

(2024) 12 GUJ CK 0044

In the Gujarat High Court

Case No : Civil Revision Application No. 86 of 2024

Lh Of Decd. Kasam Musa Makvana Decd. Suleman Kasam
Makvana (Decd) & Ors. Versus

APPELLANT

Vs

Decd Mariyam Kasam Makvana W/o Abdulla Musa Hamirka,
Decd Aisha Abdulla Hamirkha W/o Ibrahim Haji & Ors.

RESPONDENT

Date of Decision : 19-12-2024

Acts Referred:

Code of Civil Procedure, 1908 — Section 115, Order 7, Rule 11, Order 7, Rule 11(d)
Bombay Land Revenue Code, 1879 — Section 135(L)
Limitation Act, 1963 — Section 3
Registration Act, 1908 — Section 17
Constitution of India, 1950 — Articles 58, 59, 64, 65

Citation : (2024) 12 GUJ CK 0044

Hon'ble Judges : Divyesh A. Joshi, J

Bench : Single Bench

Advocate : Manisha L Shah, Sr. Adv., Rohan Shah, Aaditya Dave For Nanavati Associates, Trusha Patel, Sr. Adv., Digvijaysinh Chauhan, Shivangi D Vyas

Final Decision : Dismissed

Judgement

Divyesh A. Joshi, J

1. By filing present Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC" for short), the applicants have challenge the order dated 12.01.2024 passed below application, Exh.19 by the learned 5th Additional Senior Civil Judge, Jamnagar in Special Civil Suit No.21 of 2022, whereby the application, Exh.19 preferred by the applicant under Order 7, Rule 11(d) of the CPC came to be rejected.

2. Heard learned Senior Counsel, Ms. Manisha Lavkumar Shah assisted by learned advocate, Mr. Rohan Lavkumar Shah with learned advocate, Mr. Aaditya Dave for Nanavati Associates for the applicant and learned Senior Counsel, Ms. Trusha Patel assisted by learned advocate, Mr. Digvijaysinh Chauhan for learned advocate, Mr. Shivangi Vyas for the respondents.

3. Learned Senior Counsel, Ms. Shah submitted that the appellants are the original defendants in Special Civil Suit No.21 of 2022 filed by the respondents herein, who are the original plaintiffs, before the court of the learned Senior Civil Judge, Jamnagar inter alia praying for declaration that the original defendants are having 42.86% share in the land bearing Survey No.790 admeasuring 2-62-04 Sq.Mtrs. situated in Jamnagar City (hereinafter referred to as "the land in question" for short) and as also praying for order of handing over possession thereof and restraining the original defendants from selling, mortgaging, gifting, transferring etc. the land in question to third party and also prayed for cancellation of Entry No.78 mutated in the revenue record in or around 1951 declaring it to be null and void ab initio. She submitted that pursuant to issuance of the notice, the original defendants have appeared before the learned trial court and submitted an application under Order 7, Rule 11(d) of the CPC for rejection of the plaint on the ground of delay in institution of the suit, however, the learned trial court had rejected the said application by impugned order, which led to filing of the present application. She submitted that the issue relating to consideration of an application under Order 7, Rule 11 of the CPC is no longer res integra because the Hon'ble Court has to consider the averments made in the plaint as well as documents produced along with it, therefore, she is making submission on the strength of the facts as narrated in the plaint.

4. Learned Senior Counsel submitted that for the purpose of deciding the present application, the Hon'ble Court would have to make cursory glance upon the prayer clause as prayed for, which clearly goes on to show that the original plaintiffs have sought 42.86% share in the land in question and declaration thereof as also possession thereof. She submitted that it is not in dispute that the original plaintiffs and the original defendants are the heirs of one family and the land in question is belonging to the predecessor of the parties viz., Kasam Musa Ghanchi. She submitted that it is the specific case of the original plaintiffs that forefather of the plaintiffs and the defendants are the same and pedigree is also incorporated in the plaint, which clearly goes on to show that they are the direct linear of late Shri Kasam Musa Ghanchi and it is the specific case of the original plaintiffs that the land in question is belonging Kasam Musa and he was the farmer and cultivating the said land as darbari farmer since last many years and in the year 1951 or so, he passed away. She submitted that if the Hon'ble Court would make cursory glance upon the said pedigree, it is found out that the said Kasam Musa had two sons and three daughters and after the sad demise of said Kasam Musa, names of two sons viz., Suleman Kasam Makwana and Haji Isha Kasam Makwana had entered into record of rights and entry to that effect had been mutated in the record of rights, whereas his three daughters viz., Mariyam Kasam Makwana, Khatija Kasam Makwana and Rabhiya Kasam Makwana had not relinquished their rights from the land in question, even though their names had not been mutated in the record of rights. She submitted that however in the same year, Entry No.78 came to be mutated in the record of rights to the effect that Haji Isha Kasam Makwana had relinquished his right

