



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**FAO (OS)No. 01 of 2024
Reserved on 04.11.2025
Pronounced on: 28.11.2025**

Himinder Lal and others

.....Appellants

Vs.

Madan Lal and others

.....Respondents

Coram:

**The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.
The Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge.**

Whether approved for reporting?

For the Appellant : Mr. Neeraj Gupta, Senior Advocate with
Mr. Ajeet Pal Singh Jaswal Advocate.

For the respondents: Mr. R.K. Bawa, Senior Advocate with
Mr. Abhinav Thakur, Advocate.

G.S. Sandhawalia, Chief Justice.

Challenge, by way of present appeal has been laid to the order dated 04.01.2024, passed by the learned Single Judge in OMP No 238 of 2020 in Civil Suit No.5 of 2020, whereby the application under Order 7 Rules 11 and 11 (d) read with Section 151 of the Code of Civil Procedure, 1908, (hereinafter referred to as "CPC" for short) filed by defendants No. 23, 24 (a) and 24 (b) has been dismissed.

2. The learned Single Judge, while dismissing the application, has noticed that the plaintiffs filed Civil Suit under Section 92 of the CPC', for settling a scheme for appointment of the trustees/management of temple *Shri Jathia Devi*, along with its landed property, the details of which find mentioned in the body of the Civil Suit.

The factual matrix:

3. The said Civil suit had been filed on the ground that Jathia Devi Temple had been constructed/established by Ex-Ruler (Raja Sahib) of Keonthal State, prior to 1871 AD. Shri Jathia Devi Temple and its landed properties are situated over the suit land. The Raja of Keonthal State was the absolute owner of the suit land and prior to 1871 AD, he had constructed the temple for public and religious purposes. The aforesaid temple is of local deity (Kulja) of residents of the adjoining villages. The Raja of Keonthal had also granted remission of land revenue, in respect of the aforesaid land, in favour of deity. One

Arjun (predecessor-in-interest of defendants No. 1 to 22) was appointed as Pujari/Mohatmim of the aforesaid temple, and was authorized to arrange and manage the daily puja archana and functions relating to the deity, and also to look after the suit land. The said Arjun was required to account for income of temple and deposit the same in the accounts of the deity. It had been averred that there was breach of trust, and relief of removal of defendants No. 1 to 22, from the office of trusteeship of Shri Jathia Devi temple, to settle the scheme for proper management, administration, puja archana, ceremonies, various melas, religious fairs and day to day affairs of the deity/temple, namely, Shri Jathia Devi Ji Temple', had been sought. In addition to this, plaintiffs had also sought declaration that revenue entries, in favour of defendants No. 1 to 22, showing them owner in possession of the suit land, be declared as null and void. Consequently, it had been prayed that the sale deed dated 19.07.1986 be declared as null and void, with a prayer to direct defendants No. 23 and 24

to hand over the vacant possession of the land, i.e. subject matter of the sale deed. Defendants No 1 to 22 had also been sought to be directed to render proper accounts of the income and expenditure. Consequently, relief of permanent prohibitory injunction, against defendants No. 1 to 24, restraining them permanently from digging, excavating soil and stones, selling, alienating, encumbering, transferring or changing the nature of the suit land, in any manner, had been sought.

4. The learned Single Judge had also noticed that the pleadings of the plaintiffs would go on to show that the said suit had been filed, mainly on the ground that predecessor-in-interest, of defendants No. 1 to 22 was Pujari/Muhatmin, and defendants No. 1 to 22, including their predecessor-in-interest, had acted against the interest of the deity. As such, the plaintiffs being the right holders and worshipers of Shri Jathia Devi Ji, as their Kulja, have asserted their right in proper

management of the Temple in question, and its property (suit land).

5. The plaintiffs had also sought permission to file suit, under the provisions of Section 92 of the CPC, which had been accorded to them, before this Court, on 10.01.2020, while deciding OMP No. 31 of 2020.

