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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% ***Date of Decision: 24.09.2025***+ **C.R.P. 41/2024****KRISHNA DEVI**

.....Petitioner

Through: Mr. Charanjeet Bhalla & Mr. Gautam
Sharma, Advs.

versus

**AMOLAK SINGH (NOW DECEASED) THROUGH HIS
LRS**

.....Respondent

Through: Mr. Amit Dhalla & Mr. Sohan Singh
Rawat, Advs. with R(ii) & (iii) in
person.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The present Petition has been filed on behalf of the Petitioner under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] against the order dated 08.08.2023 passed by learned ACJ/CCJ/ARC (West), Tis Hazari Court, Delhi [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application under Order VII Rule 11(d) of the CPC filed by the Petitioner [hereinafter referred to as the "Application"] has been dismissed by the learned Trial Court.

2. On 19.09.2025, this Court had passed the following directions:

"2. The learned counsel for the Respondent further submits that the suit for declaration and injunction was filed in the year 2004. The suit was proceeded and evidence of both the parties has now been concluded. It is contended that, an application under Order VII Rule 11 CPC was filed at the stage of the final arguments. Thus, it is contended by the



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learned counsel for the Respondent that the Petitioner is merely trying to delay the final adjudication of the suit.

3. The record reflects that even the plaint has not been placed on record by the Petitioner.

4. The Court has however examined the plaint and the evidence which forms part of the Trial Court Record. It is submitted that the principal challenge as raised in the application under Order VII Rule 11 CPC is that plaint refers to a Sale Deed of the year 1961 and hence the plaint is barred by limitation.

5. The learned counsel for the Respondent submits that the Sale Deed, that has been challenged before this Court by the Plaintiff is a Sale Deed of the year 2003. Learned counsel relies on the prayers in the plaint which are extracted below:-

“It is, therefore, most respectfully prayed that this Hon’ble Court may be kindly be pleased to declare the sale deed executed by the defendant no.4 in favour of defendant no. 1 to 3 in the year 2003 be declared illegal, unlawful, ab initio in view of the facts and circumstances mentioned above.

It is further prayed that a decree for permanent injunction may kindly be passed in favour of the plaintiff and against the defendants, restraining their workman, family members, associates, representatives etc. from dispossessing the plaintiff from the suit property bearing Municipal No. 39, Krishna Puri, Near Tilak Nagar, New Delhi as shown red in the site plan attached.”

6. In any event, and given that the suit is now at the stage of final arguments and the continuance of this petition before this Court would not be fruitful.

7. In the interest of justice, an adjournment is granted subject to payment of cost of Rs.15,000/- to be paid to the Respondent on the next date of hearing.”

3. Learned Counsel for the Respondent submits that the costs as directed by the Court have not been deposited by the Petitioner.

4. However, and in the interest of expediency, the parties have been finally heard.

5. Learned Counsel for the Petitioner submits that the Petitioner raises two grounds of challenge, under Order 7 Rule 11(a) and under Order 7 Rule



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11 (d) of the CPC.

6. The learned Counsel for the Petitioner firstly relies on the judgment of the Supreme Court in ***Dahiben v. Arvindbhai Kalyanji Bhanusali (Gajra) Dead through LRs and Ors.***¹ to submit that an Application under Order VII Rule 11 of the CPC can be filed at any stage of proceedings. Learned Counsel for the Petitioner seeks to rely upon paragraph 23.14 of the ***Dahiben*** case, which is set out below:

“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].”

6.1 Secondly, learned Counsel for the Petitioner contends, relying on paragraph 9 of the Plaint, that the plaint contains a reference to an earlier suit for injunction filed in 1981 and thus the Plaint is barred by limitation. Reliance in this behalf is also placed by the learned Counsel for the Petitioner on Article 59 of the Schedule to the Limitation Act, 1963 [hereinafter referred to as the “Limitation Act”].

7. Learned Counsel for the Respondent, on the other hand, reiterates his contention that the case was pending for more than 20 years and that the matter is now at the final stages and that the Application has only been filed to delay adjudication before the learned Trial Court. Learned Counsel further submits that the Respondent/Plaintiff has already expired during the

¹ (2020) 7 SCC 366



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pendency of the civil suit.