upon the land in question in favour of Suleman Kasam Makwana, which is challenged in the suit preferred by the original plaintiffs. Learned Senior Counsel submitted that the original plaintiffs are the heirs of heirs of the daughters of the original owner, Kasam Musa. She submitted that admittedly, Entry No.78 was mutated in the record of rights in or around 1951, however, said entry had been challenged in the year 2022 by filing aforesaid suit, therefore, there is gross delay of more than 70 years and suit is hopelessly time barred and ought not to have been entertained and the said fact had been brought to the notice of the learned trial court while preferring an application under Order 7, Rule 11(d) of the CPC but despite said fact, the learned trial court had come to a conclusion that the period of limitation is a mix question of law and fact and the said issue can be decided at the time of deciding the suit.

5. Learned Senior Counsel further submitted that second bone of contention raised by is that it is the specific case of the original plaintiffs that the land in question is being cultivated by the original defendants as Administrator of the land in question and since 1951, the original plaintiffs are getting their share from the amount earned from the agricultural activity carried out by the original defendants and they are also in possession of the land in question and the said fact is also observed by the learned trial court while passing impugned order. She has drawn attention towards the operative part of the impugned order and submitted that the learned trial court has categorically observed that the original plaintiffs are the co-sharer of the land in question and are also in possession thereof and they are also getting their share from the agricultural activity carried out by the original defendants and the issue of possession as to who is in possession since 1951, is required to be decided by leading evidence, therefore, the application preferred under Order 7, Rule 11(d) of the CPC had not been entertained. She submitted that it is the specific case of the original plaintiffs that they may be declared as co-sharers of the land in question and, thereafter, possession of the land in question is to be handed over to them. She, therefore, submitted that when there is specific observations made by learned trial court to the effect that they are the co-sharer and are in possession of the land in question, in that event, relief as prayed for in the suit is quite contrary to the facts narrated in the plaint and, therefore, original plaintiffs are not entitled to claim any relief as sought for in the plaint, therefore, the learned trial court ought to have allowed the application preferred under Order 7, Rule 11(d) of the CPC.

6. Learned Senior Counsel submitted that Prayer Nos.1 to 3 as prayed for in the suit are interconnected with each other. She submitted that when the original plaintiffs are the co-sharer of the land in question and are having possession of the land in question, in that event, they are not entitled to claim Prayer No.3 of the plaint. She submitted that so far as Prayer No.4 as prayed for in the plaint is concerned, Entry No.78 mutated in or around 1951 is challenged in the suit proceedings declaring it as null and void ab initio. In this connection, she submitted that in number of decisions, the Hon'ble Supreme Court as well as this

Hon'ble Court have held that the revenue entries are considered only for fiscal purpose with a sole intent to get rent, however ownership cannot be decided on the strength of the revenue records. She submitted that it is also an admitted position of fact that the revenue entry mutated in the record of rights in the year 1951 had not been challenged by the original plaintiffs before any revenue authority and second utmost important issue in the matter is that as per provision of Section 135(L) of the Bombay Land Revenue Code (hereinafter referred to as "Revenue Code" for short), for the purpose of cancellation and/or deletion of revenue entry mutated in the record of rights, civil suit cannot be filed. She further submitted that if the plaintiffs had filed suit for partition of the property, in that event, scenario would have been different but here in this case on hand, the plaintiffs have sought declaration that they are the co-sharer of the property and seek restoration of the possession of the property.

7. Learned Senior Counsel further submitted that the cause of action can be said to have been arisen from the date dispute accrued between the parties and admittedly, specific averments have been made in the suit itself that the cause of action had been started to be cropped up from the date of death of deceased, Kasam and on account of the same, the names of sisters have not been mutated in the record of rights, therefore from the date of mutation of Entry No.78 mutated in the year 1951, cause of action to institute the suit had arisen, therefore, the suit was required to be filed within three years from that day and herein admittedly, the suit had been preferred after lapse of 70 years, therefore, the suit is hopelessly time barred and ought not to have entertained.

