2025:AHC:176705

HIGH COURT OF JUDICATURE AT ALLAHABAD

FIRST APPEAL FROM ORDER No.2081 of 2025

Mateswari Devi And Another ……Appellant (s)

Versus

Vidyakant Pandey And 2 Others ……Respondents(s)

Counsel for Appellant(s) : Devansh Misra, Saurabh Pandey
Counsel for Respondent(s) : Rahul Sahai

AFR
Court No. - 36.

HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

Heard Sri Devansh Mishra, learned counsel for the appellants and Sri Rahul Sahai, learned counsel appearing for the respondents.

2. With the consent of counsel for the parties, the appeal is taken up for admission/final disposal.

3. The instant appeal under Order 43 Rule 1 (u) of the Code of Civil Procedure, 1908[1] is directed against the judgment and order dated 31.5.2025 passed by the Additional District Judge/Special Judge, SC/ST Act, Sonbhadra in Civil Appeal No.32 of 2024 (*Vidyakant Pandey and others vs. Mateswari Devi and others*).

4. The civil appeal had arisen out of the judgment and decree dated 28.3.2024 passed by the Additional Civil Judge (Junior Division), Sonbhadra in Original Suit No.303 of 2003 (*Harishanker & Ors. vs. Smt. Mateswari & Anr.*), whereby the application under Order VII Rule

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1 CPC

11 of CPC moved by the defendants, vide paper no.102ga, was allowed and the plaintiffs' suit was dismissed.

5. The factual background of the case is being set out herein below.

6. Originally, the father of the respondents, namely Hari Shanker had instituted a suit for cancellation of a sale deed dated 9.7.1978 in respect of plot no.55Aa ad-measuring an area of 3 Bigha 10 Biswa and 13 Dhur, and plot no.55Ba ad-measuring an area 8 Biswa 18 Dhur, situate at Village Tarawan, Pargana Barher, Tehsil Robertsganj, District Sonbhadra. The said suit was instituted on 8.10.2003 for cancellation of a sale deed dated 9.7.1978, registered on 17.11.1978. Plaintiff no.1 in paragraph 8 of his plaint explained the delay in institution of the suit, contending that he had no prior knowledge about the said sale deed and he was a 70 years old man whose children resided outside the village. Subsequently, after his children returned to the village, the entries recorded in the revenue records were inspected and for the first time knowledge of the said sale deed was gained by the plaintiffs on 10.4.2003.

7. The defendants filed their written statements as paper nos.31A and 37A, *inter alia*, asserting that it was after a lapse of almost 25 years, a challenge to the said sale deed was being raised without disclosing the specific dates on which the inspection of revenue records was conducted. The trial Court, vide order dated 17.7.2007, had framed the issues. One additional issue was also framed on 6.1.2011 pertaining to maintainability of the plaintiffs' suit.

8. During the course of evidence being led, an application under Order VII Rule 11 (d) of CPC came to be filed by the defendants stating that the suit instituted by the plaintiffs was time barred and liable to be rejected under Order VII Rule 11 (d) of CPC. In the above mentioned application, the defendants, *inter alia*, took the following grounds:

(i) The limitation for institution of a suit for cancellation of a document is 3 years. However, the suit was instituted after a lapse of almost 25 years.

(ii) The plaintiff/father of the respondents had admitted in the plaint that the name of the defendants/appellants had been recorded in the revenue records.

(iii) The plaintiff by clever drafting had tried to explain the delay by stating that the knowledge regarding the said sale deed was first obtained in April, 2003. However, the said fact was contradicted since the plaintiff had admitted to the fact that he was a 70 years old man and his children reside outside the village, which made it apparent that the plaintiff had never been in possession over the suit property and only as an afterthought, the said suit had been instituted to harass the defendants.

9. The plaintiff-respondents filed their objections to the Order VII Rule 11 application filed by the defendants-appellants, which came to be numbered as Paper No.104C.