Grounds of Order 7 Rule 11 application:

6. By way of application, i.e. OMP No. 238 of 2020, permission, which was granted to the plaintiffs to file suit, under Section 92 of the CPC, vide order dated 10.1.2020, in OMP No 31 of 2020, had been also sought to be recalled, on the ground that the order passed by this Court, was not in consonance with the provisions of Section 92 of the CPC apart from rejection of plaint under Order 7 Rule 11(d).

7. It was pleaded that the permission, so sought, was only against defendants No. 1 to 22, whereas, the civil suit was stated to have been filed against 26 defendants. As such, the suit was stated to be not maintainable, for non-compliance of Section 92

of the CPC. The permission under Section 92 of the CPC was stated to be a condition precedent. The suit was stated to be not maintainable, under Section 92 of the CPC, as the conditions of Section 92 CPC were not fulfilled, in the case, as in the revenue record, defendants No. 1 to 22 have been shown to be the owners in possession of the suit land.

8. It has further been averred that the provisions of Section 92 of the CPC, were not applicable in the absence of any 'TRUST'. The plaintiffs were stated to be the strangers to the suit land, as such, they have no right to sue, against the defendants. Since, the relief of declaration to declare the revenue entries, in favour of defendants No. 1 to 22, as null and void, had been sought, as such, according to the applicants, jurisdiction of Civil Court was stated to be barred. The suit was also stated to be time barred. Permission under Section 92 of the CPC was stated to have been wrongly granted, without issuance of notice to the applicants.

9. The defendants No.23 and 24 who were legal heirs of late Shri Mohinder Lal had set-up the case that the suit would not lie against them as neither there is any 'trust' nor they are 'trustee' and the provisions of Section 92 "CPC" are not applicable to the present applicants/defendants No.23 and 24. The relief as such was not maintainable. The suit was stated to be barred by limitation as the sale-deed in question which was subject matter of challenge was dated 17.09.1986 and the suit was filed only in January, 2020. The suit was vexatious and causing great mental trauma to them and they should be directly removed from the pleadings.

10. In such circumstances, the allegations were that there were mutation No.13 entered in their favour which was attested by the Naib-Tehsildar/Tehsildar, Shimla (Rural) and father of defendant No.23 had taken physical possession of the said land by putting barbed wire on the said land and planted fruit trees, built a house on the land and developed a portion into

agricultural field and more than 34 years had gone by before the suit was filed. In such circumstances, the rejection of the plaint as such was sought.

11. Resultantly, a prayer had been made to allow the application, by holding the suit as not maintainable.

Reply filed to Order 7 Rule 11 application by the plaintiff:

12. The said application was contested and resisted by the plaintiffs-non-applicants, by taking preliminary objection that the application was not maintainable; and the permission under Section 92(1) of the CPC had rightly been granted to the plaintiffs, vide order dated 10.1.2020.

13. The contents of the application have been denied, on merits mainly on the ground that suit was maintainable, as per provisions of Section 92 of the CPC. The permission under Section 92(1) CPC had been sought to prosecute the suit, against all the defendants, and not only against defendants No. 1 to 22.

14. It has been pleaded that the material on record would go on to show that Temple in question

was established, for public purpose of religious nature and the same is 'Kulja' of the residents of the adjoining villages, including the plaintiffs. Resultantly, plaintiffs/non-applicants had sought dismissal of the application on the grounds taken in the reply to the said application.

15. Accordingly, the suit was stated to be maintainable in accordance with law and *ad-interim* orders for maintaining status quo passed in accordance with law were justified and requirements of Section 92 of "CPC" had been met and the landed properties have been constructed and established for public purpose of religious nature. The remission of land revenue(Muafi) in respect of temple/landed properties was granted in favour of the deity by Raja Sahib Bahadur/Ex. Ruler at that time. The temple was established for public purposes of religious nature and to ensure that the worshippers/public at large including plaintiffs pay their obeisance as they have immense faith in the deity. The defendants No.1 to 20 had wrongly and illegally sold

the part of the temple properties to the predecessor-in-interest of defendants No.23 and 24 and therefore they were impleaded as necessary defendants. The District Collector, Shimla had been impleaded as defendant No.27.

