Therefore, appeal dismissed with costs."

> **12.** Thus, it is clear that in the present case also when the civil suit has already been decided and the judgment and decree of the said case were before the Court at the time of deciding the application and the Court was of the opinion that the plaint filed by the plaintiff/appellant is apparently barred by limitation and also that a second suit as per Rule 11 of CPC is not maintainable, the Court without taking any other fact outside the pleadings of the plaint has decided the application filed under Order 7 Rule 11 of CPC.
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> **13**. From perusal of the record, I am also of the opinion that the trial Court did nothing wrong while allowing the application and rejecting the plaint restraining the plaintiff /appellant to proceed further or to prosecute any matter for the same issue which has already been decided long back. Thus, in my opinion, no substantial question of law is involved in the appeal and it merits dismissal."

24. However, in case of **Ramkishan Patel v. Om Prakash Mishra and others (F.A. No.1866 of 2023)** decided vide judgment dated 21.03.2025, the Court has decided the issue that if an objection is raised under Order 7 Rule 11 of CPC for rejecting the plaint on the ground of plea of *res judicata,* then what is required to be seen by the Court. The observation made by this Court is as under:-

> "**11.** Thus, this court is of the considered opinion that the court below in its impugned judgment and decree

dated 14.07.2023 has rightly allowed the application filed under Order 7 Rule 11 of CPC rejecting the plaint and it is also not required to frame any issue or to try the suit if the facts are so clear from the plaint itself.

12. This court in one of the cases i.e. **Second Appeal No.525 of 2015** parties being **Municipal Council, Khajurao Vs. Brajkishor Agrawal and others**, has also laid down that in each and every occasion, it is not required for the trial court to frame issue while deciding the application filed under Order 7 Rule 11 of CPC saying that suit is barred by law under the provision of principles of *res judicata*. The observation made by this court in the said case is as under:-

> "**9**.There is no quarrel in respect of the fact that if any question of *res judicata* is raised, then the same can be decided by the Court after framing issues and recording evidence of the parties so as to determine whether question of *res judicata* applies or not. Relying on the judgments placed by counsel for the appellant, it was observed by the Court that the basic requirement for deciding the application under Order 7 Rule 11 CPC is the averments made in the plaint only. This analogy is established and no argument is required to accept the said analogy but at the same time, it is also required to see as to in what manner, application under Order 7 Rule 11 CPC has been decided by the Court below. On perusal of the plaint and the averments made therein, it is seen that the order of the trial Court is based upon the averments made in the plaint and application under Order 7 Rule 11 CPC has been decided on the point that when the suit has already been decided between the parties in respect of the same property then how a second suit for the same cause of action is maintainable.
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> **10**.It is not a case that the fact with regard to the judgment and decree passed earlier was not in the knowledge of the plaintiff and it is also not a case that they are disputing about the said

fact. The averments made in the plaint, especially paragraphs 3,4,7, 9 and 11 and also the relief claimed in the plaint are relevant, which read as under:-

"3- यह कि विशेष क्षेत्र प्राधिकरण खजुराहो का दिनांक 22.6.1998 को नगर परिषद खजुराहो में विलय हो गया था और जिससे इसके बाद से उक्त भूमि नगर परिषद खजुराहो के स्वामित्व एवं आधिपत्य की सम्पत्ति है। जिस पर सभी के ज्ञान में तभी से नगर परिषद खजुराहो का वैधानिक रूप से स्वत्व एवं कब्जा रहा है व आज है तथा जिसमे प्रतिवादी नं.-1 अथवा अन्य किसी का कोई हक व हिस्सा कब्जा व उपयोग न कभी रहा है और न आज है।