8. Learned Senior Counsel has put reliance upon Articles 58 and 59 as also Articles 64 and 65 of the Limitation Act and submitted that the period of limitation to institute the suit is three years and after a lapse of three years, the suit cannot be entertained. She has put reliance upon the provision of Section 3 of Limitation Act and submitted that period of limitation cannot be extended by any means to institute the suit. She submitted that with sole intent to bring the period of limitation in time, illusory cause of action has been generated by the original plaintiffs and the said fact is clearly found out from the plaint itself. She submitted that it is the specific case of the original plaintiffs that five months before the date of institution of the suit, they approached the original defendants and tried to request them to part the share of the land in question between the legal heirs and at that relevant point of time, they had replied in positive manner but behind their back, the original defendants had tried to sell the land in question to third party by executing registered sale deed, therefore once again, the original plaintiffs have approached them but at that point of time, the original defendants had administered threats stating that they are the owner and occupant of the land in question and their names are running in the record of rights since last more than 50 years and they are going to sell the land in question to third party, therefore, the original plaintiffs have approached Muslim Jamat with a sole intent to settle the dispute but they could not get success, therefore, the suit has been filed. She submitted that the averments made in the

plaint clearly goes on to show that with sole intent to come out from the limitation period, false and fabricated cause of action has been generated.

9. Learned Senior Counsel has summed up her submissions by contending that as stated above, there are three defects, which clearly found out from the face on record. She submitted that by perusal of the plaint clearly goes on to show that the suit is filed for declaration of the land in question, however as per the settled proposition of law, more particularly, Section 3 of the Limitation Act, the period of right to sue accrues from the date of knowledge and admittedly herein in the present case, the great grandfather of the plaintiffs passed away in the year 1951 and entry to that effect was also mutated at the relevant point of time and, thereafter, the land in question was mutated in the name of Suleman Kasam and after his sad demise in the year 1963, the name of legal heirs of Suleman Kasam had mutated in the revenue records and at that point of time, no objections were raised nor those entries were challenged before the revenue authority and surprisingly, the suit is filed to set at naught the entries mutated in the revenue record by way of preferring civil suit, therefore as per Articles 58 and 59 of the Limitation Act, within a period of three years, relief of declaration can be sought for but admittedly, the suit is preferred after a lapse of 70 years, therefore, the pleadings of the suit would squarely fall under the provision of the Order 7, Rule 11(d) of the CPC, therefore, the suit is hopelessly time barred and is required to be dismissed at threshold.

10. Learned Senior Counsel submitted that the plaintiffs have sought prayer with regard to handing over their possession. She submitted that however admittedly since 1951, the land in question is lying in the custody of the original defendants i.e. Suleman Kasam and then, his legal heirs and as per the settled proposition of law, if the parties are enjoying the fruits of the land in question in the presence of one and all continuously since last more than 12 years, in that event, by way of adverse possession, they would become the owners of the land in question. She submitted that here in this case on hand, the original defendants are enjoying the possession of the land in question since last more than 70 years, therefore at this belated stage, they cannot seek possession thereof, therefore, the said prayer cannot be considered.

11. Learned Senior Counsel submitted that third relief, which is sought for in the plaint, is with regard to cancellation of the entry mutated in the revenue record. In this regard, she has heavily put reliance upon the provision of Section 135(L) of the Revenue Code and submitted that the land employed in the said section clearly goes on to show that for the purpose of removing and/or adding and/or substituting the name in the revenue record, the learned civil court has got no jurisdiction to entertain the suit, therefore the said relief also cannot be considered.

12. Learned Senior Counsel, at this stage, has put reliance upon following decisions,

(1) the decision of this Hon'ble Court in case of Jaman Shamji Fadadu Vs. Sadik Mahmad Sidik, reported in 2023 (3) GLH 441; and

(2) the decision of this Hon'ble Court in case of Haridas Atmaram Desani Vs. Legal Heirs of Decd. Vishnudas Atmaram Desani & Ors., reported in 2023 (3) GLR 1835;

13. Referring to the ratio enunciated in the aforesaid decisions and raising above contentions, learned Senior Counsel submitted that the case of the applicants is squarely covered by those decisions and the impugned order rejecting an application preferred under Order 7, Rule 11 of the CPC cannot be said to be just and legal order, which requires interference at the hands of this Court because by dismissing the suit preferred by the original plaintiffs under Order 7, Rule 11 of the CPC. It is, therefore, urged that the present Civil Revision Application may be allowed.