16. The fact that the suit was barred by limitation was denied and the suit had been filed on the basis of the illegality committed by the defendants and a valid cause of action had been arisen as the properties of the deity have been wrongly and illegally sold. Neither there was any intention to cast aspersions on anyone nor they had made any averments with any malafide intention. The plaintiffs had only explained the chain of circumstances as revealed from the records and the plaintiffs had not made any false averments in the plaint. It was denied that in context of the averments made the contents of the suit were highly false and defamatory and that allegations had been made with malafide intention and they should be removed from the pleadings was palpably false.

Reasons for dismissal of application by the learned Single Judge:

17. The learned Single Judge while dismissing the application has held that there is nothing on record to show that the suit was manifestly vexatious and meritless and moreover the plaintiffs have asserted the fact that they are beneficiaries of the Temple as such they have every right to file the present suit. Considering all these facts, it has been noticed that while deciding the application, under Order 7 Rule 11 CPC, only averments of the plaint, as made, are material, and can only be taken into consideration. The stand or the probable defence of the defendants, could not be considered and reliance was placed on the judgments rendered by the Apex Court in ***Sopan Sukhdeo Sable vs. Charity Commr. (2004) 3 SCC 137, Madanuri Sri Rama Chandra Murthy vs. Syed Jala (2017) 13 SCC 174, Deoki Nandan vs. Murlidhar and others AIR 1957 SC 133*** and ***Sant Lal vs. Sudakar (2000) 2 Civil Court Cases 406 (P&H).***

18. Accordingly, the learned Single Judge came to the conclusion that the plaintiffs have pleaded that they are worshippers of deity/Jathia Devi Temple, as their 'Kulja' and they are having direct right in the proper management of the said Temple and its properties and that only the averments of the plaint were material and could be taken into consideration. The stand of the probable defence could not be considered. The temple had been constructed/ established for public purpose of religious nature and Ruler of Keonthal had established the same and it was found that the suit could not be held to be as vexatious or meritless.

19. Framing of scheme for proper management to appoint new Trustees, and to declare the new revenue entries was subject matter of challenge and therefore it was held that whether the property had been dedicated or not, was a mixed question of law and fact and there was nothing to show that the suit is manifestly vexatious and meritless and the plaintiffs

have asserted the fact that they are beneficiaries of the Temple and they had every right to file the present suit.

20. Hence the present Letters Patent Appeal has been filed on the grounds taken therein.

Arguments of learned Counsel for the appellant/defendant No.23:

21. Mr. Neeraj Gupta, learned Senior Counsel, for the appellant has vehemently submitted that the specific declaration prayed for was that the sale-deed was bad and the relief could not be sought under the provisions of Section 92 of "CPC and therefore, it was held that the suit was barred. While referring to paragraph Nos.7 to 9 of the application filed, it was the case that defendants No.23 and 24 were not concerned with the removal of the Trustees and the limitation was three years to challenge the sale deed under Article 58 of the Limitation Act, 1963 and specific plea has also been taken on the issue of limitation and was not denied that the sale-deed was 34 years back in point of time. Counsel for the appellants/defendants No. 23,

24(a) and 4(b) was gracious enough to concede the fact that the suit could not be rejected partly and had to go as a whole.

22. In such circumstances, it was stressed that the plaint should be rejected while placing reliance upon the judgment of the Apex Court in ***Pragdasji Vs. Ishwarlalbhai AIR (1952) 39 SC 143***, in this context.

23. Reliance was also placed upon the judgments of the Apex Court in ***Suraj Lamp and Industries Private Limited (2) Through Director Vs. State of Haryana and another (2012) 1 SCC 656, Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniyamman Educational Trust (2012) 8 SCC 706, Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) and Others (2020) 7 SCC 366*** and ***Uma Devi and Others Vs. Anand Kumar and Others (2025) 5 SCC 198***.

24. Reliance has also been placed upon the judgment of the Apex Court in ***Uma Devi's case*** (supra) and to contend that the plaintiff could not deny

their rights after sleeping over it for 45 years and the suit was liable to be rejected.

