HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT AT JABALPUR

Case No.	**M.P. No.3302/2018**
Parties Name	Suresh Madan and others vs. Manvendra Singh and others
Date of Order	**07/09/2022**
Bench Constituted	**Single Bench :** **Justice S.A.Dharmadhikari**
Judgment delivered by	**Justice S.A.Dharmadhikari**
Whether approved for reporting	Yes
Name of counsels for parties	Petitioners by Shri R.P.Agrawal, Senior Advocate with Shri Rahul Gupta, Advocate. Respondent No.1 by Shri Radheshyam Tiwari – Advocate) Respondents No.3 and 4 by Shri Rajkamal Chaturvedi – Advocate.
Law laid down	1. Second application under Order VII Rule 11 C.P.C. is maintainable and is not hit by the principles of resjudicata. 2. Provisions of Order VII Rule 11 C.P.C. are not exhaustive and the court has an inherent power to see that frivolous or vexatious litigation are not allowed to consume the time of the Court. 3. When the cause of action is not disclosed in the plaint, the plaint ought to have been rejected. 4. No cause of action accrued to the

	plaintiff to file a suit without impleading the original purchaser as a party to the suit, who are still alive.
Significant paragraph numbers	14, 15, 20.

(S.A.Dharmadhikari)
Judge

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE SUSHRUT ARVIND DHARMADHIKARI
ON THE 07th OF SEPTEMBER, 2022

MISC. PETITION No. 3302 of 2018

Between:-

1. SURESH MADAN

2. ANURAG MADAN

3. ABHISHEK ALIAS DAINY MADAN

4. DHIRAJ KUMAR

5. SMT PRAVESH MADAN

6. SHYAM KUMAR

7. MITHILESH CHANDRA

8. NARESH CHANDRA

9. RAM KUMAR

10. SHIVNARAYAN

11. PREMNARAYAN

12. PANKAJ AGRAWAL

13. SUSHIL KUMAR

14. SMT SAVITRI

15. SMT VIJAY

16. KISHORI KUSHWAHA

17. BRIJ KISHORE KUSHWAHA

.....PETITIONER

(BY SHRI R.P.AGRAWAL – SENIOR ADVOCATE WITH SHRI

RAHUL GUPTA - ADVOCATE)

AND

1. MANVENDRA SINGH

2. STATE OF MP THROUGH COLLECTOR CHHATARPUR (MADHYA PRADESH)

3. SMT USHA RAI

4. SMT CHHOTELAL DADARYA

.....RESPONDENTS

(RESPONDENT NO.1 BY SHRI RADHESHAYAM TIWARI – ADVOCATE)
(RESPONDENTS NO.3 AND 4 BY SHRI RAJKAMAL CHATURVEDI - ADVOCATE)

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

ORDER

Heard finally with the consent of both the parties.

2. In this petition under Article 227 of the Constitution of India, the petitioners have assailed the order dated 3.7.2018 (annexure P/23) passed by II Civil Judge Class I, Nowgaon, District Chhattarpur in Civil Suit No.54-A/2017 whereby the application under Order VII Rule 11 C.P.C. filed by the petitioners/defendants has been rejected.

3. Brief facts leading to filing of this case are that respondent/plaintiff has filed a suit for declaration of title, permanent injunction and delivery of possession by the defendants/petitioners. One Raghuraj Singh, grandfather of the present plaintiff Manvendra Singh was the Ruler of princely State of Alipura situated within Tahsil Nowgaon, District Chhattarpur. In the year 1947-48 number of princely States were merged in the then class "C" State of Vindhya Pradesh and at the time of vesting an inventory was prepared wherein the properties which had vested in the newly formed State of Vindhya Pradesh were separately shown and the properties which were left for the use of ex-Ruler were also separately shown.

4. Thereafter, the Estate of Alipura, prior to vesting had given 18.57 acres of land on permanent patta to one Mahadev Singh in the year 1945. Mahadev Singh – since deceased had a son named Kunwar Bahadur Singh. Kunwar Bahadur Singh is also dead and is survived by his only son Santosh Singh. Late Kunwar Bahadur Singh sold certain lands out of 18.57 acres of land to the

