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BHAU RAM

v.

JANAK SINGH & ORS.

(Civil Appeal No. 5343 of 2012)

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JULY 20, 2012

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

*CODE OF CIVIL PROCEDURE, 1908:*

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*O. 7, r. 11 r/w s.151 - Application for rejection of plaint - Held: While considering an application under O. 7, r. 11, the court has to examine the averments in the plaint; and the pleas taken by the defendant in the written statement would be irrelevant - High Court is fully justified in confirming the decision of the appellate court remitting the matter to trial court for consideration of all the issues.*

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In respect of the suit land, the application of the tenant for proprietary rights u/s 11 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, was ultimately allowed by the High Court in the second appeal filed by the appellant, who, after the death of the widow of the tenant, being their nephew, was substituted in the proceedings. The SLP of the purchaser, who had meanwhile purchased the suit land from the owner thereof, was dismissed by the Supreme Court. Involving the same issue, one 'AS' who had earlier unsuccessfully filed an application for substitution after the death of the widow of the tenant claiming under a will, filed suit no. 424/1 of 99/97. The said suit was dismissed for default, but was subsequently restored. He again filed suit no. 10/1 of 2004 for possession of the suit land. The appellant filed an application under O. 7 r.11 read with s.151 CPC for rejection of the plaint which was allowed by the trial court

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on the ground that the plaint was barred under the provisions of O. 9, rr. 8 and 9 and O. 23, rr.1(3) and 4(b) CPC. The suit filed by 'AS' was dismissed, but the appeal filed by him was allowed on the ground that the trial court had taken the pleas from the written statement which was not permissible under O. 7, r.11 CPC. By the impugned order, the High Court dismissed the second appeal filed by the appellant.

#### Dismissing the appeal, the Court

**HELD: 1.1.** The questions of law, as raised in the second appeal, before the High Court are no longer needed to be decided in view of the settled law that while deciding the application under O. 7, r.11, the court has to examine the averments in the plaint and the pleas taken by the defendant in the written statement would be irrelevant. This aspect has been rightly dealt with by the High Court. [para 8-9] [1024-G-H; 1025-A, D-E]

*C. Natrajan vs. Ashim Bai and Another* 2007 (11) SCR 33 = (2007) 14 SCC 183, *Ram Prakash Gupta vs. Rajiv Kumar Gupta and Others*, 2007 (10 ) SCR 520 = (2007) 10 SCC 59, *Hardesh Ores (P) Ltd. vs. Hede and Company* 2007 (6 ) SCR 608 = (2007) 5 SCC 614, *Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and others*, 2006 (1) SCR 860 = (2006) 3 SCC 100, *Sopan Sukhdeo Sable and Others vs. Assistant Charity Commissioner and Others*, 2004 (1) SCR 1004 = (2004) 3 SCC 137, *Saleem Bhai and Others vs. State of Maharashtra and Others* 2002 (5) Suppl. SCR 491 = (2003) 1 SCC 557; *The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee*, 2012 (6) JT 149 - relied on

**1.2.** It is significant to note that Suit No. 424/1 of 99/

A 97 which was dismissed for default had been restored by the trial court even at the time of filing of the application by the defendant under O. 7, r.11 CPC and the said proceedings are going on. In view of the same, the provisions of O.9, rr. 8 and 9 CPC are not applicable to the said suit. Even otherwise, the relief sought in the suit (which was earlier dismissed for default) and in the instant suit are with regard to different properties. For the same reasons, the provisions of O.23, rr. 1 (3) and 4 (b) of CPC are not applicable. [para 7] [1024-E-G]

C 1.3. The High Court is fully justified in confirming the decision of the appellate court remitting the matter to the trial court for consideration of all the issues. The trial court is directed to decide the suit in its entirety considering all the issues. [para 10] [1025-F]

D Case Law Reference:

	2007 (11) SCR 33	relied on	para 8
	2007 (10) SCR 520	relied on	para 8
E	2007. (6) SCR 608	relied on	para 8
	2006 (1) SCR 860	relied on	para 8
	2004 (1) SCR 1004	relied on	para 8
F	2002 (5) Suppl. SCR 491	relied on	para 8
	2012 (6) JT 149	relied on	para 8

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5343 of 2012.

G From the Judgment & Order dated 20.9.2010 of the High Court of Himachal Pradesh at Shimla in RSA No. 501 of 2009.

Radhika Gautam, Mahesh Agarwal, Rishi Agrawala, Abhinav Agrawal, E.C. Agrawala for the Appellant.