Arguments of counsel for the plaintiff/respondents:

25. Mr. R.K. Bawa, learned Senior Counsel, for the plaintiff/respondents has accordingly submitted that the issue in question was a mixed question of law and fact. The fraud had been played which goes to the root of the matter and issue of limitation had been specifically denied and the father of the defendants had changed the classification of the land 'Charand' to 'Ghasni' and there was large chunk of land of 274-13 bighas and the land could not be sold and referred to Article 59 of the Limitation Act that the knowledge of alienation was to be seen and that only the averments in the plaint were to be seen and specifically it had been mentioned that the predecessor-in-interest of the present appellants namely-Mohinder Lal was working as Deputy Commissioner, Shimla w.e.f. 22.05.1980 to 13.10.1986. The sale-deed had been done in his favour which could not have been executed as the land has been classified

as 'Charand' and could not have been sold by the predecessor-in-interest of defendants No.1 to 22. The averments were of fraud and cheating in respect of the Muafi land and the sale deed was fraudulently executed and registered and the mutation had been attested of 15-02 bighas 'Charand' land, which was changed from 'Charand' to 'Ghasni' without any revenue being assessed. The defendants had acted in a much planned manner so as to usurp/grab the property of the said Temple and the entries had been changed behind the back of the residents/estate right holders.

26. Accordingly, it was contended that the sale-deed had been liable to be set aside and Section 92 (1) (h) of CPC was badly violated and the relief could be granted in the nature of the case which was required and therefore the general public was not aware of the sale. The issue of limitation could not stand in the way and the worshipers had decided to institute the suit as such.

27. Reliance was placed upon the judgment of the Apex Court in ***Hardesh Ores (P) Ltd., Vs. Hede and Company (2007) 5 SCC 614: 2007 SCC OnLine SC 703***, wherein it has been held that the averments made in the plaint, if taken to be correct in its entirety, a decree could be passed and it is not permissible to cull out a sentence or a passage and to read it out on the context in isolation.

28. While placing reliance upon ***Dahiben case*** (supra), it was thus submitted that the plaint is to be read along with the documents in conjunction whether it was barred or not and termination of the civil action was a drastic one and the cause of action would mean every fact which is necessary to adjudicate the right of parties and a bundle of material facts.

29. Under Article 59 of the Limitation Act, 1963, the limitation as such started when the instrument came to be known to the plaintiff and the limitation was to be three years and therefore it could not be said that

the limitation had expired only on account of the fact that the sale-deed had been executed in the year 1986.

30. While placing reliance upon the judgment of the Apex Court in ***Eldeco Housing and Industries Limited Vs. Ashok Vidyarthi and Others, 2023 SCC OnLine SC 1612***, it was held that no amount of evidence on merits of the controversy can be examined at the stage of application under Order VII Rule 11 CPC and once the plaint disclosed the cause of action, the learned Single Judge was justified in dismissing the application.

31. While referring to the judgment of the Apex Court in ***Civil Appeal No.5622 of 2025*** [Arising from SLP(C) No.2549 of 2021] titled ***P. Kumarakurubaran Vs. P. Narayanan & Others***, decided on 29.04.2025, Mr. R.K. Bawa, learned Senior Counsel, for the plaintiff/respondents stressed that the issue of limitation was to be seen by examining the record and the rejection of the plaint as such has been set aside by the Apex Court in the said case.

32. While relying upon Article 59 of the Limitation Act, 1963 as to when the plaintiff acquired knowledge of such kind and therefore it would be a matter of mixed question of law and fact and could not be adjudicated in an application under Order VII Rule 11 of CPC.

Our reasoning to uphold the order:

33. After hearing the arguments as such, we are of the considered opinion that the issue as such has been settled beyond the angle of doubt in ***Eldeco Housing's case*** (supra) that only the vexatious litigation had to be put to an end, while exercising power under Order VII Rule 11 of "CPC" which is a drastic one, and has to be strictly adhered to. Thus, the test was to see that the full averment in the plaints have to be examined and reference can be made to the judgments of the Apex Court in ***Nusli Neville Wadia Vs. Ivory Properties and Others (2020) 6 SCC 557*** and ***Sayed Mohd. Salie Labbai Vs. Mohd. Hanifa (1976) 4 SCC, 780***, wherein it was held that it is a

mixed question of fact and law. It is not disputed that there are specific averments made that the beneficiaries as such was the predecessor-in-interest of the present applicants-defendants No.23 and 24 namely-Mohinder Lal who was the then Deputy Commissioner, Shimla. The allegation was that the entries were changed in the revenue record clandestinely and the property was transferred. In such circumstances, the challenge had been raised and it is not disputed that fraud goes to the root of the matter.

