



2026:AHC:164125

HIGH COURT OF JUDICATURE AT ALLAHABAD

MATTERS UNDER ARTICLE 227 No. - 5609 of 2026

Raju Kashyap and 2 others

.....Petitioner(s)

Versus

Smt Archana Jain

.....Respondent(s)

Counsel for Petitioner(s)	: Ashutosh Ganguli, Masoom Alam
Counsel for Respondent(s)	: Brij Raj

AFR

Court No. - 35

HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Heard Sri Ashutosh Ganguli, learned counsel for the petitioners and Sri Brij Raj, learned counsel appearing for the respondent.

2. The present petition under Article 227 of the Constitution of India has been instituted questioning the legality of the order dated 16.01.2026 passed by the Judge, Small Causes Court, Saharanpur in SCC Suit No.3 of 2023, whereby Application No.43-G preferred by the petitioners-defendants under Order XIV Rule 1 read with Section 151 of the Code of Civil Procedure, 1908, seeking framing and adjudication of the plea of *res judicata* as a preliminary issue, has been rejected.

3. The dispute relates to premises bearing Nagar Panchayat House No.667, Mohalla Kothiwalla, Post Chilkana, Tehsil Sadar, District Saharanpur. According to the petitioners, they were the original owners of

the property and had, in the year 2014, borrowed a sum of Rs. 6,00,000/- from the respondent's husband, intending to secure the transaction by creation of a mortgage. It is alleged that, instead of a mortgage deed, a sale deed dated 23.09.2014 came to be executed by obtaining their thumb impressions without disclosing the true nature of the document. Challenging the validity of the said transaction, the petitioners instituted Original Suit No. 640 of 2015 seeking a declaration that the sale deed is void and inoperative.

4. It is further the case of the petitioners that, subsequent to the execution of the aforesaid sale deed, the respondent's issued a notice asserting the existence of a landlord-tenant relationship and instituted SCC Suit No.37 of 2015 seeking their eviction from the premises. In the said suit, it was specifically pleaded that the property stood in the name of the present respondent and that the proceedings were being prosecuted by her husband solely in the capacity of her constituted attorney. Upon adjudication of the issues relating, inter *alia*, to the existence of the relationship of landlord and tenant, the validity of the notice and the maintainability of the suit, the Court of Small Causes, by judgment dated 19.08.2023, dismissed the suit.

5. Thereafter, the respondent herself issued a fresh notice dated 28.08.2023 and instituted the present SCC Suit No.3 of 2023 seeking eviction of the petitioners, recovery of arrears of rent and damages. In their written statement, the petitioners specifically pleaded that the subsequent suit is barred by the principle of *res judicata*, contending that the earlier proceedings had been instituted by the respondent's husband as her constituted attorney and that the issues sought to be reagitated in the present proceedings had already attained finality by virtue of the judgment dated 19.08.2023.

6. During the pendency of the suit, the petitioners filed Application No. 43-C under Order XIV Rule 1 read with Section 151 CPC praying that the plea of *res judicata* be framed and adjudicated as a preliminary issue. It was asserted that, although an objection under Order VII Rule 11 CPC had

earlier been raised, the plea of *res judicata* required an independent determination on the basis of the pleadings and judgment rendered in the earlier proceedings and, if upheld, would render further trial unnecessary.

7. The application was opposed by the respondent, who contended that proceedings before the Court of Small Causes are summary in nature and, by virtue of Order L Rule 1 CPC, the provisions relating to framing of issues contained in Order XIV are inapplicable. It was further pleaded that the plea of *res judicata* raises a mixed question of law and fact requiring appreciation of the record of the earlier proceedings and, therefore, cannot be decided as a preliminary issue. According to the respondent, the application was merely intended to protract the proceedings.