14. On the other hand, learned Senior Counsel, Ms. Trusha Patel has opposed the present revision application with a vehemence and submitted that while passing impugned order, the learned Judge concerned has taken into consideration facts of the case and rightly rejected the application preferred by the original defendants under Order 7, Rule 11(d) of the CPC. She submitted that it is settled proposition of law that at the time of entertaining the application preferred under Order 7, Rule 11(d) of the CPC, the Hon'ble Court has to consider the pleadings of the suit as well as the documentary evidence annexed along with the suit, except that, reliance cannot be placed upon other material. She submitted that so far as the factual aspect is concerned, it is not in dispute that the original plaintiffs and the original defendants are the legal heirs of the deceased, Kasam Musa because at the time of submission of application, they have not denied about the said factum of the plaint. She submitted that in fact, the land in question was cultivated by the ancestral of the parties viz., Kasam Musa as darbari farmer and he was cultivating the said land as a tenant and pursuant thereto, he had become the owner of the land in question and after his sad demise, the land in question is required to be transferred in the name of legal heirs of Kasam Musa and admittedly in the year 1951, entry was mutated in the name of his two brothers and one brother has relinquished his right, therefore, the name of Suleman Kasam was there in the revenue record of the land in question, however, the original owner, Kasam Musa had also three daughters but their names were not mutated in the revenue record though they had not waived their rights and there is no entry to that effect mutated in the revenue record on the basis of any document executed between the parties but behind their back, the name of daughters have been deleted from the record. She further submitted that in fact, it is well within the knowledge of all the legal heirs that the land in question was running in the name of Suleman Kasam after the death of Kasam Musa but they are regularly getting the outcome of the activity carried upon the said land in question, therefore, as such, there was no dispute between the parties but recently, the original defendants have tried to sell the land in question

and that is how the disputes have been cropped up and at that relevant point of time, the original plaintiffs had tried to settle the dispute amicably but could not get success in their attempt and that is why at the time of institution of the suit, the cause of action as stated in the plaint is stated that the original plaintiffs had gone to the house of the original defendants and they had requested for partition of the land in question by giving their share and initially the original defendants were agreeable and, thereafter subsequently he retracted from their version and stated that their names are running the revenue record and they are cultivating the land in question as a owner and occupant of the land in question and the original plaintiffs are not entitled to get any share from the said property and refused to give any share in the said property, therefore, the original plaintiffs were constrained to institute suit before the competent court and at the time of deciding the application preferred under Order 7, Rule 11 of the CPC, the learned Judge has considered all those facts in true and proper spirit and passed impugned order rejecting the said application. She further submitted that merely the name of some of the legal heirs have not been mutated in the revenue record, that does not mean that the right upon the land in question had automatically been extinguished, however, it is settled proposition of law that in a joint property, one of the co-sharer/ co-owner is in possession of the said property, in that event, the possession of the said co-owner would never be treated as adverse possession for the rest of the co-owners. She further submitted that the Hon'ble Supreme Court as well as this Hon'ble Court in number of decisions have decided the said principle of law, therefore simply on the count that the name of the parties have not been mutated in the record, automatically their rights upon the property cannot be extinguished and the person having possession of the property, cannot get benefit against the co-sharer upon the property on the basis of the adverse possession. She submitted that it is settled law that as per rule of primogeniture, the name of eldest son had been rather used and mutated in the revenue record and all the family members are jointly used to enjoy the fruits of the property but simply the name of elder person is mutated in the revenue record, it cannot be said that other persons have no share in the said property because being a head of the family and with sole intent to administer the property, the name of elder son had been mutated in the revenue record and only on that count, the right upon the property and share in the property cannot be gone away but on the contrary, in the privy counsel judgment and subsequently the Hon'ble Supreme Court in number of case laws have held that benefit would be extended to whole family members, therefore, the application preferred by the applicant is rightly rejected by the learned Judge. She further submitted that the parties are Muslims, therefore, they are governed by the Mohammedan Law, therefore at the time of institution of the suit, they had not sought partition on the metes and bounds but they had only demanded their share from the land in question. She has further submitted that in fact, the land in question was enjoying by all the members of the family since last many years and there is no dispute between the family but recently when the original plaintiffs have tried to demand their share, at that

relevant point of time, they have resiled from their version by stating that the said property is in their name and as per their wish, they would sell the property and there are all possible chances that third party rights would be created, therefore, the cause of action has been generated recently, therefore, the original plaintiffs were constrained to file suit. At this stage, learned Senior Counsel has put reliance upon Section 17 of the Registration Act and submitted that as per said section, if a party relinquishes his or her right in the property, in that event, the same must be done by a registered document in terms of the said provision, which in the facts of the present case has not been done.