4- यह कि भूमि खसरा न. 1735/11 (सत्रह सौ पैतीस बटा एक अ) रकवा 1.21 (एक दशमलव इक्कीस) एकड़ की भूमि वादपत्र की कंडिका-3 में वर्णित भूमि खसरा नं. 1735/4अ (सत्रह सौ पैतीस बटा चार अ) रकवा 1.21 (एक दशमलव इक्कीस) से लगी म०प्र०शासन के स्वत्व एवं कब्जा की बजर पड़ती भूमि थी जिसे वाटिका विकास हेतु विशेष क्षेत्र प्राधिकरण खजुराहो को सन् 1984 में कलेक्टर महोदय छतरपुर द्वारा आबंटित किया गया था जिसके पश्चात् इस भूमि की स्वामित्व एवं आधिपत्यधारी विशेष क्षेत्र प्राधिकरण खजुराहो हो गया था तत्पश्चात् सन् 1998 में विशेष क्षेत्र प्राधिकरण खजुराहो का विलय नगर परिषद खजुराहो मे हो जाने के बाद इसका स्वामित्व व आधिपत्यधारी नगर परिषद खजुराहो का हो गया था और तभी से आज तक इसी प्रकार चला आ रहा है तथा जिसमें प्रतिवादी नं0-1 का न कभी पूर्व में कोई स्वत्व व कब्जा रहा और न ही आज है।

7- यह कि प्रतिवादी नं0-1 में अपने उक्त अवैधानिक उद्देश्य से अनुचित रूप से यह लेख कर कि बादी के स्वत्व व आधिपत्य की वादपत्र की कडिका-1 में वर्णित भूमि उसके खसरा न 1735/1/2 (सत्रह सी पैतीस् बटा एक बटा दो) रकवा 0.224 (शून्य दशमलव दो सौ चौबीस) आरे की भूमि है तथा जिसका पूर्व में खसरा नं. 1735/1छ (सत्रह सी पैतीस बटा एक छ) था जिसके संबंध में उसके द्वारा शासन म०प्र० के विरूद्ध प्रस्तुत किये गये व्यवहार वाद क्र० 192/ए/92 में उसके पक्ष में घोषणा एवं स्थायी निषेधाज्ञा की डिक्री दी गई है तथा प्रतिवादी 10-1 को पता चला है कि वादी उसकी उक्त भूमि पर चूना डालकर ले-आउट करने का प्रयास कर रहे है. एक असत्य सूचना पत्र दिनांक 18.6.12 का वादी को अपने अधिवक्ता जीतेन्द्र सिंह के माध्यम से भिजवाया था ।

9- यह कि जब वादी को पता चला कि प्रतिवादी नं०-1 अपने अनुचित उद्देश्य को पूरा करने के लिये उक्त व्यवहारवाद क्र0-192/ए/92 में अनुचित रूप से तथा असत्य दस्तावेजों तथा तथ्यों के आधार पर प्राप्त की गई दिनांक 23 11.92 की उक्त शून्यवत् डिक्री की आड़ में दाबिया भूमि को अपनी भूमि कहने लगा है और इसकी आढ़ में दाबिया भूमि में वादी के शातिपूर्ण स्वत्व एवं आधिपत्य में नाजायज रूप से बिना किसी अधिकार के अवरोध उत्पन्न करने की कोशिश में है। जबकि प्रतिवादी नं0-1 को ऐसा कोई कार्य करने का कोई अधिकार नहीं है। क्योंकि कथित व्यवहार प्रकरण में वादी पक्षकार भी नहीं रहा है जिससे वादी को इस प्रकरण की

कोई जानकारी नहीं है और जिससे कानूनन कथित डिक्री एवं निर्णय दाबिया भूमि में वादी के हितों के प्रति शून्यक्त एवं प्रभावहीन है।

11- यह कि प्रतिवादी क्रं0-1 में उक्त सूचना पत्र की अवधि पूर्ण होने के बाद आज तक वादी को भेजे गये नोटिस के संबंध में लिये गये अपने निर्णय से लिखित रूप में सूचित नहीं किया है तथा प्रतिवादी नं0-1 ने अपने लोगों के माध्यम से एक धमकी देने लगा है कि यदि वह वादी की दाबिया भूमि पर किसी प्रकार से कब्जा करने में सफल नहीं हो सका तो मौका लगते ही अनुचित रूप से प्राप्त की गई उक्त शून्यवत् डिक्री दिनांक 23.12.92 की आड़ में दाबिया भूमि को उक्त व्यवहारवाद क्रमांक 192/ए/92 की भूमि बताकर किसी आपराधिक किस्म के दंबग व्यक्ति को अंतरित कर देगा जो अपने धनबल एंव बाहुबल से वादी की दाबिया भूमि पर बने वादी के वाहन विश्राम स्थल पर जबरन नाजायज रूप से कब्जा कर लेगा ।