defendants no.1 to 5, 7, 10, 11 and 12 and Santosh Singh out of the same land of 18.57 acres sold some pieces of land to Pankaj Agrawal, defendant no.13. Pankaj Agrawal thereafter gave the same land to defendants no.8 and 9. The respondent no.1/plaintiff filed the suit on the basis of Patta of 1945 that too has been executed by one Chand Khan, Tahsildar. The aforesaid Patta does not bear the signature of Chand Khan, Tahsildar nor there is any seal over such Patta. In terms of the patta, the land is resumable after 40 years. The petitioners filed an application under Order VII Rule 11A of the C.P.C. seeking dismissal of the suit as the plaintiff had no cause of action inasmuch as the suit land had already been alienated by the then state of Alipura prior to vesting of the Estate in the State of Vindhya Pradesh. Since the State of Alipura had already alienated the suit land in the year 1945, the question of ex-Ruler of the State having any interest on such land did not arise and the present suit was not maintainable in the absence of any cause of action. Defendants/petitioners also filed an application under Order VIII Rule 1A(iii) of the C.P.C. for taking documents in evidence.

5. Out of four documents, two are the sale-deeds dated 29.8.1972 and 6.2.1975 by which 1.42 and 6.26 acres of land were sold out of khasra no.2239 and 4324/3360 respectively. The relevancy of these documents was to show that these khasra nos. were mentioned in Ex.D/1 executed by the then Ruler of the State

of Alipura in favour of Mahadev Singh which were out of the purview of 18.57 acres. The present plaintiff did not file any suit claiming the aforesaid land which was part of 18.57 acres of land given to Shri Mahadev Singh by Ex.D/1 in the year 1945. The other two documents were Khasra and khatauni of the year 1945 which showed the name of Mahadev Singh. The learned trial court allowed the application under Order VIII Rule 1A(iii) C.P.C. however rejected the application under Order VII Rule 11A of the C.P.C.

6. The learned senior counsel Shri Agrawal contended that the suit land is said to have been allotted on 19.5.1945 for a period of 40 years which expired in 1985 and the suit was filed on 25.9.2014, i.e. almost after a period of 30 years, which is beyond the period of limitation. Mahadev Singh and his legal heirs had already acquired bhumiswami rights under section 153 of the Vindhya Pradesh Land Revenue and Tenancy Act, 1953 (hereinafter referred to as 'the 1953 Act') being the Pattedar/tenant as defined in sub clause (xvi) of section 2 of the 1953 Act. Therefore, the right, if any, the plaintiff had, stood statutorily extinguished. Under this section, the rights of a Pattedar/tenant have been made heritable and transferrable. The aforesaid legal position has again been reiterated by the legislature in sub clause (d)(i) of clause 1 of section 158 of the M.P. Land Revenue Code, 1959 (hereinafter referred to as 'the 1959 Code').

7. It is further contended that Mahadev Singh or his legal heirs has not been impleaded in the suit from whom the reversion of the property could be claimed. Mahadev Singh is dead and he is survived by his son Kunwar Bahadur Singh, his wife Sushila Singh, Santosh Singh, s/o Kunwar Bahadur Singh and Pratibha Singh, d/o Kunwar Bahadur Singh. The sale-deeds which have been exhibited in the case have all been executed by Kunwar Bahadur Singh except the last one which was executed by Santosh Singh, s/o Kunwar Bahadur Singh. The aforesaid five sale-deeds were executed between 5.8.1969 to 12.1.1988.

8. It is further submitted that all the defendants/petitioners are the transferees from Kunwar Bahadur Singh and Santosh Singh. Their predecessor-in-title Mahadev Singh and Kunwar Bahadur Singh had already perfected their right under the statute as also by way of adverse possession.

9. It is further contended that no relief can be granted in this suit because :-

i) the right of the plaintiff, if any, has statutorily extinguished;

ii) the suit must fail for non-joinder of Mahadev Singh and his legal heirs; and

iii) certified copy of the judgment dated 12.11.1984 passed by the III Addl. District Judge in Civil Suit No.3A/1983 upholding the validity of Patta, annexure P/4, executed

in favour of Mahadev Singh shows that Kunwar Bahadur Singh as the appellant who is the son of Mahadev Singh.

It is thus clear that Mahadev Singh did not die intestate which fact has been suppressed and wrongly stated in para 9 of paper book at page 27 and denied in paras 7 and 22 by the defendants in their written statement.

10. It is further contended that the suit cannot be decreed because all the five sale-deeds were executed between 5.8.1969 and 12.1.1988 and even if 1988 date is taken to be datum line then also Shri Pankaj Agrawal, who purchased the land by sale-deed dated 12.1.1988 perfected his right in the year 2000 whereas the suit is filed on 25.9.2014, which is hit by limitation.