15. Learned Senior Counsel submitted that in fact, it is settled proposition of law that names of the parties are mutated in the revenue record for the purpose of collecting rent on the basis of mutation of entry but right of the persons cannot be decided. She has put reliance upon prayer clause and submitted that it is the specific case of the original plaintiffs that they may be declared as co-owner considering their share as 42.86% in the land in question and possession thereof may be handed over to them and accordingly, their names may be mutated in the revenue record and thus, all these questions are mix questions of facts and law and other issue pertaining to adverse possession cannot be decided at threshold without giving opportunity of leading evidence. She has further submitted that at the time of objecting the suit, the original defendants had come with a specific case that by way of adverse possession, they became the owner of the property. She, however, submitted that in view of numeration case laws of the Hon'ble Supreme Court, possession of the property cannot be termed as adverse possession and evidence in that regard is required to be led. She has submitted that yet written submission had been submitted by the original defendants, which they have to hear and prove these facts that by way of adverse possession, they have become the owner of the said property, therefore, this is a premature stage to decide the faith of the suit. She, therefore submitted that considering all above facts, the learned Judge concerned has rightly rejected the application preferred by the original defendants.

16. Learned Senior Counsel, at this stage, has put reliance upon following decisions,

(1) the judgment of the Hon'ble Supreme Court in case of Jitendra Singh Vs. State of Madhya Pradesh, reported in 2021 (10) Scale 413;

(2) the judgment of the Hon'ble Supreme Court in case of C. Natrajan Vs. Ashim Bai, reported in (2007) 14 SCC 183;

(3) the judgment of the Hon'ble Supreme Court in case of Abubakar Abdul Inamdar Vs. Harun Abdul Inamdar, reported in (1995) 5 SCC 612;

(4) the judgment of the Hon'ble Supreme Court in case of Mohd. Zainulabudeen Vs. Sayed Ahmed Mohideen, reported in (1990) 1 SCC 345;

(5) the judgment of the Hon'ble Supreme Court in case of Syed Shah Ghulam

Ghouse Mohiuddin Vs. Syed Shah Ahmed Mohiuddin Kamisul Quadri, reported in (1971) 1 SCC 597;

(6) the order dated 16.01.2019 passed by this Hon'ble Court in Special Civil Application No.661/2019 in case of Amarshi Sursangji Vs. Heirs of Decd. Shivabhai Jivabhai;

(7) the judgment of the Hon'ble Supreme Court in case of Sneh Gupta Vs. Devi Sarup & Ors., reported in 2009 (2) GLH 94;

(8) the judgment of the Hon'ble Madhya Pradesh High Court in case of Hooriya Vs. Munna, reported in 1955 (0) JX (MP) 61;

17. Referring to the ratio enunciated in the aforesaid decisions coupled with the facts of the case, the learned Senior Counsel has urged that the present Civil Revision Application may be dismissed upholding the impugned order.

18. In view of the rival submissions canvassed by learned advocates for the parties and having considered the documents produced on record including the impugned order delivered by the learned Judge concerned, the question, which would fall for consideration of this Hon'ble Court is as to whether it is permissible for Court to look into evidence or consider disputed question of fact or law, for arriving at the conclusion that the suit is barred by any law? However on a plain reading of the plaint along with the documents annexed therewith, I am of the considered opinion that no such finding can be rendered at this stage unless appropriate issue is framed and evidence is led in respect of the applicability of the relevant Articles as canvassed by the parties. Over and above that, it is required to be mentioned that in an application under Order 7, Rule 11(d) of CPC, this Court cannot adjudicate such an issue on the basis of bare averments in the plaint.