प्रार्थना

1. यह कि वादी के पक्ष में प्रतिवादी क्रं0-1 के विरूद्ध इस प्रकार की घोषणात्मक डिक्री प्रदान की जाये की दाबिया भूमि 1735/4अ एवं 1735/1अ जिसका उल्लेख वादपत्र की कंडिका एक मे किया गया है वादी के स्वत्व एवं कब्जा की सम्पत्ति है तथा व्यवहारवाद क्रं0- 1192/ए/92 में तृतीय व्यवहार न्यायाधीश वर्ग-1 छतरपुर से अनुचित रूप से प्रतिवादी क्रं0-1 द्वारा प्राप्त की गई डिक्री दिनांक 23.11.92 वादी के हितों के प्रति शून्यवत् होने से वादी पर बंधनकारी नहीं है।

2. यह कि वादी के पक्ष में इस प्रकार की स्थायी निषेधाज्ञा जारी की जाये कि प्रतिवादी नं0-1 भविष्य में स्वयं अथवा अन्य किसी के माध्यम से दाबिया भूमि तथा उस पर निर्मित वाहन विश्राम स्थल में वादी के शांतिपूर्ण स्वत्व एवं आधिपत्य में कोई हस्तक्षेप न करे और किसी प्रकार से इसे किसी अन्य को न अंतरित करे और न अंतरण हेतु कोई करार करें।

3. यह कि खर्चा मुकदमा वादी को प्रतिवादी नं.-1 से दिलाया जाये।

4. यह कि अन्य सहायता जो न्यायालय वादी के हक में उचित समझे दिलायी जाये।"

11. From perusal of the averments made in the plaint itself and the application filed under Order 7 Rule 11 of CPC, it reveals that the defendant/respondent has claimed that one suit has already been decided in which the original owner, i.e. SADA was the party and, therefore, a second suit that too after such a long time is not maintainable. I find that there is nothing wrong committed by the trial Court and the legal position as has been laid down by the

Supreme Court in the cases on which counsel for the appellant has placed reliance in the facts and circumstances of the case, is not applicable because it is a case in which Section 11 of CPC comes into operation. Section 11 is relevant, which reads as under:-

> *"***11**. ***Res Judicata.-*** No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.
>
> *Explanation I*.-- The expression former suit shall denote a suit which has been decided prior to a suit in question whether or not it was instituted prior thereto.
>
> *Explanation II*.-- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.
>
> *Explanation III*.--The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.
>
> *Explanation IV*.-- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.
>
> *Explanation V*.-- Any relief claimed in the plaint, which is not expressly granted by the decree, shall for the purposes of this section, be deemed to have been refused.

> *Explanation VI*.-- Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.
>
> [*Explanation VII*.-- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.
>
> *Explanation VIII*.-- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.]"

The aforesaid section very categorically provides and it starts with *non obstante* clause that 'no Court shall try any suit', meaning thereby that there is a clear binding upon the Court for not trying any suit which has already been decided and the Court cannot shut its eyes when the facts were very much clear before the Court and the Court was fully aware of the fact that the suit has already been decided and the issue involved in the case has already been dealt with earlier and the decree has been passed in that regard. Only because the SADA merged in the Nagar Palika Parishad, the subsequent civil suit cannot be entertained at the instance of Nagar Palika Parishad and if it is entertained then it would be a mockery of justice because the said civil suit is absolutely vexatious and meritless and result of the

same is known to everybody. The Karnataka High Court in case of **Smt. Sofyamma K. J. Vs. Sri. Chandy Abraham** passed in **R.F.A. No. 722 of 2008** has dealt with the situation and decided the said issue observing therein the scope of Section 11 as well as Order 7 Rule 11 of CPC. The observations made by the Karnataka High Court in paras 11 to 23 are as under:-

> "11. In view of the above contentions, the question that arises for consideration of this Court is:
>
> > "Whether the rejection of the plaint under the impugned order is sustainable in law?"
>
> 12. The certified copies of the Judgments in O.S. No. 5693/1992, RFA No. 714/1994, C.A. No. 36/1999 and R.P. No. 1434/2004 in C.A. No. 36/1999 are produced before the trial Court and they are available in the records. They show that plaintiff claimed permanent injunction on the ground that she is the absolute owner and in possession of plaint schedule "A" and "B" properties as purchaser and in respect of plaint schedule "C" property as prospective purchaser. She claimed that when the sale deeds and agreement of sale were executed in her favour the power of attorney executed by her mother in law in favour of her husband was in force and therefore, her sale deeds are valid. She further contended that in view of the registered sale deeds and agreement of sale in her favour, the subsequent sale deeds in favour of the defendant executed by her brother in law are invalid. Thus, it is clear that in the said proceedings the Court was called upon to decide not the issue of possession of the property simpliciter, but it was called upon to decide the plaintiff's lawful possession of the suit properties. Issue No. 1 was, "Whether the plaintiff is in lawful possession of the suit properties?"