8. Upon consideration of the rival submissions, the learned Judge, Small Cause Court rejected Application No.43-C by the impugned order dated 16.01.2026, holding that, in view of Order L Rule 1 CPC, the procedure relating to the settlement and framing of issues is inapplicable to proceedings before a Court of Small Causes and that there is no provision for framing issues in such proceedings. The trial court further observed that the plea of *res judicata*, involving a mixed question of law and fact, was not amenable to adjudication as a preliminary issue. Aggrieved thereby, the petitioners have invoked the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

9. Learned counsel appearing for the petitioners submits that the trial court has committed a manifest jurisdictional error in rejecting Application No. 43-C, whereby the petitioners had sought adjudication of the plea of *res judicata* at the threshold. It is contended that although the procedure relating to the settlement and framing of issues under Order XIV CPC stands excluded from proceedings before a Court of Small Causes by virtue of Order L Rule 1(a)(iii) CPC, such exclusion does not denude the Court of its jurisdiction to identify and determine the principal controversies arising between the parties. It is submitted that the Court is nevertheless required to formulate the points for determination in terms of Order XX Rule 4(1) CPC and, where a plea is capable of disposing of the entire proceedings without

requiring any factual enquiry, there is no legal impediment to determining the same at the threshold. In support of the aforesaid submissions, reliance has been placed upon **Rameshwar Dayal v. Banda (Dead) through LRs**¹.

10. Elaborating the submission, learned counsel contends that the petitioners had earlier raised an objection under Order VII Rule 11 CPC; however, the plea of *res judicata* could not have been effectively examined in such proceedings since the scope of an application under Order VII Rule 11 CPC is confined to the averments contained in the plaint and does not permit consideration of the pleadings, the issues arising in the earlier proceedings or the judgment rendered therein. It is, therefore, submitted that the petitioners were fully justified in independently invoking the jurisdiction of the trial court for adjudication of the plea of *res judicata*. It is further urged that where the requisite material is already available on record and the plea, if upheld, would result in termination of the proceedings, the court ought to determine such objection at the earliest stage instead of relegating the parties to a full-fledged trial.

11. Learned counsel appearing for the respondent supports the impugned order and submits that the learned Judge, Small Causes Court has committed no error, much less any jurisdictional error, in rejecting the petitioners' application. It is contended that proceedings before a Court of Small Causes are governed by a special and summary procedure and, by virtue of Order L Rule 1(a) (iii) CPC, the provisions contained in Order XIV relating to the settlement and framing of issues stand expressly excluded. It is, therefore, submitted that the trial court rightly declined to entertain the application under Order XIV Rule 1 CPC. Learned counsel further submits that the exclusion of the procedure relating to the settlement and framing of issues does not dispense with the Court's obligation to determine the controversies arising between the parties, which are required to be addressed in the manner contemplated by Order XX Rule 4(1) CPC.

12. Learned counsel further submits that the plea of *res judicata* does not, in the facts of the present case, constitute a pure question of law capable of

1 (1993) 1 SCC 531

being determined in isolation. Its adjudication necessarily requires examination of the pleadings, issues and judgment in the earlier proceedings, the capacity in which the parties litigated, the identity of the matters directly and substantially in issue, as well as other foundational facts contemplated under Section 11 CPC. Such an enquiry, it is submitted, involves a mixed question of law and fact and, therefore, cannot ordinarily be undertaken as a preliminary issue. It is further urged that the defence of *res judicata* already stands specifically pleaded in the written statement and remains available for consideration at the stage of final adjudication of the suit. Consequently, no prejudice has been caused to the petitioners by the rejection of the application, nor does the impugned order disclose any patent illegality, perversity or jurisdictional infirmity warranting interference in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India.

13. In the backdrop of the rival submissions, the question that arises for consideration is whether, within the framework of the statutory scheme governing proceedings before a Court of Small Causes under Section 17 of the Provincial Small Cause Courts Act, 1887 read with Order L Rule 1(a) (iii) and Order XX Rule 4(1) of the Code of Civil Procedure, 1908, a plea of *res judicata* can be insisted upon as a matter of right to be determined at the threshold.