11. Per contra, learned counsel for the respondents vehemently opposed the prayer and contended that this being second application under Order 7 Rule 11 C.P.C., the same is hit by the principles of resjudicata as defined under section 11 of the C.P.C. and, therefore, second application under Order VII Rule 11 C.P.C. being not maintainable has been rightly dismissed by the court below. It is further submitted that the application is misconceived and based on incorrect facts and has been filed only with the purpose to delay the trial. The plaint was filed on 25.9.2014. Earlier, the petitioners/defendants had also filed an application under Order 7 Rule 11 C.P.C., which was dismissed vide order darted 14.5.2018. It was also stated that Pattedar does not become

the owner of the land and cannot transfer the same to any other person. It is stated in the document that the land in question was granted on Patta only for a period of 40 years and thereafter, the same has to be returned back to the original owner. The petitioners/defendants by illegal means have got their names mutated in the revenue records and illegally became the owner. The trial court has rightly rejected the application filed by the petitioners/defendants. In support of his contention counsel for the respondent had relied upon the judgment of the Apex court in the case of ***Arjun Singh Vs. Mohindra Kumar and others***, AIR 1964 SC 993 the relevant para 16 is reproduced below :-

> "**16.** That the question of fact which arose in the two proceedings was identical would not be in doubt. Of course, they were not in successive suits so as to make the provisions of Section 11 of the Civil Procedure Code, applicable in terms. That the scope of the principle of *res judicata is* not confined to what, is contained in Section 11 but is of more general application is also not in dispute. Again, *res judicata* could be as much applicable to different stages of the same suit as to findings on issues in different suits. In this connection we were 'referred to what this Court said in *Satyadhan Ghosal* v. *Smt Deorajin Debi* [(1960) 3 SCR 590] where Das Gupta, J. speaking for the Court expressed himself thus:
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> "The principle of *res judicata-is* based on the need of giving a finality, to judicial decisions. What it says is that once resjudicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter — whether on a question of fact or on a question of law — has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again…. The principle of *res judicata* applies also as between the two stages in the same

> litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings."

12. In another judgment of the Apex Court in the case of ***Satyadhyan Ghosal and others Vs. S.M.Deorajin Debi and another***, reported in AIR 1960 SC 941, in para 7 and 8 has held as under :-

> "**7.** The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter — whether on a question of fact or a question of law — has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct.
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> **8.** The principle of res judicata applies also as between two stages in the same litigation to this extent that a court, whether the trial court or a higher court having at an earlier stage decided a matter in one way will not allow the parties to re-agitate the matter again at a subsequent stage of the same proceedings. Does this however mean that because at an earlier stage of the litigation a court has decided an interlocutory matter in one way and no appeal has been taken therefrom or no

> appeal did lie, a higher court cannot at a later stage of the same litigation consider the matter again?

13. Learned counsel for the respondents in the light of the aforesaid judgments prays for dismissal of the writ petition.

14. In reply learned senior counsel for the petitioners submitted that a suit can be dismissed under any of the clauses of order VII Rule 11 C.P.C. provided that the grounds mentioned therein are made out. Learned counsel further submitted that the second application under Order VII Rule 11 C.P.C. is maintainable and has placed reliance on a judgment of the Supreme Court in the case of ***Ferro Alloys Corporation Limited and another Vs. Union of India and others, AIR 1999 SC 1236***, to bring home the issue that second application under Order VII Rule 11 C.P.C. was not hit by the principles of resjudicata. Learned counsel for the petitioner has also placed reliance on the judgment of the Apex Court in the case of ***Mathura Prasad Bajoo Jaiswal and others Vs. Dossibai N.B.Jeejeebhoy, AIR 1971 SC 2355***, to show that the civil suit relating to jurisdiction of the court cannot be deemed to have been finally determined by erroneous decision of that court and such decision cannot operate as resjudicata in the subsequent proceedings. Reliance has also been placed upon the judgment of the Apex Court in the case of ***Lonankutty Vs. Thomman and another, reported in AIR 1976 SC 1645,*** wherein it has been held that for application of the rule of resjudicata it is

not enough to constitute a matter that it was in issue in the former suit. It is further necessary that it must have been in issue directly and substantially. The matter cannot be said to have been "directly and substantially" in issue in a suit unless it was alleged by one party and denied or admitted either expressly or by necessary implication, by the other.

