

(2025) 10 JH CK 0080

Jharkhand HC

Case No: Civil Miscellaneous Petition No. 562 Of 2025

Dr. Arvind Kumar Tiwary, S/o Sri
Ramakant Tiwary

APPELLANT

Vs

Narayan Gope, S/o Late
Jaleshwar Gope

RESPONDENT

Date of Decision: Oct. 17, 2025

Acts Referred:

- Constitution of India, 1950 — Article 227
- Code of Civil Procedure, 1908 — Section 12, 151, Order 7 Rule 11, Order 7 Rule 11(d), Order 14 Rule 2

Hon'ble Judges: Gautam Kumar Choudhary, J

Bench: Single Bench

Advocate: Prabhash Kumar, Manish Sharma, D.N. Tiwari, Manoj Kr. Choubey, Madhav Prasad

Final Decision: Dismissed

Judgement

Gautam Kumar Choudhary, J

1. Petitioner is the defendant and has preferred this instant civil miscellaneous petition under Article 227 of Constitution of India to quash the order dated 20.03.2025 passed in Original Suit No. 149 of 2021 by which the petition under Order VII Rule 11 of the CPC has been rejected by the learned Trial Court.

2. Plaintiff filed the suit for a declaration that registered sale deed dated 28.06.2014 executed being deed no. 1605/1415 on 28.06.2014 was vitiated by fraud, coercion, undue influence, misrepresentation and was void ab initio.

3. Petitioner/ defendant filed a petition under Order VII Rule 11 read with Section 151 of the CPC for rejection of the plaint on the ground that the suit was barred by limitation.

4. Learned Trial Court by the impugned order rejected the petition vide order dated 20.03.2025 against which the instant civil miscellaneous petition has been filed.

5. It is submitted by the learned counsel appearing on behalf of the petitioner that the sale deed was executed in favour of the petitioner on 28.06.2014, whereas the suit has been filed on 02.03.2021 i.e., more than three years which is statutory period of limitation under Article 59 of the Limitation Act to file a suit for cancellation of the sale deed and was therefore barred by limitation.

6. Having considered the submissions advanced on behalf of the petitioner, I do not find any infirmity in the impugned order for the reason that the defence of limitation cannot be looked into at the stage of hearing the petition under Order VII Rule 11 of the CPC. Law is settled so far, a petition under Order VII Rule 11 of the CPC is concerned, it can be based only on the averment made in the plaint, and defence as disclosed in the written statement cannot be considered. The grounds on which under Order 7 Rule 11 a plaint can be rejected, is enumerated below:

- a) Where it does not disclose any cause of action
- b) where the relief claimed is undervalued and the plaintiff, on being required by the Court to correct the valuation within time stipulated by the court
- 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
- d) where the suit appears from the statement in the plaint to be barred by any law
- e) where it is not filed in duplicate
- f) where the plaintiff fails to comply with the provision of Rule 9

It has been held in *Kamala v. K.T. Eshwara Sa*, (2008) 12 SCC 661 : 2008 SCC OnLine SC 727 at page 668

21. Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.

22. For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall not be the subject-matter of an order under the said provision.

23. The principles of *res judicata*, when attracted, would bar another suit in view of Section 12 of the Code. The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

7. Here the petitioner moved the Trial Court for rejecting the plaint on the ground of limitation which is a mixed question of fact and law and was therefore, impermissible. There is no infirmity in the order passed by the learned Trial Court.

8. However, since the matter is with regard to cancellation of sale deed and prima facie the suit appears to have been filed after the statutory period of limitation, therefore, the learned Trial Court shall decide the issue of limitation as a preliminary issue before proceeding with the full-fledged trial in the present case.

With this observation Civil Miscellaneous Petition stands dismissed. Pending I.A., if any, stands disposed of.