14. Before examining the rival submissions, it would be apposite to advert to the statutory scheme governing proceedings before a Court of Small Causes and the principles regulating the determination of a plea of *res judicata*.

15. Section 17 of the Provincial Small Cause Courts Act, 1887 makes the procedure prescribed by the Code of Civil Procedure, 1908 applicable to suits cognizable by a Court of Small Causes, subject to the exceptions and modifications specified in the Code. The applicability of the provisions of the Code to proceedings before a Court of Small Causes is, therefore, conditioned by the statutory exclusions expressly engrafted therein.

16. One such exclusion is contained in Order L Rule 1 CPC, which enumerates the provisions of the Code rendered inapplicable to suits cognizable by a Court of Small Causes. Insofar as the present controversy is concerned, clause (a)(iii) thereof expressly provides that the provisions of the Code relating to "the settlement of issues" shall not extend to proceedings before a Court of Small Causes. The relevant extract reads thus:

“Order L Rule 1 Provincial Small Cause Courts.—The provisions hereinafter specified shall not extend to Court constituted under the Provincial Small Cause Courts Act 1887,.....that is to say-

(a) so much of this schedule as relates to

... ..

(iii) the settlement of issues;"

17. A plain reading of the aforesaid provision indicates that the exclusion is not of an individual rule but of the subject-matter described as "the settlement of issues." Significantly, Order XIV of the Code bears the heading *"Settlement of Issues and Determination of Suit on Issues of Law or on Issues Agreed Upon."* The legislative technique adopted in Order L Rule 1(a) is to identify the excluded procedural categories by reference to their subject-matter rather than by numerical enumeration of individual Orders or Rules. The exclusion of the procedure relating to the settlement and framing of issues thus manifests the legislative intent that proceedings before a Court of Small Causes should not be governed by the elaborate procedure prescribed for framing and trying issues in ordinary civil suits.

18. The rationale underlying such exclusion is evident. Proceedings before a Court of Small Causes are intended to be summary in character and expeditiously disposed of. Requiring the Court to undertake the formal exercise of settling and framing issues in the manner contemplated by Order XIV CPC would be inconsistent with the legislative objective of providing a simplified procedure for adjudication of suits cognizable by such Courts.

19. Consistent with the aforesaid legislative object, the statutory scheme governing proceedings before a Court of Small Causes does not envisage fragmented adjudication of controversies as a matter of course. The object

underlying the determination of a preliminary issue is to avoid an unnecessary trial where the proceedings are capable of being disposed of on a pure question of law. It is not intended to encourage piecemeal adjudication of disputes that substantially overlap with the merits of the suit.

20. Equally material is Order XX Rule 4(1) CPC, which prescribes the manner in which judgments of a Court of Small Causes are to be framed. Unlike judgments in ordinary civil suits, a judgment of a Court of Small Causes need not contain more than the points for determination and the decision thereon. The provision demonstrates that, although the procedure relating to the settlement and framing of issues stands excluded, the Court nevertheless remains under a statutory obligation to identify the real controversies arising between the parties and return its decision on each such point. Thus, the exclusion of the procedure relating to the settlement of issues does not dispense with judicial adjudication of the disputes raised by the parties; it merely replaces the formulation of formal issues with the identification of the points requiring determination in accordance with Order XX Rule 4(1) CPC.

21. The plea sought to be raised by the petitioners is founded upon the doctrine of *res judicata*, embodied in Section 11 CPC. The doctrine is founded upon the principle that there must be finality to judicial proceedings and that a person ought not to be vexed twice over in respect of the same cause. The applicability of the doctrine depends upon fulfilment of the statutory requirements prescribed under Section 11, including identity of the parties or parties claiming under them, identity of the matter directly and substantially in issue, competence of the former court and a final adjudication upon such issue.