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Sudhir Chandra, T.V. Ratnam, Munawwar Naseem, A  
Bhagabati Prasad Padhy for the Respondents.

The Judgment of the Court was delivered by

**P. SATHASIVAM, J.** 1. Leave granted.

2. This appeal is directed against the final judgment and B  
order dated 20.09.2010 passed by the High Court of Himachal Pradesh at Shimla in R.S.A. No. 501 of 2009 whereby the High Court dismissed the appeal filed by the appellant herein.

3. Brief facts: C

(a) One Shanker Lal owned and possessed several lands in District Shimla including the land in question. Originally the land in question was owned by Smt. Lari Mohansingh @ Madna Wati and was in occupation of Shankar Lal as a tenant. After coming into force of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953, Shanker Lal, moved an application on 21.01.1957, for proprietary rights under Section 11 of the said Act before the Compensation Officer, Mahesu. In the meantime, Madna Wati sold the suit land to Panu Ram (defendant No.2) on 22.10.1960. Defendant No.2 purchased the said land as benami in the name of his wife Kamla Devi (defendant No.1), who was a minor at that time. After the sale of suit land, defendant No.1 through defendant No.2 was substituted as respondents in place of Madna Wati in the application pending before the Compensation Officer. During the pendency of the application, Shanker Lal died on 07.06.1960 and after his death, his wife Reshmoo Devi was substituted as his legal representative. Vide his order dated 31.08.1964, the Compensation Officer allowed the application and granted proprietary rights to Reshmoo Devi. D  
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(b) Against the said order, Kamla Devi (defendant No.1) preferred an appeal before the District Judge, Mahesu, who, by his order dated 14.12.1966, dismissed the same.

(c) During the pendency of the proceedings before the Compensation Officer, one Raghunath Singh Thakur of Marina H

A Hotel, Shimla filed a Civil Suit No. 80/1 of 1962 in the Court of Sub-Judge, Mahesu against Madna Wati and Kamla Devi alleging that the suit land along with other land property was mortgaged with him by Madna Wati and, therefore, she had no rights to sell or transfer the suit land. The said suit was decreed  
 B in favour of Raghunath Singh. Aggrieved by the said order, they filed an appeal before the Judicial Commissioner, Himachal Pradesh at Shimla and Reshmoo Devi also preferred an appeal before the Judicial Commissioner, Shimla. Both the appeals were transferred to the High Court of Himachal  
 C Pradesh. The High Court allowed the appeal preferred by Reshmoo Devi and set aside the order of the sub-Judge Mahesu to the extent it affected her rights and further directed her to seek remedy against Kamla Devi by a separate suit.

(d) During the pendency of the appeal before the High  
 D Court, since the possession was forcibly taken from Reshmoo Devi, she filed a suit for recovery of possession being Suit No. 61/1 of 1976 before the Sub-Judge (I), Shima which was decreed in her favour on 25.03.1985.

(e) Aggrieved by that judgment, Kamla Devi filed an appeal  
 E before the sub-Judge, 1st Class, Shimla. During the pendency of the appeal, Reshmoo Devi died on 25.09.1985. An application under Order XXII Rule 4 of the Code of Civil Procedure, 1908 (in short "CPC") was filed by the sister of Reshmoo Devi for bringing her on record as legal  
 F representative (L.R.). However, another application was filed by Hira Singh and Attar Singh that they may be brought on record as L.Rs of Reshmoo Devi on the basis of a Will.

(f) Challenging the said Will, Bhau Ram, the appellant  
 G herein, who was the nephew of Reshmoo Devi, filed an application to implead himself as L.R. of Reshmoo Devi. By order dated 29.11.1986, sub-Judge 1st Class, Shimla held that Bhau Ram, the appellant herein, being the son of real brother of Shankar Lal, husband of Reshmoo Devi is the only legal  
 H representative.

(g) The appeal filed by Kamla Devi & Ors. was registered as Civil Appeal No. 118-S/13 of 1987. By order dated 02.12.1987, the Additional District Judge allowed the appeal and dismissed the suit filed by Reshmoo Devi for possession as barred by limitation. The appellant herein, who was substituted as L.R., filed second appeal being R.S.A. No.113 of 1988 before the High Court which was allowed by the High Court on 25.05.2000.

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(h) Against that order, Kamla Devi & Ors. filed special leave petition before this Court which was dismissed.