10. The trial Court, while allowing the application under Order VII Rule 11 of CPC filed by the defendants, rejected the suit as time barred and recorded a finding that by clever drafting the plaintiff-respondents had tried to create a cause of action and bring it within the purview of limitation. The plaintiff-respondents, being aggrieved by order dated 28.3.2024, preferred a Civil Appeal under Section 96 of CPC, alleging that the suit could not be rejected under Order VII Rule 11 (d) of CPC for being time barred as the question of limitation is a mixed question of fact and law for which evidence is required to be led. The appellate Court, vide order dated 31.5.2025 has set aside the order passed by the trial Court and remitted the matter back for consideration of preliminary issues, being issue nos.3, 4 and 7.

11. The first appellate Court, while allowing the Civil Appeal, has recorded a finding that the question of limitation is a mixed question of fact and law. As per Article 59 of the Indian Limitation Act, 1963, the period of limitation for cancellation of document/instrument begins from the date of knowledge of the execution of the document/instrument, which the plaintiffs in its plaint, at para no.8, had asserted to be in the month of April, 2003, upon inspection of the revenue records.

12. Aggrieved by the aforesaid order passed by the first appellate Court, the instant appeal has been filed.

13. Counsel for the appellants has sought to assail the findings recorded by the first appellate Court regarding question of limitation being a mixed question of fact and law and requiring leading of evidence and framing of issues, by contending that the aforesaid rule is not inflexible, and in the instant case, the plaintiff-respondents had failed to give any plausible explanation for instituting a suit after a period of 25 years, and no particulars had been given as to the date on which inspection of the revenue records was carried out and the copy of *khatauni* had also not been placed on record.

14. It has been urged that the assertion made by plaintiff no.1 that he was 70 years' old man and his children do not reside in the same village is contradictory to the stand that he continued to be in possession of the suit property and upon a dispute having arisen with the defendant-appellants, an inspection was carried out and thereafter, knowledge regarding the execution of the sale deed was first obtained in the month of April, 2003. It has been further argued that the plaintiff-respondents, by means of clever drafting, have attempted to create a cause of action for a time barred suit. A contention is also sought to be raised that the suit is barred by Section 49 of the U P Consolidation of Holdings Act, 1953, Section 331 of the U P Zamindari Abolition and Land Reforms Act, 1950 and Section 206 of the U P Revenue Code, 2006 and objections in this regard had been taken in the written statement filed by the defendants. Reliance has been placed on the decisions in **Indian Evangelical Lutheran Church Trust Association vs. Sri Bala and Co.**[2] and **R. Nagraj (Dead) Through Lrs and another vs. Rajmani and others**[3] to submit that the general rule that question of limitation would be a mixed question of law and fact and that usually on a reading of the plaint, it is not rejected as being barred by law of limitation, is not an inflexible rule.

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2 2025 SCC Online SC 48
3 2025 SCC Online SC 762

15. Counsel appearing for the respondents has supported the judgment of the first appellate Court by contending that the trial Court, while disposing of the application under Order VII Rule 11 of CPC, ought to have confined itself to the averments made in the plaint and could not have traversed beyond the pleadings in the plaint to arrive at a conclusion on the question of limitation, which being a mixed question of fact and law, could not have been decided at the stage of Order VII Rule 11. It has been asserted that the plaint having contained specific assertion with regard to the cause of action for filing the suit and having raised issues which necessitated a detailed adjudication based on oral and documentary evidence, it was impermissible for the trial Court to summarily reject the suit on the ground of limitation.

16. Upon hearing the counsel for the parties and perusing the pleadings and the material on record, it would be necessary to examine whether in the facts of present case, the rejection of the plaint in exercise of power under Order VII Rule 11 (d) can be held to be justified.