7.1 Learned Counsel for the Respondent further submits that Application that was adjudicated by the learned Trial Court was filed under Order VII Rule 11(d) of the CPC alone and for rejection of plaint in view of the suit being barred by limitation. Thus, it is contended that the Plaintiff cannot take any fresh grounds before this Court.

8. So far as concerns the ground of challenge under Order 7 Rule 11(a) of the CPC, which is sought to have been raised by the Petitioner, clearly the Application that has been placed on record does not refer to this ground, and in fact, in, paragraph 11 therein, only refers to the fact that the challenge is to the Plaint being barred by limitation. The paragraph 11 of the Application as filed by the Petitioner is set out below:

“11. That in terms of Order 7 Rule 11 (D) CPC a plaint can be rejected in case the suit is barred by limitation. Since as shown above present suit is barred by law of limitation, therefore the said suit is liable to be rejected. Judgment of Supreme Court is annexed here with as Annexure ‘A’.”

9. It is settled law that where a plea has not been taken before the Trial Court, cannot be adjudicated under the revisionary jurisdiction of the High Court. The Supreme Court in the case of **Food Corporation of India & Anr. v. Yadav Engineer & Contractor**², held that a ground not raised before the Trial Court should not be allowed to be raised before High Court in a revision petition under Section 115 of the CPC. It is apposite to set out the relevant extract below:

“33. The learned Judge also negatived the prayer for stay for the additional reason that the 1st defendant had not complied with another condition for relief under Section 34. The learned Judge found that in the application for

² (1982) 2 SCC 499



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*stay the applicant had not stated that at the time when the proceedings were commenced it was ready and willing to do all things necessary to the proper conduct of the arbitration and still remains ready and willing to do the same. **The learned Judge held after referring to the averments in the application for stay that there is no averment to that effect. Plaintiff contesting the application had not raised this contention before the trial court and the first appellate court and that becomes evident from what the learned Judge has stated in the judgment that both the courts have not taken into account this aspect of the case at all. Obviously, the learned Judge ought not to have permitted the contention while hearing a revision petition under Section 115 of the Code of Civil Procedure. But apart from this, the finding of the learned Judge is contrary to record.***

[Emphasis Supplied]

9.1 A similar view was taken in the case of ***Madan Mohan Kotal v. Gobinda Kotal & Anr.***³, wherein the Supreme Court laid down that, it was not permissible to allow a new ground to be raised for the first time in revision. It is apposite to set out the relevant extract below:

*“4. We are of the opinion that the high court was in error in allowing a **ground which had been given up before the trial court and the District Judge to be raised for the first time in revision.** The claim of Respondent 1 on the ground of co-shareship had not been accepted by the High Court.*

5. In the view of the above, the appeal is allowed. The judgement and order passed by the High Court is set aside and that of the District Judge is restored. However, there will be no order as to costs.”

[Emphasis Supplied]

9.2 Since no challenge on the ground under Order VII Rule 11 (a) of the CPC has been taken by the Petitioner in the Application, the challenge before this Court cannot be sustained.

10. The Trial Court record reflects that the suit that has been filed has been filed for declaration and permanent injunction seeking relief in respect of the property bearing Municipal No.39/65, Krishna Puri, near Tilak Nagar,

³ 2002 9 SCC 457



New Delhi and also the relief of declaration in respect of the sale deed dated 14.05.2023 executed by Defendant No.4 in favour of Defendant Nos.1 to 3. [Defendant No.3 is the Petitioner before this Court].

11. As stated above, the suit has been filed seeking declaration that the sale deed dated 14.05.2003 is null and void and seeking dispossession of the Respondent/Plaintiff from the suit property. It is apposite to extract the relevant paragraphs of the Plaint, along with the prayers, in this behalf, which are set out below:

“SUIT FOR DECLARATION AND PERMANENT INJUNCTION

xxx

xxx

xxx

1. That the plaintiff is the owner/landlord of the property bearing Municipal No.WZ-65 and WZ-39, Krishna Puri, Near Tilak Nagar, New Delhi.

2. That the grand father of the plaintiff Sh.Sawan Singh was the owner/landlord of the abovesaid property and he purchased the said property by a duly registered Sale Deed in his favour and after his death that took place in the year 1965 his legal heir became the co-owner of the abovesaid property.

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4. That the said Smt.Sumitra Devi during her lifetime executed a Relinquishment Deed in favour of the son and daughter of Sh.Isher Singh on 23.8.1978.