22. It is equally well settled that the applicability of Section 11 CPC cannot be determined in the abstract. A plea of *res judicata* necessarily requires examination of the pleadings, the issues which arose for determination, the findings returned in the former proceedings, the title under which the parties litigated and the finality attaching to the earlier adjudication. Whether such a plea is capable of being determined at the

threshold or requires consideration along with the remaining controversies would necessarily depend upon the nature of the foundational facts and the extent to which they are admitted or disputed.

23. The first limb of the controversy concerns the applicability of the procedure relating to settlement and framing of issues to proceedings before a Court of Small Causes. As noticed hereinabove, Section 17 of the Provincial Small Cause Courts Act, 1887 makes the provisions of the Code of Civil Procedure applicable to such proceedings subject to the exceptions and modifications expressly engrafted therein. Order L Rule 1(a)(iii) expressly excludes the provisions of the Code relating to "the settlement of issues", thereby indicating the legislative intent that proceedings before a Court of Small Causes are not to be governed by the elaborate procedural mechanism applicable to ordinary civil suits.

24. The consequence of such exclusion, however, is not that the Court of Small Causes is relieved of its obligation to identify and adjudicate the real controversies arising between the parties. Although the procedure relating to the settlement and framing of issues stands excluded, Order XX Rule 4(1) CPC nevertheless requires the Court to formulate the points for determination and pronounce its decision thereon. The summary character of the proceedings is thereby preserved without diluting the Court's essential judicial function of determining every material controversy arising between the parties.

25. The aforesaid distinction stands authoritatively recognised by the Supreme Court in **Rameshwar Dayal**. The Court held that although the procedure relating to the settlement and framing of issues under Order XIV CPC stands excluded in proceedings before a Court of Small Causes by virtue of Order L CPC, the "points for determination" contemplated by Order XX Rule 4(1) CPC are, in substance, nothing but the issues which would otherwise arise for determination under Order XIV Rules 1 and 3 CPC. It was further held that a judgment of a Court of Small Causes which fails to state the points for determination and record clear findings thereon does not satisfy the requirements of a "judgment" within the meaning of

Section 2(9) CPC and cannot sustain a decree within the meaning of Section 2(2) CPC.

26. The same principle has consistently been followed by this Court. In **Krishna Kumar Gupta v. Subhash Chand Surana**², this Court reiterated that although a Court of Small Causes is not required to frame formal issues in the manner contemplated by Order XIV CPC, Order XX Rule 4(1) CPC nevertheless obliges it to formulate the points for determination arising from the pleadings and record its decision thereon. The exclusion of the procedure relating to the settlement and framing of issues, therefore, does not dispense with judicial determination of the controversies raised by the parties; it merely dispenses with the technical requirement of framing formal issues while preserving the Court's obligation to determine the real questions in controversy.

27. The statutory framework and the judicial pronouncements noticed above thus leave little room for doubt that proceedings before a Court of Small Causes are governed by a special and simplified procedural regime. The Court is neither required nor expected to undertake the formal exercise of settlement and framing of issues in the manner applicable to ordinary civil suits. At the same time, it remains under a duty to identify the disputes that arise for adjudication by formulating the points for determination and rendering its decision thereon in conformity with Order XX Rule 4(1) CPC. The exclusion of the procedure relating to the settlement of issues, therefore, does not dilute the obligation of the Court to adjudicate every material controversy arising between the parties; it merely modifies the procedural mode by which such adjudication is undertaken.

28. The second limb of the controversy concerns the correctness of the trial court's refusal to adjudicate the petitioners' plea of *res judicata* as a preliminary issue.

29. The doctrine of *res judicata*, embodied in Section 11 CPC, is founded upon the salutary principle that there must be finality to judicial determinations and that a party should not be vexed twice over in respect of the same matter. The applicability of the doctrine, however, is conditioned

² (2013) 98 ALR 480

upon fulfilment of the statutory requirements prescribed under Section 11, including identity of the parties or those claiming under them, identity of the matter directly and substantially in issue, litigation under the same title, competence of the former court and a final decision/adjudication upon such issue.