17. It has been specifically averred in the plaint that in the month of April, 2003, when plaintiff no.1 went for harvesting the crops as per his usual routine, the defendants' husbands created a dispute and during the course of the dispute, they mentioned a sale deed relating to the property. Plaintiff no.1 was of age around 70 years and his children were residing outside the village. Subsequently, after his children returned back to the village, the entries recorded in the revenue records were inspected and it was then that the plaintiffs came to know about the sale deed sometime in the month of April, 2003. The plaintiff no.1 approached the defendants through certain relatives so that the sale deed may be got cancelled, but they kept evading and finally refused to do so sometimes in the month of September, 2003 and thereafter, the suit was instituted, seeking cancellation of the sale deed and consequential reliefs.

18. The defendant nos.1 and 2 filed their written statements.

19. On the basis of the pleadings of the parties, the trial Court on 17.7.2007, framed the following issues:

1. Whether the sale deed executed on 9.11.78 and registered at Sub-Registrar Office Robertsganj at book no.1, volume no.417, page no.205-207, serial no.1545 dated 17.11.78 is liable to be cancelled on the grounds pleaded in the plaint ?

2. Whether the suit is undervalued and the court fee paid is insufficient ?

3. Whether this court has authority to adjudicate on the issues involved ?

4. Whether the suit is hit by Section 49 of the Consolidation of Holding Act ?

5. Whether the suit of the plaintiff is barred by estoppel and acquiescence ?

6. Whether the plaintiff is entitled for any relief?

20. On 6.1.2011, one additional issue with regard to the maintainability of the plaintiffs' suit was also framed.

21. It was thereafter, at the stage of evidence, that an application 102ga was preferred by defendant no.1 under Order VII Rule 1 (d) of CPC for rejection of the plaint, primarily on the ground that the suit for cancellation of sale deed 9.11.1978/17.11.1978 had been instituted after about 25 years of its execution and, therefore, it would be barred by limitation.

22. The plaintiffs in their objections to the aforesaid application, asserted that as per Article 59 of the Indian Limitation Act, 1963, the limitation would commence from the date of knowledge of the execution of the sale deed, which in the present case, was obtained in the month of April, 2003, therefore, the institution of the suit could not be said to be beyond limitation. The plea with regard to the suit being barred by Section 49 of the U P Consolidation of Holdings Act, 1953 was denied by the plaintiffs. Referring to Section 331 of the U P Zamindari Abolition and Land Reforms Act, 1950 and Section 206 of the U P

Revenue Code, 2006, it was asserted that the power to cancel a registered document is solely vested with the Civil Court.

23. The drastic nature of the power conferred under Order VII Rule 11 of CPC in respect of rejection of plaint was examined in the decision in **P V Guru Raj Reddy vs. P Neeradha Reddy**[4], wherein it was observed that while exercising the power under Order VII Rule 11 of CPC only the averments in the plaint are required to be seen, and the stand of the defendants in written statement or in the application for rejection of plaint is wholly immaterial at that stage. It was observed that the plaint can be rejected only if the averments made therein *ex facie* do not disclose the cause of action or on a reading thereof, the suit appears to be barred by any law.

24. The considerations that would be relevant while examining the plea as to rejection of plaint on the ground of suit being barred by limitation upon an application filed under Order VII Rule 11 (d) of CPC came up for consideration in the case of **Chhotanben vs. Kiritbhai Jalkrushnabhai Thakkar**[5] and, it was stated that in a case where the issue regarding the suit being barred by limitation was a triable issue, the plaint could not be rejected at the threshold in exercise of power under Order VII Rule 11 (d) of CPC.

25. In a case where an application is made for rejection of plaint under Order VII Rule 11 (d) of CPC on the ground that suit is barred by the law of limitation, it would be the duty of the court to scrutinize the averments contained in the plaint as a whole on their face value to ascertain the bar of limitation and to take a decision thereon. The averments in the written statement as well as the contention of the defendants would be wholly immaterial while considering the prayer for rejection of plaint. This position in law has been discussed in **Shakti Bhog Food Industries Ltd. vs. Central Bank of India**[6], wherein after referring to the earlier decisions in **Saleem Bhai vs. State of**