13. To legitimize her possession, she traced her right through the sale deeds and agreement of sale. Therefore, in those proceedings the trial Court, the First Appellate Court and the Apex Court were required to adjudicate on the merits/legality of the sale deeds and the sale agreement. In fact the reading of the judgments show that the Courts considered the question of title to consider the lawful possession.

14. Section 11, CPC says, "No Court shall try any suit or issue in which the matter directly arid substantially in issue has been directly arid substantially in issue in a former suit between the same parties…….. has been heard arid finally decided by such Courts". The plaintiff does not dispute the judgments in the earlier proceedings referred to supra. In those cases, though she had not filed that suit for declaration of title and that was a suit for bare injunction, the Courts decided the legality of the sale deed/title of plaintiff because the claim of possession was based on the title.

15. In this context it is necessary and relevant to refer to paragraph 16 of the judgment in RFA No. 714/1994.

> "16. It is contended by Sri. Raghavachar, learned advocate for the plaintiff relying upon certain decisions that it is necessary for this court to give finding on title of the plaintiff since the plaintiff seeks the relief prayed for in the suit basing the same on her title. On the other hand, learned counsel appearing for the plaintiff submitted that a separate suit is pending filed by the defendant for declaration and the question of title could be gone into in that proceedings. I am not inclined to accept the said submission made on behalf of the plaintiff. Plaintiff has filed this suit based on title. It is her definite case that she is the owner of the property

and the defendant is interfering with her possession. On the other hand the defendant asserts that he is the owner having purchased the same from the true owner and since the purchase, he is in possession and it is the plaintiff, who is causing obstacles in his possession and enjoyment.

17. The Hon'ble Supreme Court in Corporation City of Bangalore v. M. Papaish, (1989) 3 SCC 612 : AIR 1989 SC 1809, has held that when the foundation of claim of plaintiff was title, the court has to consider the question of tide and see whether the plaintiff has established her title in order to get an order of injunction. That was also a case for perpetual injunction. In Nagarapalike v. Jagatsingh (1995) 3 SCC 426 : (AIR 1995 SC 1377), the Hon'ble Supreme Court has observed while considering similar facts that “there is no substance in the stand taken by the respondent that even if he had failed to prove his title, the suit filed on behalf of the respondents should be treated as a suit based on possession and dispossession in terms of section 6 of the Specific Relief Act. Once a suit has been filed by the respondent claiming to be the owner arid being in possession of the land in question, the suit cannot be treated as a suit based on possession and dispossession without reference to title”. The Hon'ble Supreme Court held that in such case, the Court is to record its finding on the question of title. This court in B.P. Sadashivaiah v. Parvathamma ILR 1994 Kar 2671 has held that the court trying a suit for permanent injunction based on title has to consider the said question before it decides to decree or dismiss the suit. In this case, the plaintiff has filed the suit

> stating that she is the owner of the property by virtue of the sale deed and agreement and the defendant is interfering with her possession and the case of the defendant is that he is the owner by virtue of the sale deeds in his favour executed by the true owner and that he is in possession. In, view of these, it is necessary for this court to go into the title of the parties"

16. The Courts in the above said proceedings held that the power of attorney executed in favour of the plaintiff's husband by her mother-in-law did not include a clause to empower him/agent to alienate the properties. Therefore, the Courts held that the sale deeds and agreement of sale in favour of the plaintiff are null and void as the vendor had no competency to sell them. Therefore, in O.S.5693/1992 plaintiff was very clear on the point that her, right to possession is decided on the basis of her title deeds and they are so adjudicated. Therefore, it is clear that though the suit was not for declaration of title of the plaintiff on the basis of the sale deeds and agreement of sale, legality/merit of those documents was substantially an issue in the said case. Therefore, the suit is clearly hit by the principles of res judicata.