30. The question, however, is not whether the petitioners have raised a plea founded upon the statutory bar contained in Section 11 CPC, but whether such a plea can be insisted upon as a matter of right to be determined at the threshold. In proceedings before a Court of Small Causes, where the procedure relating to the settlement and framing of issues stands excluded and the Court is required to determine the controversies by formulating the points for determination under Order XX Rule 4(1) CPC, whether a particular defence ought to be considered at the threshold or along with the remaining controversies necessarily depends upon the nature of the enquiry required for its determination.

31. It is a well-settled principle of civil procedure that only those objections which are capable of determination as pure questions of law on admitted or undisputed facts may appropriately be decided at the threshold. Where adjudication of a plea necessitates determination of disputed foundational facts, appreciation of evidence or examination of matters giving rise to a mixed question of law and fact, such plea cannot ordinarily be segregated for prior determination but must be considered along with the remaining controversies at the final adjudication. The aforesaid principle stands authoritatively recognised by the Supreme Court in **Nusli Neville Wadia v. Ivory Properties**³, wherein it was held that a question of law which depends upon the determination of disputed facts cannot be decided as a preliminary issue.

32. A plea founded upon the statutory bar contained in Section 11 CPC stands on no different footing. A plea of *res judicata* ordinarily gives rise to a mixed question of law and fact requiring examination of the pleadings, the issues arising in the former proceedings, the findings recorded therein and the judgment rendered thereon. Unless the requisite factual foundation is

3 (2020) 6 SCC 557

admitted or is manifest from the record, the applicability of the statutory bar cannot be determined in the abstract or merely on the basis of the plea as raised.

33. The principle that emerges is that no inflexible rule can be laid down requiring every plea of *res judicata* to be determined before the remaining controversies in the suit. Where the applicability of Section 11 CPC turns exclusively upon admitted facts or undisputed material, the Court may appropriately determine the objection at the threshold. Conversely, where determination of the plea necessitates examination of the pleadings, the issues arising in the former proceedings, the findings recorded therein, the judgment rendered thereon or the capacity in which the parties litigated, the Court would ordinarily be justified in considering the plea along with the remaining controversies rather than undertaking a fragmented adjudication.

34. It follows that the mere invocation of the statutory bar contained in Section 11 CPC does not, by itself, entitle a party to insist upon a threshold adjudication of the plea of *res judicata*. The doctrine is intended to advance the principle of finality in litigation and not to create procedural impediments divorced from the factual foundation upon which it rests. Before the statutory bar embodied in Section 11 CPC can be invoked, the Court must be satisfied that each of its statutory ingredients stands established. Such satisfaction ordinarily requires examination of the pleadings, the issues that arose for determination, the findings returned in the former proceedings, the judgment rendered therein and, where relevant, the title or capacity in which the parties litigated. Whether a plea of *res judicata* is capable of being determined at the threshold must, therefore, necessarily depend upon the nature of the enquiry required in the facts and circumstances of each case

35. Tested on the touchstone of the aforesaid principles, no fault can be found with the approach adopted by the trial court. The petitioners sought a threshold adjudication of the plea of *res judicata* by filing an application under Order XIV Rule 1 read with Section 151 CPC. The trial court rightly proceeded on the basis that proceedings before a Court of Small Causes are governed by a special procedural regime in which the procedure relating to

the settlement and framing of issues is inapplicable and the controversies are to be determined by formulating the points for determination under Order XX Rule 4(1) CPC. The plea raised by the petitioners necessarily entails an examination of the pleadings, the issues, the judgment and the record of the earlier proceedings to ascertain whether the statutory ingredients of Section 11 CPC stand satisfied. In such circumstances, the petitioners could not, as a matter of right, insist upon a threshold adjudication of the plea of *res judicata*. The trial court, therefore, committed no jurisdictional error in declining to determine the objection at the threshold.