5. That the abovesaid Isher Singh died in the year 1978 and after his death his legal heirs became the co-owner of the abovesaid property bearing Municipal No.39/65, Krishna Puri, near Tilak Nagar, New Delhi.

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xxx

7. That the abovesaid plaintiff applied for mutation in his name and mutation has been effected in his name vide letter No.Tax/WZ/Mut./2004-2005/67/70 dated 27.8.04.

8. That the defendant no.4 had been mischievously and illegally trying to interfere in the possession of the plaintiff in the abovesaid property and has been trying to dispossess the plaintiff from the said property directly or indirectly by way of collusion with the local police as well as with bad elements of the locality and pressurise the plaintiff to vacate the



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premises in question otherwise they would take the forcible possession of the abovesaid property.

9. That the abovesaid defendant no.4 who is having no right, title or interest in the abovesaid property also filed a frivolous suit for permanent injunction in the year 1981 and the said suit was assigned to the Court of Sh.Satnam Singh, the then Sub-Judge, Delhi vide Suit No.242/81 and the said suit was dismissed by the said Court.

10. That inspite of the abovesaid dismissal of the suit of the defendant No.4, the defendants have been harassing and troubling the plaintiff by interfering in his possession and he occasionally bring goondas and bad elements of the area in order to try to take the forcible possession of the premises in question. The plaintiff who is a law abiding citizen of India made a request to the abovesaid defendants not to take the law into their own hands but they are adamant to take the forcible possession of the abovesaid property.

11. That the abovesaid defendants came to the premises of the plaintiff with some bad elements of the locality and tried to take the forcible possession of the abovesaid property No.39, Krishna Puri, Near Tilak Nagar, New Delhi. The plaintiff immediately rushed to the police station and lodged the report on 14.9.2004 and the concerned police officer of P.S. Tilak Nagar called the abovesaid defendant and the plaintiff at the police station and there the abovesaid defendants no.1 to 3 informed the police that they had purchased the abovesaid property from the defendant no.4 and the defendant no.4 has executed a sale deed in their favour in the year 2003 and then the plaintiff came to know that the abovesaid defendant no.4 had executed a sale deed which is illegal, void, unlawful and ab initio because the defendant no.4 was having no right, title or interest in the said property and the defendant no.4 is a law breaking man and number of criminal cases of trespass is pending against him and oftenly take the law into his own hands and tried to take the possession of the property by illegal means.

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14. That on September 30, 2004 at about 9 A.M. the abovesaid defendants alongwith some bad elements of the locality came to the premises of the plaintiff to take the forcible possession. The plaintiff who was present there raised an alarm and the locality people gathered there and did not allow the abovesaid defendants and their associates to take the forcible possession of the suit premises. The plaintiff was having no other alternative but to file the present suit, hence this Suit.

15. That the cause of action arose in favour of the plaintiff and against the defendants on 14.9.2004 when the defendants informed to the police that a sale deed has been executed by the defendant no.4 in favour of defendant no.1 to 3 when they were in police station Tilak



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Nagar. It further arose on September 30, 2004 when the abovesaid defendants alongwith some bad elements came to the house of the plaintiff in order to take the forcible possession. The cause of action is a continuing one.

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PRAYERS

“It is, therefore, most respectfully prayed that this Hon'ble Court may be kindly be pleased to declare the sale deed executed by the defendant no.4 in favour of defendant no. 1 to 3 in the year 2003 be declared illegal, unlawful, abinito in view of the facts and circumstances mentioned above.

It is further prayed that a decree for permanent injunction may kindly be passed in favour of the plaintiff and against the defendants, restraining their workman, family members, associates, representatives etc. from dispossessing the plaintiff from the suit property bearing Municipal No.39, Krishna Puri, Near Tilak Nagar, New Delhi as shown red in the site plan attached.”

[Emphasis Supplied]

12. It is no longer *res integra* that the examination of an application under Order VII Rule 11 of the CPC is on a demurer. All that is required to be examined by the Court is the plaint and the documents filed with the plaint. The Court is not required to entertain the defence of the Respondent.