34. Reliance can be placed upon the judgment of ***S.P. Chengalvaraya Naidu (Dead) by LRs. Vs. Jagannath (Dead) by Lrs. And others (1994) 1 SCC 1*** to this extent and that the fact we are dealing with the case of the Trust property, the specific averments have to be seen whether the alienation was bad and we cannot say that there is no cause of action.

35. In Hareendran and others Vs. Sukumaran and others (2018) 14 SCC 187, the issues of limitation and redemption were held to be

wrongly decided as a preliminary issue; by the Trial Court and the appeal filed by the plaintiff was allowed and it has been held that both being mixed questions of law and facts, cannot as such be decided under Order 7 Rule 11 CPC.

36. Reliance can also be placed upon the judgment of the Apex Court in a three Judge Bench case titled ***M/s Popat and Kotecha Property Vs. Ashim Kumar Dey, (2005) 3 Civil Court Cases 350,*** wherein it was held in the said case that disputed questions cannot be decided at the time of considering of an application under Order 7 Rule 11 CPC. The learned Single Judge had rejected the application and the Division Bench had allowed the appeal and rejected the plaint and the Apex Court thereafter, interfered and dismissed the application and allowed the suit to continue.

37. In ***Mayar (H.K.) Ltd. & Others Vs. Owners & Parties, Vessel M.V. Fortune Express & Others (2006) 3 SCC 100,*** it was held that if a cause of action

is arising which is a bundle of facts, the rejection should not be done. The relevant observations reads as under:-

“10. The aforesaid finding clearly indicates that the order of permanent stay of the suit was made by the Division Bench not because the plaint is liable to be rejected on the grounds that it falls within the parameters of Order VII Rule 11 of the Code or the suit is liable to be stayed in exercise of the powers under Section 10 of the Code or that the Court has passed an order under Order VI Rule 16 of the Code which has not been complied with. The Division Bench, in fact, has exercised the jurisdiction for stay of the suit as the plaintiffs did not disclose the forum selection clause whereby the Court at Calcutta had no jurisdiction to entertain the suit and further suppressed the fact that the claim in the suit shall be governed by the laws applicable in the Singapore Court and that plaintiffs have no case because the claim is in regard to deck cargo.

11. Under Order VII Rule 11 of the Code, the Court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the relief claimed is undervalued and the valuation is not corrected within a time as fixed by the Court, where insufficient court fee is paid and the additional court fee is not supplied within the period given by the Court, and where the suit appears from the statement in the plaint to be barred by any law. Rejection of the plaint in exercise of the powers under Order VII Rule 11 of the Code would be on consideration of the principles laid down by this Court. In T. Arivandandam vs. T.V. Satyapal and another, (1977) 4 SCC 467, this Court has held 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, the Court should exercise its power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. In Roop

Lal vs. Nachhattar Singh Gill, (1982) 3 SCC 487, this Court has held that where the plaint discloses no cause of action, it is obligatory upon the court to reject the plaint as a whole under Order VII Rule 11 of the Code, but the rule does not justify the rejection of any particular portion of a plaint. Therefore, the High Court could not act under Order VII Rule 11(a) of the Code for striking down certain paragraphs nor the High Court could act under Order VI Rule 16 to strike out the paragraphs in absence of

anything to show that the averments in those paragraphs are either unnecessary, frivolous or vexatious, or that they are such as may tend to prejudice, embarrass or delay the fair trial of the case, or constitute an abuse of the process of the court. In ITC Ltd. vs. Depts Recovery Appellate Tribunal, (1998) 2 SCC 70, it was held that the basic question to be decided while dealing with an application filed by the defendant under Order VII Rule 11 of the Code is to find out whether the real cause of action has been set out in the plaint or something illusory has been projected in the plaint with a view to get out of the said provision. In Saleem Bhai and others vs. State of Maharashtra and other (2003) 1 SCC 557, this Court has held that the trial court can exercise its powers under Order VII Rule 11 of the Code at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial and for the said purpose the averments in the plaint are germane and the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage. In Popat and Kotecha Property vs. State Bank of India Staff Association (2005) 7 SCC 510, this Court has culled out the legal ambit of Rule 11 of Order VII of the Code in these words:"