36. Even otherwise, the plea of *res judicata* raised by the petitioners is not capable of determination merely on the basis of the assertions contained in the pleadings. The petitioners seek to invoke the doctrine on the contention that the earlier eviction proceedings had been instituted by the respondent's husband in his capacity as the constituted attorney of the respondent and that the matters directly and substantially in issue in the present suit already stood adjudicated in the earlier proceedings. Whether the parties litigated under the same title, whether the matters directly and substantially in issue are identical, the nature and effect of the findings recorded in the former proceedings and whether the statutory ingredients of Section 11 CPC stand fulfilled are all matters which necessarily require examination of the pleadings, the record, the evidence and the judgment in the former suit. Such an enquiry cannot appropriately be undertaken in isolation or in the abstract.

37. Significantly, the impugned order neither rejects nor adjudicates the petitioners' plea of *res judicata* on merits. It merely declines to determine the said plea at the threshold. The petitioners have already incorporated the said defence in their written statement and shall remain at liberty to establish the same by relying upon the pleadings, documentary evidence and the record of the earlier proceedings at the appropriate stage of the proceedings. No prejudice can, therefore, be said to have been occasioned merely because the plea has not been determined at the threshold.

38. It deserves to be clarified that rejection of an application seeking adjudication of a plea of *res judicata* at the threshold does not amount to an adjudication of the plea on merits. The defence continues to remain open for consideration at the stage of final disposal of the suit, where the trial court shall determine its applicability on the basis of the pleadings, evidence and the record of the earlier proceedings. Consequently, an order merely declining to examine such objection at the threshold cannot, by itself, be construed as causing any prejudice to the party raising the defence.

39. Whether a particular objection should be determined at the threshold or along with the remaining controversies is essentially a matter falling within the procedural discretion of the trial court, to be exercised having regard to the nature of the enquiry involved and the facts and circumstances of the particular case. Unless such discretion is shown to have been exercised arbitrarily, perversely, in disregard of the statutory scheme or in a manner resulting in manifest failure of justice, this Court would be slow to interfere in exercise of its supervisory jurisdiction under Article 227 of the Constitution.

40. Before parting, it deserves to be observed that the exclusion of the procedure relating to settlement of issues in proceedings before a Court of Small Causes cannot be construed as restricting the jurisdiction of such Court to examine any defence legitimately available to a party. The exclusion is purely procedural and is intended to facilitate expeditious disposal of suits. Every substantial defence, including a plea founded upon Section 11 CPC, remains amenable to adjudication by the Court at the appropriate stage in accordance with the procedure prescribed by law.

41. In view of the foregoing discussion, this Court is of the considered opinion that the learned Judge, Small Causes Court committed no jurisdictional error in declining to determine the petitioners' plea of *res judicata* at the threshold. The impugned order is in consonance with the statutory scheme governing proceedings before a Court of Small Causes and the settled principles governing the doctrine of *res judicata*. The impugned order neither adjudicates nor rejects the petitioners' plea of *res judicata* on merits. In the absence of any patent illegality, perversity or

jurisdictional infirmity, no case for interference is made out in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

42. Accordingly, the petition is **dismissed**.

43. It is, however, clarified that this Court has expressed no opinion on the merits of the petitioners' plea of *res judicata*. It shall be open to the petitioners to urge the said plea, as also all other pleas available to them in law, before the trial court at the appropriate stage. The trial court shall consider and decide the plea of *res judicata*, as well as all other questions arising for determination, independently in accordance with law on the basis of the pleadings, evidence and the record of the earlier proceedings, uninfluenced by any observations contained either in the impugned order or in the present judgment, except to the extent of the legal principles enunciated herein. The learned trial court shall endeavour to dispose of the suit expeditiously, avoiding unnecessary adjournments to either party.

(Dr. Yogendra Kumar Srivastava, J.)

August 4, 2026

RKK/-