4 (2015) 8 SCC 331
5 (2018) 6 SCC 422
6 (2020) 17 SCC 260

Maharashtra[7]; **ITC Ltd. vs. Debts Recovery Appellate Tribunal**[8]; **T. Arivandandam vs. T.V. Satyapal**[9]; **Roop Lal Sathi vs. Nachhattar Singh Gill**[10]; **Raptakos Brett & Co. Ltd. vs. Ganesh Property**[11]; **Sopan Sukhdeo Sable vs. Asstt. Charity Commr.**[12]; **Ram Prakash Gupta vs. Rajiv Kumar Gupta**[13] and **Church of Christ Charitable Trust & Educational Charitable Society vs. Ponnniamman Educational Trust**[14], it was observed as follows:

> "7. … … …Order 7 Rule 11 CPC gives ample power to the court to reject the plaint, if from the averments in the plaint, it is evident that the suit is barred by any law including the law of limitation. This position is no more res integra. We may usefully refer to the decision of this Court in *Ram Prakash Gupta vs. Rajiv Kumar Gupta* [(2007) 10 SCC 59]. In paras 13 to 20, the Court observed as follows: (SCC pp. 65-66) (2020) 17 SCC 260
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> "13. As per Order 7 Rule 11, the plaint is liable to be rejected in the following cases:
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> > '(a) where it does not disclose a cause of action;
> >
> > (b) where the relief claimed is undervalued, and the plaintiff, on being required by the court to correct the valuation within a time to be fixed by the court, fails to do so;
> >
> > (c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the court, fails to do so;
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> > (d) where the suit appears from the statement in the plaint to be barred by any law;
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> > (e) where it is not filed in duplicate;
> >
> > (f) where the plaintiff fails to comply with the provisions of Rule 9;'
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> 14. In *Saleem Bhai v. State of Maharashtra*, [(2003) 1 SCC 557] it was held with reference to Order 7 Rule 11 of the Code that:
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> > '9. … the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power … 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. For the purposes of deciding an application under

7 (2003) 1 SCC 557
8 (1998) 2 SCC 70
9 (1977) 4 SCC 467
10 (1982) 3 SCC 487
11 (1998) 7 SCC 184
12 (2004) 3 SCC 137
13 (2007) 10 SCC 59
14 (2012) 8 SCC 706

> clauses (a) and (d) of Rule 11 Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.…' (SCC p. 560, para 9).

15. In *ITC Ltd. vs. Debts Recovery Appellate Tribunal*, (1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.

16. "The trial court 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, it should exercise its power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, [it has to be nipped] in the bud at the first hearing by examining the party searchingly under Order 10 CPC." (See *T. Arivandandam vs. T.V. Satyapal*, [(1977) 4 SCC 467] , SCC p. 468.)

17. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in *Roop Lal Sathi v. Nachhattar Singh Gill* [(1982) 3 SCC 487], only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

18. In *Raptakos Brett & Co. Ltd. v. Ganesh Property* [(1998) 7 SCC 184] it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 Order 7 was applicable.

19. In *Sopan Sukhdeo Sable vs. Charity Commr.* [(2004) 3 SCC 137] this Court held thus: (SCC pp. 146-47, para 15)

> '15. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.'

20. For our purpose, clause (d) is relevant. It makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. For the said purpose, it

is the duty of the person who files such an application to satisfy the court that the plaint does not disclose how the same is in time. In order to answer the said question, it is incumbent on the part of the court to verify the entire plaint. Order 7 Rule 12 mandates where a plaint is rejected, the court has to record the order to that effect with the reasons for such order."

8. On the same lines, this Court in *Church of Christ Charitable Trust & Educational Charitable Society vs. Ponnniamman Educational Trust* [(2012) 8 SCC 706: (2012) 4 SCC (Civ) 612], observed as follows: (SCC pp. 713-15, paras 10-12)

> "10. … It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the court, insufficiently stamped and not rectified within the time fixed by the court, barred by any law, failed to enclose the required copies and the plaintiff fails to comply with the provisions of Rule 9, the court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order 7 Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.
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> 11. This position was explained by this Court in Saleem Bhai vs. State of Maharashtra [(2003) 1 SCC 557], in which, while considering Order 7 Rule 11 of the Code, it was held as under: (SCC p. 560, para 9)
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> > '9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC 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. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.' It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the court to scrutinise the averments/pleas

> in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in Raptakos Brett & Co. Ltd. v. Ganesh Property, [(1998) 7 SCC 184] and Mayar (H.K.) Ltd. Vs. Vessel M.V. Fortune Express [(2006) 3 SCC 100].