17. So far as the contention that the trial Court ought to have framed an issue and given an opportunity to the plaintiff to adduce evidence on that issue of res judicata and trial Court should have gone through the pleadings in those cases etc., it is to be seen that Section 11, CPC creates a total bar to entertain a suit. The words employed in Section 11 are that "No court shall try any suit". That means once if it comes to the notice of the Court that the issue in the suit was directly and substantially in issue in former suit between the same parties and such issue had been raised, heard and finally decided, Court cannot proceed with the matter. When the reading of the admitted documents viz., Judgments in the former suit,

Regular First Appeal, Civil Appeal and Review Petition clearly showed that the issue in the present suit is already decided finally in the former suit, there is no question of framing an issue and trying the same as a preliminary issue. There is a total bar for trial of such suit.

18. In *Hardesh Ores Private Limited* referred to supra invoking Order VII, Rule 11 CPC the plaints were sought to be rejected on the ground of bar of limitation. There it was argued that to invoke Order VII, Rule 11 CPC defendant's case need not be considered and the matter must be decided on the basis of the averments of the plaint alone. In those cases the plea of limitation was raised in the written statement. The Trial Court rejected the plaints and the High Court upheld such rejection. The Apex Court also upheld the rejection. Therefore, the said judgment in no way advances the case of the plaintiff.

19. A reading of para 17 in *Vaish Aggarwal Panchayat's*'case shows that in that matter the former suit and the later suit were riot between the same parties and there it was alleged that the judgment in the former suit was an outcome of fraud and collusion between the parties to the said. suit. Therefore, it was held that, the finding on the issue of res judicata ought to have been given on recording the evidence. Therefore, the said judgment is not applicable.

20. Paragraph 42 of the Judgment in Ramachandra Dagdu Sonavane (Dead) by L.Rs.'s case, shows that though the, appellants contended that the question of res judicata ought to have been decided only on the production of the pleadings and the judgments in both the suits, the same was not accepted. It was held that in the judgment of the earlier suit, the Judge in extenso had referred to the pleadings of the parties in the earlier suit and the finding on the question of res judicata is given on appreciating the copy of the judgment of the earlier suit. In this case the earlier suit viz., O.S.5693/1992

was admittedly between the same parties and it was her own suit. The copies of the Judgment in the said case right from the suit till the C.A. and Review Petition are produced before the Court and based on them the trial Court has rejected the plaint. Therefore, the judgments relied upon by the appellant are not applicable to the facts of this case.

21. In Sulochana Amma v. Narayanan Nair (1994) 2 SCC 14 : AIR 1994 SC 152) it was held:

> "The decree passed in injunction suit wherein issue regarding title of the party was directly and substantially in issue and decided and attained finality would operate as res judicata in a subsequent suit based on title, where the same issue directly and substantially arises between the parties."

22. The T. Aravindam v. T.V. Sathyapal ((1977) 4 SCC 467 : AIR 1977 SC 2421) case the Supreme Court held:

> "Where the plaint is manifestly vexatious and meritless in the sense of not disclosing the right to sue, the trial court should exercise its powers u/O. 7, Rule 11, CPC and bogus litigation should not be permitted to go on".

23. The plaint averments themselves show that the defendant claimed title to the property by virtue of the sale deed executed by her brother-in-law as the power of attorney holder of her mother-in-law. Still, she filed O.S.5693/1992 for bare injunction. She fought that matter for more than two decades up to the Supreme Court. It was open to her to claim the relief of declaration of title. But, she omitted to do that. Therefore, such omission on her part to include the claim for declaration of title bars the later suit by operation of Order II, Rules (2 and 3), CPC. Looked at from any angle, the impugned order of rejection of plaint does not call for interference by this Court. Therefore, appeal dismissed with costs."