15. Learned counsel for the petitioners contended that the provisions of Order VII Rule 11 C.P.C. are not exhaustive and the court has an inherent power to see that frivolous or vexatious litigation are not allowed to consume the time of the Court as has been held by the Apex Court in the case of ***S.L.P. Civil No.31844/2018 - Bijay Kumar Manish Kumar HUF Vs. Ashwin Desai***. Learned counsel for the petitioner also submitted that the Apex Court in the case of ***T.Arivandandam Vs. T.V.Satyapal, reported in (1977)4 SCC 467*** in para 5 and 6 has held as under :-

> "**5.** We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining

> the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:
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> "It is dangerous to be too good."
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> **6.** The trial court in this case will remind itself of Section 35-A CPC and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned".

16. The Apex Court in the case of ***Rajendra Bajoria and others Vs. Hemant Kumar Jalan and others reported in (2021) SCC Online SC 764*** has held as under :-

> "16…… Thus, none of the reliefs sought in the plaint can be granted to the plaintiff under the law. The question then arises as to whether such a suit should be allowed to continue and go for trial. The answer in our view is clear, that is, such a suit should be thrown out at the threshold.
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> ……
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> **20.** It could thus be seen that this Court has held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to. However, under Order VII Rule 11 of

CPC, the duty is cast upon the court to determine whether the plaint discloses a cause of action, by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. This Court has held that the underlying object of Order VII Rule 11 of CPC is that when a plaint does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings. It has been held that in such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted."

17. The Apex Court in the case of ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali reported in (2020)S CC 366*** has held as under :-

"**23.14.** The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai* v. *State of Maharashtra* [*Saleem Bhai* v. *State of Maharashtra*, (2003) 1 SCC 557] . The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar Hussain case* [*Azhar Hussain* v. *Rajiv Gandhi*, 1986 Supp SCC 315. Followed in *Manvendrasinhji Ranjitsinhji Jadeja* v. *Vijaykunverba*, 1998 SCC OnLine Guj 281 : (1998) 2 GLH 823] .

…..

24. "Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

> **…….**
> **24.4.** If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Rama Chandra Murthy* v. *Syed Jalal* [*Madanuri Sri Rama Chandra Murthy* v. *Syed Jalal*, (2017) 13 SCC 174 : (2017) 5 SCC (Civ) 602] held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court".

18. Learned counsel further submitted that the suit can be dismissed not only under Order VII Rule 11 C.P.C. clauses (a)(e); but also on the grounds that the suit is frivolous, vexatious and bogus as the list enumerated under Order 7 Rule 11 C.P.C. is not exhaustive. The suit can also be dismissed by the court exercising its inherent power if the same appears to be frivolous, vexatious and bogus. In view of the aforesaid grounds, the learned trial court ought to have rejected the plaint.

19. Heard learned counsel for the parties and perused the record. From the pleadings it is admitted position that the suit lands is said to have been allotted on 19.5.1945 for a period of 40 years, which stood expired in the year 1985 and the suit was filed on 25.9.2014, i.e. almost after a period of 30 years for which the plaintiff has not putforth any plausible explanation for the inordinate delay. Mahadev Singh and his legal heirs had already acquired bhumiswami rights under section 153 of the 1953 Act being a pattedar/tenant as defined in sub clause (xvi) of section 2

of the 1953 Act. The right, if any, the plaintiff had, stood statutorily extinguished.

20. Section 2 of the 1953 Act provides for a right of an heir/tenant made heritable and transferrable. This legal position gets fortified as per sub clause d(i) of clause 1 of section 158 of the 1959 Code. So far as the question of resjudicata is concerned, as has been held in the case of Ferro Alloys Corporation Limited (supra), Mathura Prasad Bajoo Jaiswal (supra) and Lanankutty (supra), when the cause of action is not disclosed in the plaint, the plaint ought to have been rejected. Learned counsel for the petitioners has been able to demonstrate from the pleadings as well as law that no cause of action accrued to the plaintiff to file such a suit without impleading the original purchaser as a party to the suit, who are still alive. In absence of non-joinder of the original purchaser as a party to the suit, this is also one of the ground on which the plaint ought to have been rejected. The trial court has committed jurisdictional error in rejecting the application under Order VII Rule 11 C.P.C. Accordingly, the impugned order dated 3.7.2018 passed by II Civil Judge Class I, Nowgaon, District Chhattarpur in C.S.No.54-A/2017 is set aside. The application filed under Order VII Rule 11 C.P.C. by the petitioners/defendants is allowed. As a consequence, plaint of the plaintiff stands rejected.

21. In the result, petition stands allowed and disposed of. No order as to cost.

(S.A.Dharmadhikari)
Judge

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