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(i) Involving the same issue, Attar Singh filed a Suit being Suit No. 424/1 of 99/97 in the Court of sub-Judge-IV, Shimla which was dismissed for default on 23.02.2001 but the same was restored vide order dated 14.08.2002. He again filed a Civil Suit No. 10/1 of 2004 before the Civil Judge (Jr. Division-II) Rohru, Shimla for possession of the suit land belonging to Reshmoo Devi. During the course of proceedings, the appellant herein filed an application under Order VII Rule 11 read with Section 151 of CPC for rejection of the plaint on certain grounds. By order dated 17.11.2004, the Civil Judge allowed the application and dismissed the suit filed by Attar Singh.

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(j) Against the said order, Attar Singh filed F.A. No. 90-S/13 of 2005 before the District Judge (Forest), Shimla. After the death of Attar Singh, Kamla Devi was brought on record as his legal representative. Vide order dated 31.07.2009, the District Judge (Forest) allowed the appeal. Challenging the said order, the appellant herein and his sister, Kular Mani, filed R.S.A. No. 501 of 2009 before the High Court. By the impugned order dated 20.09.2010, the High Court dismissed the appeal. Against the said order, the appellant herein filed an appeal by way of special leave petition before this Court.

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4. Heard Ms. Radhika Gautam, learned counsel for the appellant and Mr. Sudhir Chandra, learned senior counsel for respondent No.1 and Mr. T. V. Ratnam, learned counsel for respondent No.2.

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A 5. The only point for consideration in this appeal is whether the High Court is justified in confirming the decision of the lower appellate Court and remitting the matter to trial Court for fresh consideration of all the issues.

B 6. In order to ascertain an answer for the above question, we have to consider whether the application under Order VII Rule 11 CPC filed by the defendant can be decided merely on the basis of the plaint and whether the other materials filed by the defendant in support of the application can also be looked into. The trial Court allowed the application of the appellant/  
C defendant No.1 filed under Order VII Rule 11 CPC on the ground that the plaint was barred under the provisions of Order IX Rules 8 & 9 CPC and Order XXIII Rule 1 (3) & 4 (b) of CPC. The said order of the trial Court was set aside by the first appellate Court on the ground that the trial Court had taken the  
D pleas from the written statement of the defendant which is not permissible under Order VII Rule 11 CPC and the High Court in the second appeal confirmed the judgment of the first appellate Court.

E 7. It is relevant to point out the findings of the trial Court particularly with reference to the Suit No. 424/1 of 99/97 which was dismissed for default had been restored by the trial Court even at the time of filing of the application by the defendant under Order VII Rule 11 CPC and it is also brought to our notice that the said proceedings are going on. In view of the same,  
F the provisions of Order IX Rules 8 and 9 CPC are not applicable to the said suit. Even otherwise, the relief sought in the suit (which was earlier dismissed for default) and in the present suit are with regard to different properties. For the same reasons, the provisions of Order XXIII Rule 1 (3) & 4 (b)  
G of CPC are not applicable.

H 8. The law has been settled by this Court in various decisions that while considering an application under Order VII Rule 11 CPC, the Court has to examine the averments in the plaint and the pleas taken by the defendants in its written

statements would be irrelevant. [vide *C. Natrajan vs. Ashim Bai and Another*, (2007) 14 SCC 183, *Ram Prakash Gupta vs. Rajiv Kumar Gupta and Others*, (2007) 10 SCC 59, *Hardesh Ores (P) Ltd. vs. Hede and Company*, (2007) 5 SCC 614, *Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and others*, (2006) 3 SCC 100, *Sopan Sukhdeo Sable and Others vs. Assistant Charity Commissioner and Others*, (2004) 3 SCC 137, *Saleem Bhai and Others vs. State of Maharashtra and Others*, (2003) 1 SCC 557]. The above view has been once again reiterated in the recent decision of this Court in *The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman vs. M/s Ponniamman Educational Trust represented by its Chairperson/Managing Trustee*, 2012 (6) JT 149.

9. As rightly pointed out by learned counsel for the respondents, the questions of law, as raised in the second appeal, before the High Court are no longer needed to be decided in view of the settled law that only the averments in the plaint can be looked into while deciding the application under Order VII Rule 11. This aspect has been rightly dealt with by the High Court.

10. In the light of the above discussion and in view of the settled legal position, as mentioned above, we are of the view that the High Court is fully justified in confirming the decision of the appellate Court remitting the matter to the trial Court for consideration of all the issues. In view of the fact that the suit is pending from 2002, we direct the trial Court to decide the suit in its entirety considering all the issues, after affording adequate opportunity to both the parties, and dispose of the same within a period of six months from the date of receipt of copy of this judgment.

11. Consequently, the civil appeal is dismissed with the above direction. No order as to costs.

R.P.

Appeal dismissed.