13. A perusal of the Application does reflect that the challenge in the Application is only on the ground of limitation. This is clear from the heading, the prayers and the contents of the Application, which are extracted below:

“APPLICATION ON BEHALF OF DEFENDANT, UNDER ORDER 7 RULE 11(D) READ WITH SECTION 151 CPC FOR REJECTION OR PLAINT AS THE SUIT IS NOT MAINTANABLE BEING BARRED BY LAW OF LIMITATION

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xxx

9. That the limitation in the suit for declaration in regard to immoveable property based on document is three years not a day more than that.



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10. That the limitation of the suit for declaration of the plaintiff from the date of knowledge of the said sale deed of the year 1961 i.e. 1979, so the period of the limitation would expire in the year 1982. As such, the limitation of the suit is hopelessly time barred.

11. That in terms of Order 7 Rule 11 (D) CPC a plaint can be rejected in case the suit is barred by limitation. Since as shown above present suit is barred by law of - limitation, therefore the said suit is liable to be rejected. Judgment of Supreme Court is annexed here with as Annexure 'A'.

PRAYER: -

It is therefore, respectfully prayed that that the suit of the plaintiff may kindly be rejected, as the same is hopelessly time barred, in the interest of Justice."

[Emphasis Supplied]

14. The Supreme Court in ***Balasaria Construction (P) Ltd v. Hanuman Seva Trust and Others***⁴ has held the suit could not be dismissed as time-barred under Order 7 Rule 11(d) CPC without proper pleadings, framing of issues, and evidence, since limitation is a mixed question of law and fact and cannot be determined without evidence. The relevant extract of ***Balasaria Construction (P) Ltd*** case is below:

"8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time. The findings recorded by the High Court touching upon the merits of the dispute are set aside but the conclusion arrived at by the High Court is affirmed. We agree with the view taken by the trial court that a plaint cannot be rejected under Order 7 Rule 11(d) of the Code of Civil Procedure."

[Emphasis Supplied]

14.1 The Supreme Court in ***Vaish Aggarwal Panchayat v. Inder Kumar***

⁴ (2006) 5 SCC 658



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and Others⁵ relied on *Balasaria Constructions* case has held that limitation is a mixed question of law and fact. The relevant extract of *Vaish Aggarwal Panchayat* case is below:

“16. After so stating, the Division Bench opined that in the facts of the said case, the suit could not be dismissed as barred by limitation without proper pleadings, framing of issue on limitation and taking evidence, for question of limitation is a mixed question of fact and law and on ex facie reading of the plaint it could not be held that the suit was barred by time.”

[Emphasis Supplied]

15. At this stage, it is also apposite to set out Article 59 of the Schedule to the Limitation Act, 1963, which is extracted below:

	<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
59.	<i>To cancel or set aside an instrument or decree or for the rescission of a contract.</i>	<i>Three years.</i>	<i>When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.</i>

15.1 A perusal of this Article shows that the Article is applicable to cancel or set aside an instrument or decree. The Plaintiff however, that has been filed, seeks declaratory and possessory relief as has been reproduced above. The provisions of Article 59 of the schedule to the Limitation Act, cannot be said to be applicable to the present case.

16. No doubt, an application under Order VII Rule 11 of the CPC can be filed at any stage of the proceedings, however, in as suit which was originally filed in the year 2004, where the evidence of both the parties has been concluded and the matter is at the stage of final arguments, an application under Order VII Rule 11 of the CPC can but only be filed to

⁵ (2020) 12 SCC 809



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delay the adjudication of the suit. This has also been set out by the Impugned Order.

16.1 Clearly, also this suit which was filed in the year 2004 seeks declaration and injunction in respect of a sale deed that has been executed in the year 2003. Thus, *prima facie*, the Complaint does not appear to be barred by limitation. However, this aspect of the matter shall be examined by the learned Trial Court at the time of trial, as the suit is yet to be finally disposed of by the learned Trial Court.

17. From a perusal of the Complaint and the documents filed along with the Complaint, it cannot be said on a demurer that the Complaint is barred by limitation.

18. The Petition is accordingly dismissed.

19. It is clarified that the Court has not expressed any opinion on the merits of the case. The rights and contentions of the parties are left open to be agitated before the learned Trial Court.

20. Given the fact that the Application has clearly been filed with a view to delay adjudication of a suit which is pending for the last more than 21 years, this Court deems it apposite to direct the Petitioner to pay the costs in the sum of Rs.25,000/- to the Respondent.

21. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

SEPTEMBER 24, 2025/ ha