> **12.**Thus, it is clear that in the present case also when the civil suit has already been decided and the judgment and decree of the said case were before the Court at the time of deciding the application and the Court was of the opinion that the plaint filed by the plaintiff/appellant is apparently barred by limitation and also that a second suit as per Rule 11 of CPC is not maintainable, the Court without taking any other fact outside the pleadings of the plaint has decided the application filed under Order 7 Rule 11 of CPC.
>
> **13**.From perusal of the record, I am also of the opinion that the trial Court did nothing wrong while allowing the application and rejecting the plaint restraining the plaintiff /appellant to proceed further or to prosecute any matter for the same issue which has already been decided long back. Thus, in my opinion, no substantial question of law is involved in the appeal and it merits dismissal.
>
> **14.***Ex consequntia*, the appeal is without any substance, is hereby **dismissed.**"

> **13.** Although, it is further made clear that the trial court has rejected the plaint not only on the ground of question of *res judicata* but also on the ground that the plaint suffers from any cause of action. As such, in the opinion of this court, looking to the existing facts and circumstances of the case and the observation made by the trial court, there is nothing wrong committed by the court in allowing the application filed under Order 7 Rule 11 of CPC."

25. Thus, it is clear that the plaint filed by the plaintiff/respondent herein for setting aside the judgment and decree dated 10.12.1999 on the ground of fraud is merely an exercise so as to take advantage of the settled legal position that any judgment and decree obtained by fraud, can be challenged at any stage but this analogy cannot be applied in

each and every litigation. Even otherwise, it would be the endless proceeding and there would not be the end of litigation. Even from perusal of averments made in the plaint and efforts made by the plaintiff/respondent herein it can be seen that it is a casual attitude of the respondent/State so as to allege fraud against the applicants whereas in the plaint itself it does not reflect as to what type of fraud has been played by them. Neither in the judgment of first Appellate Court before which judgment and decree dated 10.12.1999 was subject matter nor in the reply submitted by the respondent/State here in this revision any fraud has been disclosed so as to challenge the judgment and decree dated 10.12.1999 which has been affirmed upto the Supreme Court.

26. The Supreme Court in a case reported in **2022 SCC OnLine SC 1962 (Charu Kishor Mehta v. Prakash Patel & Ors.)**, has considered this aspect and observed as under:-

> "15. A mere recital of fraud, however is not enough. Once fraud is alleged by a party, like the one that has been done by the Petitioner in reply to the objection under Order VII, Rule 11 of the Civil Procedure Code, then the allegation of fraud has to be tested in terms of Order VI, Rule 4 of the Civil Procedure Code, which reads as under:
>
> > **"4. Particulars to be given where necessary.**
> >
> > In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading."
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> 16. Apart from making a bald statement of collusion between Defendant Nos. 1, 2 & 4 and the secured creditor, i.e., M/s. Phoenix A.R.C. Pvt. Ltd. there is nothing substantial as to how and as to what precise

fraud has been committed. The only case of the Petitioner for creating a case of fraud is that the Petitioner's name was not registered as a member of the society and the reason for not registering the name of the Petitioner as a member of the society was that the society, i.e., Defendant No. 3 was in collusion with the secured creditor as well as with the Defendant Nos. 1, 2 and 4. The fact of the matter is that even if the name of the Petitioner would have been registered as a member of the society, it would have hardly given any benefit to the Petitioner in the present case. Being registered as a member of the society would have only meant that the petitioner is a member of the society. It would not create ownership rights on a property. Moreover, and most importantly, not only is this just a bald allegation but the necessary party against whom fraud was alleged i.e., M/s. Phoenix A.R.C. Pvt. Ltd. was never made a party in the suit proceedings before the Civil Court.

17. At this stage, it was placed on record that the suit premises have been sold in favour of Defendant No. 4 i.e., Acrynova Industries Pvt. Ltd. The challenge to the auction and sale, which was made at the hands of none other than the present petitioner before the Bombay High Court and as well as this Court has been dismissed and that as far as the sale auction in favour of the Defendant No. 4 is concerned, that has attained a finality. Paragraph No. 4 of the order dated 25.05.2022 of the Trial Court, reads as under:

> "4. In the light of above discussion, it is clear that the suit premises is sold to defendant no. 4 in auction proceeding conducted on 31/03/2022. Now the plaintiff is seeking declaration that defendants no. 1 and 2 are not entitled to participate in the auction proceeding and to restrain them from participating in the auction proceeding. Similarly, he has prayed to restrain defendants no. 1, 2 and 4 or their representatives from making further payments towards auction sale of the suit premises. In short, the plaintiff is trying to nullify the effect and operation of the auction proceedings regarding the suit premises conducted in the proceeding before DRT through the medium of order of this Court. If prayers of the plaintiff are considered, it would result into wiping

> out all legal exercise made by DRT to recover the loan amount from the defaulter and the guarantors. In order to prevent such counter productive things in the form of indulgence in the functioning of DRT and in order to achieve the object of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, 'the SARFAESI Act'), Section 34 has been incorporated in the SARFAESI Act. Accordingly, civil courts are barred from entertaining the proceeding in respect of any matter which is DRT or the Appellate Tribunal is empowered to determine. It is specifically provided in Section 34 of the SARFAESI Act that no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the SARFAESI Act or under the Recovery of Debts and Bankruptcy Act, 1993."