12. It is also useful to refer the judgment in T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467, wherein while considering the very same provisions i.e. Order 7 Rule 11 and the duty of the trial court in considering such application, this Court has reminded the trial Judges with the following observation : (SCC p. 470, para 5)

> '5. … 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 Ordr 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, (Chapter XI) and must be triggered against them.' It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order 7 Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer, J. in the abovereferred decision [T. Arivandandam vs. T.V. Satyapal, (1977) 4 SCC 467, it should be nipped in the bud at the first hearing by examining the parties under Order 10 of the Code."

26. In view of the foregoing discussions, the legal position that emerges, as fairly well settled, is that while considering an application under Order VII Rule 11, the Court is to confine itself to the averments made in the plaint, and the assertions made in the written statement or even the application filed under Order VII Rule 11, would not be material. In a situation where an objection is taken under clause (d) of

Rule 11 with regard to limitation, it would be the duty of the person who files the application to satisfy the Court that the plaint does not disclose as to how it is within time.

27. The decisions in **Indian Evangelical Lutheran Church Trust Association** (supra) and **R. Nagraj (Dead) Through LRs** (supra) which have been sought to be relied upon by the appellants have reiterated the settled principle that normally the question of limitation would be a mixed question of law and fact; however, the same would not be an inflexible rule, and in cases where action is initiated several years after the right to sue having accrued without any pleading to explain the reasons for delay, the question of limitation is to be treated as a question of law. In the present case, the plaint contains a specific averment that execution of the sale deed in question was not in the knowledge of the plaintiffs, and upon becoming aware of the said fact and carrying out necessary inspections, they gained knowledge of the same in April, 2003 and upon refusal of the defendants to get the sale deed cancelled, sometimes in the month of September, 2003, the suit was filed. This aspect of the matter has been duly noticed by the first appellate Court to come to a conclusion that the accrual of cause of action had been sufficiently disclosed in the plaint and, therefore, the trial Court had committed an error in rejecting the plaint under Order VII Rule 11 (d).

28. The questions relating to the starting point of limitation and reckoning the date of knowledge of essential facts, which form basis of the cause of action, would have to be held to be triable issues and a suit cannot be dismissed at the threshold or upon an application under Order VII Rule 11 (d) of CPC in cases where such issues exist.

29. The first appellate Court has duly considered the afore-stated legal position to arrive at a conclusion that the trial Court while rejecting the plaint was at a fault in failing to confine itself to the averments in the plaint, and had based its conclusion on assertions regarding facts stated in the application filed under Order VII Rule 11. It has also noted that the conclusion derived by the trial Court to disbelieve the averment in

the plaint that execution of the disputed sale deed was not in the knowledge of the plaintiffs when consolidation operations were pending in the village concerned is based on surmises and conjectures, which was wholly impermissible while considering an application under Order VII Rule 11. Furthermore, it has been observed that the inference drawn by the trial Court that the suit is barred under Section 49 of the U P Consolidation of Holdings Act was also not based on the strength of the plaint averments but by traversing beyond what was stated in the plaint.

30. The view taken by the trial Court that the suit was barred by limitation has not been accepted by the first appellate Court by referring to Article 59 of the Indian Limitation Act in terms whereof the limitation would have to be reckoned from the date when the facts entitling the plaintiffs to seek relief first become known to them.

31. The rejection of plaint on the ground of limitation would not be legally sustainable unless the same is apparent from a plain reading of the plaint averments and is to be derived on the strength of the pleadings and the evidence to be adduced by the parties. The first appellate Court accordingly, has set aside the order rejecting the plaint under Order VII Rule 11 (d) for the reason that the trial Court, while doing so, had failed to confine itself to the averments made in the plaint.