38. In *Sejal Glass Limited Vs. Navilan Merchants Private Limited (2018) 11 SCC 780*, the

issue was also of the plaint being rejected in part and the fact that it cannot be done. In the said case, the Director as such was given the clean-chit and the suit was held to continue against the company alone. It has been held that it is not permissible to reject the plaint or any particular portion including some defendants and that the plaint survives against certain defendants and the application under Order VII Rule 11 was not liable to be entertained. The said view was also followed in ***Madhav Prasad Aggarwal and Another Vs. Axis Bank Limited and Another (2019) 7 SCC 158.***

39. In ***Madhav Prasad Aggarwal case*** (supra), it was held that the plaint survived against certain defendants of the properties under Order 7 Rule 11 CPC. Resultantly, in sum and substance, it has been held that the plaint has to be rejected as a whole or not at all and it was jurisdictional error to partly reject the plaint and go on the part of the another defendants. Resultantly, the Division Bench order was set aside and

order of the learned Single Judge rejecting the application under Order 7 Rule 11 CPC was upheld.

40. In the said case, the Axis Bank had sought the relief being defendant No.15 in the suit in question whereby there was challenge as such to the property being mortgaged in favour of the said bank by the developers. The learned Single Judge as such had not allowed the application and dismissed the same and in appeal the Division Bench had come to the conclusion that there was no case of fraud committed by the bank and therefore the matter had been carried to the Apex Court and it has been held that the suit as a whole must proceed, if the plaint is survived against the certain defendants.

41. The said position of law has further been crystallized by the Apex Court recently in ***Kum. Geetha, D/o Late Krishna and Others Vs. Nanjundaswamy and Others (2024) 14 SCC 390***, wherein it has been held that the order of the High Court as such which had rejected the plaint was bad

and it was allowed on both issues; on merits that the High Court went into the issue as to whether the karta of the family would alienate the property or not and there was delay as such in challenging the sale-deeds of 1990. The plaint had also been rejected in respect to Schedule A property in the said case and the Apex Court had set aside the order both on the ground that the case would depend upon the evidence adduced by the plaintiffs and only whether the plaint disclosed the cause of action had to be seen and part rejection would not be permissible. The relevant portion reads as under:-

"8. It is apparent from the above that the plaintiffs specifically pleaded that various sales were executed through "nominal sale deeds", but were not acted upon. The plaint of the joint family property specifically addressed the issue of the revenue records and averred that although the RTC records stood in the name of the financiers, the joint family continued to be in undisrupted possession of the property.

9. If the statements in the plaint are taken to be true, the joint family properties may ensure to the benefit of its members and they may well be available for partition. This is a matter of trial, the result of which would depend upon the evidence adduced by the plaintiff. At this stage, we are not concerned with the correctness of the averments, except to state that the plaintiffs have the carriage of the

proceedings, and have to discharge the heavy burden of proving their case. Insofar as the application under Order 7 Rule 11 CPC is concerned, this Court will proceed only that far, to examine whether the plaint disclosed a cause of action, and no further.

10. The High Court committed an error by examining the merits of the matter. It pre-judged the truth, legality and validity of the sale deed under which Defendants 4 to 14 claim title. This is not to say that the plaintiffs have any less burden to prove their case or even that their case is probable. Simply put, the High Court could not have anticipated the truth of the averments by assuming that the alleged previous sale of the property is complete or that it has been acted upon. The approach adopted by the High Court is incorrect and contrary to the well-entrenched principles of considering an application under Order 7 Rule 11 CPC. Under these circumstances, we set aside the judgment and the order passed by the High Court and dismiss the application under Order 7 Rule 11 CPC, and restore the suit even with respect to the properties mentioned under Schedule A of the plaint.