18. The observations of the Bombay High Court on this aspect are as under:

> "33. It is true that the Plaintiff has not challenged the validity of the auction proceedings or the orders passed by the authorities under the SARFAESI Act. The Plaintiff has also not sought any substantive relief against Defendant No. 4, who is the highest bidder. However, a plain reading of the averments and the prayers in the plaint would indicate that the Plaintiff, under the guise of raising a membership dispute with the Defendant No. 3 - Society, has in fact once again attempted to stall the auction proceedings conducted by the Recovery Officer under the provisions of SARFAESI Act. Though the Plaintiff has alleged fraud, the pleadings in this regard are vague, ambiguous and do not meet the requirement of Order VI Rule 4 of CPC and/or do not satisfy the test of fraud. The allegations of fraud and collusion is nothing but clever and ingenious drafting to get over the bar of Section 34 of the SARFAESI Act and to prevent the auction and the auction having been concluded, to prevent the Defendant No. 4-auction purchaser from taking possession of the suit premises. The learned Judge was therefore perfectly justified in rejecting the plaint under Order VII Rule 11 of CPC."

19. We are totally in agreement with the above observations of the two courts and the order passed by the trial court

allowing the application under Order VII, Rule 11 of the CPC the Bombay High Court dated 13.06.2022 and upholding that order and dismissing the appeal of the present Petitioner. Under the facts and circumstances of the case, the Bombay High Court was absolutely justified in imposing the cost of Rs. 5 lakh, on the Petitioner. It is not only the proceedings before the Civil Court initiated by the Petitioner in the year 2022 which was on abuse of the law, but the entire conduct of the petitioner is a clear reflection of the fact that the petitioner has been doing so repeatedly, after being a signatory to the settlement as back as 01.10.2013.

20. The Supreme Court in ***Dalip Singh v. State of Uttar Pradesh, reported in (2010) 2 SCC 114*** has this to say for methods adopted at the hands of litigants under similar circumstances. Paragraph nos. 1 and 2 as produced below:

> "1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.
>
> 2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

21. We may record here that we were initially persuaded in this case, to initiate contempt proceedings against the Petitioner, considering that there has been a deliberate attempt on her part in the non-disclosure of absolutely relevant facts before this Court. We are not doing so purely due to the age of

> the Petitioner as she is a lady of 78 years of age. The present petition is no doubt an abuse of the process of law and has caused harm to the other parties to the litigation, some of whom may have been needlessly drawn into the litigation. We may refer here an observation given in the case of ***Subrata Roy Sahara v. Union of India, (2014) 8 SCC 470***:
>
> > "191. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part.""

27. Considering the aforesaid enunciation of law, this Court has no hesitation to say that the application filed by the applicants/defendants before the trial Court under Section 11 of CPC pointing out that the suit was not maintainable and plaint deserves to be dismissed on the ground that the same was hit by the principles of *res judicata* and that could have been considered by the Court on the basis of averments made in the plaint itself and that ought to have been decided by the Court but without examining the said aspect of the matter, the Court in a very casual manner, relying upon general perception that the plea of *res judicata* is decided after recording the statement of the parties and conducting trial, but this analogy in the facts and circumstances of the present case is not applicable and as such, in my opinion, the application filed by the applicants/defendants deserves to be allowed and it is accordingly allowed. The suit filed by the plaintiff/respondent herein i.e. RCSA-147/2023 pending before the First Civil Judge, Junior Division to the Court of Third Additional Judge, Satna is dismissed as the same is

hit by the principles of *res judicata*.

28. The order dated 15.07.2024 (Annexure-P/11) which is impugned in this revision is set aside.

29. With the aforesaid observations, this civil revision is **allowed** and **disposed of**. No order as to costs.

(SANJAY DWIVEDI)
JUDGE

ac/-