32. The period of limitation for suits seeking to cancel or setting aside an instrument or decree or for rescission of a contract is prescribed under Article 59 of the Limitation Act, 1963. The emphasis under Article 59 is not on the date of transaction, but on the accrual of the cause of action, which in cases involving allegations of fraud or unauthorized execution of documents would relate to the date on which the plaintiff acquires knowledge of such facts. As per its terms, the limitation period is three years and the time begins to run from the date when the facts entitling the plaintiff to have the instrument cancelled or contract rescinded first become known to him.

33. The key trigger under Article 59 would not be the date of execution of the instrument or decree, but the limitation period would

start when the facts entitling the plaintiff to seek relief first become known to him. This would be especially relevant in cases involving fraud or mistake, where the knowledge of such grounds may arise after the transaction or decree takes effect, and the period of limitation would therefore start running from the date of discovery of the said facts.

34. The issue as to whether the plaintiffs had prior knowledge or were otherwise aware of the transaction at an earlier point of time, or whether the assertion with regard to the date of knowledge is credible, would be matters requiring appreciation of evidence. In a situation where the date of knowledge has been specifically pleaded in the plaint and forms the basis of accrual of cause of action, the issue of limitation cannot be decided at the threshold. The question of limitation, in such a situation, would be a mixed question of fact and law, which would require framing of issues and appreciation of evidence, and cannot be adjudicated summarily. Thus, rejection of the plaint on the ground of limitation, in such circumstances, without permitting the parties to lead evidence would not be legally permissible.

35. The present appeal under Order 43 Rule 1 (u) of CPC is required to be admitted and heard on substantial questions of law and on grounds on which a second appeal is heard under Section 100 CPC, as has been laid down in **Narayanan vs. Kumaran**[15] and **Jegannathan vs. Raju Sigamani**[16], and reiterated in a recent decision of this Court in **Shrivatsa Goswami vs. Anant Prasad Singh**[17].

36. Learned counsel for the appellant has not been able to dispute the settled legal position that while considering the application under Order VII Rule 11, the plaint averments are required to be seen and the assertions in the written statement or the application filed under Order VII Rule 11 would be wholly immaterial.

37. The conclusion drawn by the first appellate Court that the trial Court, while allowing the application under Order VII Rule 11 (d) of

15 (2004) 4 SCC 26
16 (2012) 5 SCC 540
17 2024 (2) ADJ 763

CPC and rejecting the plaint, has traversed beyond the plaint averments and has placed reliance on the assertions of facts in the written statement and the application filed under Order VII Rule 11 (d), therefore, cannot be said to suffer from any patent error or illegality.

38. In these circumstances, this Court is satisfied that no substantial question of law arises for consideration for the purpose of admitting the appeal. Consequently, the appeal does not merit admission and is, accordingly, **dismissed**.

39. Counsel for the appellants, at this stage, submits that the first appellate Court while setting aside the order passed by the trial Court under Order VII Rule 11 of CPC and restoring the suit to its original number, has granted liberty to the trial Court to proceed with the issues nos.3, 4 and 7, as preliminary issues, before proceeding any further. He has sought to urge that the trial Court be directed to decide the said issues as preliminary issues without being prejudiced by the observations made in the judgment of the first appellate Court.

40. In this regard, it may be stated that the observations that have been made by the first appellate Court are only for the purpose of deciding the correctness of the order passed by the trial Court, rejecting the plaint under Order VII Rule 11 (d) of CPC, and the case having been remanded with liberty to the trial Court to proceed with issues nos.3, 4 and 7 as preliminary issues, there should not be any manner of doubt that the trial Court would proceed accordingly.

(Dr. Yogendra Kumar Srivastava, J.)

October 6, 2025
RKK/-

Digitally signed by :-
RAJ KUMAR KANNAUJIA
High Court of Judicature at Allahabad