11. There is yet another reason why the judgment of the High Court is not sustainable. In an application under Order 7 Rule 11 CPC a plaint cannot be rejected in part. This principle is well established and has been continuously followed since the 1936 decision in *Maqsood Ahmad v. Mathra Datt & Co.* This principle is also explained in a recent decision of this Court in *Sejal Glass Ltd. v. Navilan Merchants (P) Ltd.* Which again followed in *Madhav Prasad Aggarwal v. Axis Bank Ltd.*

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13. In view of the aboveresferred principle, we have no hesitation in holding that the High Court committed an error in rejecting the plaint in part with respect to Schedule A property and permitting the plaintiffs to prosecute the case only with respect to Schedule B property. This approach while considering an application

under Order 7 Rule 11 CPC is impermissible. We, therefore, set aside the judgment and order of the High Court even on this ground."

42. A perusal of the provisions of Section 92 of the Code of Civil Procedure, 1908 would go on to show that sub-Section (1) (a) to (g) provide for various reliefs against the trust and the trustees which is from removal to appointments and to further directing accounts and inquires and to settle a scheme and authorize the whole or any part of the trust property to be sold, mortgaged or exchanged. However, Section 92 sub-Clause (1) (h) of CPC is very widely worded which further provides that grant of such further or other relief as the nature of the case may require, can be done by the Principal Civil Court or original jurisdiction or in any other Court empowered in that behalf by the State Government. It is thus, apparently clear from sub-Section (1) (h) of Section 92 CPC, the power of the Courts would depend upon as to what relief has to be granted at the time of the final decision and whether it is to be exercised qua the alienation which was done in favour of Mohinder Lal

and therefore, we are of the considered opinion that it would be a question which has to be decided after evidence is led and at this stage even otherwise cannot be done. This Court not being denuded of any such jurisdiction should not adjudicate as such on merits in the dispute in question at this stage. Section 92 of the Code of Civil Procedure, 1908 reads as under:-

“92. Public charities.-(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate-General, or two or more persons having an interest in the trust and having obtained the [leave of the Court] may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the State Government within the local limits of whose jurisdiction the whole or any part of the subject-matter of the trust is situate to obtain a decree-

- (a) removing any trustee;*
- (b) appointing a new trustee;*
- (c) vesting any property in a trustee;*
- [cc) directing a trustee who has been removed or a person who has ceased to be a trustee, to deliver possession of any trust property in his possession to the person entitled to the possession of such property;]*
- (d) directing accounts and inquires;*
- (e) declaring what proportion of the trust property or of the interest therein shall*

be allocated to any particular object of the trust;

(f) authorizing the whole or any part of the trust property to be let, sold, mortgaged or exchanged;

(g) settling a scheme; or

(h) granting such further or other relief as the nature of the case may require."

43. Accordingly, keeping in view the above, we are of the considered opinion that the learned Single Judge did not fall in any error as such while rejecting the application for rejection of plaint under Order VII Rule 11 CPC and the order does not suffer from any infirmity or illegality as the cause of action is a bundle of facts which exists as there are serious allegations made regarding the land which is measuring over 274-13 bighas in total and out of which one of the part of the cause of action as such is also to set aside the sale-deed dated 19.07.1986 in favour of defendants No.23 and 24 measuring 15 bighas, 3 biswas. Only on the issue of limitation as such, the plaint is not liable to be rejected as concededly, it is only the defendant Nos.23 and 24 who were raising the boggy of rejection of plaint and wanting in an indirect manner that the other

defendants also are beneficiaries as such and it is not disputed by the counsel for the appellants, since it has been held that the plaint cannot be rejected in part as settled by the Apex Court itself consistently.

44. Resultantly, we dismiss the present Appeal accordingly.

45. Pending miscellaneous application(s) if any, shall also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Jiya Lal Bhardwaj)
Judge

28th November, 2025.
(CM Thakur/Munish Thakur)