19. What is emerged from the facts of the case as well as from the submissions canvassed by learned advocates for the parties, is that the dispute pertains to land bearing Survey No.790 admeasuring 2-62-04 Sq.Mtrs. situated in Jamnagar City, which is said to be ancestral property of the parties and having equal share, which the original plaintiffs are claiming in the suit. It is found out from the record that the land in question was originally belonging to one Kasam Musa Makwana, which he was cultivating as darbari farmar, who expired in or around 1951. The said Kasam Musa was having two sons and three daughters viz., (1) Suleman Kasam Makwana; (2) Haji Isha Kasam Makwana; (3) Mariyam Kasam Makwana; (4) Khatija Kasam Makwana; and (5) Rabhhiya Kasam Makwana and the parties to the present proceedings are their either fourth or fifth generation. After the death of original owner, Kasam Musa Makwana, Entry No.78 came to be mutated in the revenue record mutating the name of Suleman Kasam Makwana in or around 1951 and since then, his name is running in the revenue record. However thereafter, as stated above, legal heirs of Kasam Musa Makwana have expired from time to time and, thereafter, his heirs came into the possession of the land in question and they are maintaining the land in question by cultivating

it and receiving earnings from the agricultural activity and also sharing the said earning to the original plaintiffs, which is not in dispute. It is found out from the record, more particularly, Entry No.78, which is under challenge in the plaint, that Haji Isha Kasam Makwana had relinquished his rights and not by three sisters and subsequently, their names have been deleted and thus, it can be said that they are having share in the property being legal heirs of Kasam Musa Makwana. However to get their shares in the land in question, the original plaintiffs have made their efforts through Muslim Jamat, wherein talks of settlement had been taken place and the original defendants were agree to part share in favour of the original plaintiffs but subsequently, they retracted from their statement and attempts were being made by them to sale out the land in question behind the back of the original defendants to create third party rights and upon coming to know about the said fact, pubic notice was issued in the newspaper on 30.07.2022 and, thereafter, the suit has been filed with the prayers as prayed for, wherein an application under Order 7, Rule 11(d) of the CPC for rejection of plaint but after considering the facts of the case, the learned Judge, by impugned order, rejected the said application.

20. At this stage, I would like to reproduce the provision of the Order 7, Rule 11 CPC reads,

"11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

(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 returned 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 provisions of rule 9:] [Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]"

(emphasis supplied)

21. Thus from the above provision, it is found out that the provision of the Order

7 Rule 11(d) of CPC provides that the plaint shall be rejected "where the suit appears from the statement in the plaint to be barred by any law". Further as can be seen from the aforesaid provisions, there are different clauses in Order 7 Rule 11, which should not be mixed up while deciding such issue. Therefore in order to decide as to whether the suit is barred by any law or not, it is the statement in the plaint which will have to be construed and while while deciding such an application, the Court concerned must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the written statement in the case.

22. The Hon'ble Supreme Court in a judgment in case of Jitendra Singh (supra) upon which reliance has been placed by learned Senior Counsel, Ms. Patel for the original plaintiffs, has considered the aspect of mutation of entry in the revenue record, which would not confer any right, title or interest in favour of any particular person and after considering the same, the Hon'ble Supreme Court has observed in Paragraph Nos.5 as under,

"5. We have heard Shri Nishesh Sharma, learned Advocate appearing for the petitioner. It is not in dispute that the dispute is with respect to mutation entry in the revenue records. The petitioner herein submitted an application to mutate his name on the basis of the alleged will dated 20.05.1998 executed by Smt. Ananti Bai. Even, according to the petitioner also, Smt. Ananti Bai died on 27.08.2011. From the record, it emerges that the application before the Nayab Tehsildar was made on 9.8.2011, i.e., before the death of Smt. Ananti Bai. It cannot be disputed that the right on the basis of the will can be claimed only after the death of the executant of the will. Even the will itself has been disputed. Be that as it may, as per the settled proposition of law, mutation entry does not confer any right, title or interest in favour of the person and the mutation entry in the revenue record is only for the fiscal purpose. As per the settled proposition of law, if there is any dispute with respect to the title and more particularly when the mutation entry is sought to be made on the basis of the will, the party who is claiming title/right on the basis of the will has to approach the appropriate civil court/court and get his rights crystalised and only thereafter on the basis of the decision before the civil court necessary mutation entry can be made.

23. The Hon'ble Supreme Court in a judgment in case of C. Natrajan (supra) upon which reliance has been placed by learned Senior Counsel, Ms. Patel for the original plaintiffs, has considered the aspect of law of limitation and adverse possession after considering decisions of the Hon'ble Supreme Court and observed in Paragraph Nos.15, 16 and 17 as under,

"15. The law of limitation relating to the suit for possession has undergone a drastic change. In terms of Arts. 142 and 144 of the Limitation Act, 1908, it was obligatory on the part of the plaintiff to aver and plead that he not only has title over the property but also has been in possession of the same for a period of

more than 12 years. However, if the plaintiff has filed the suit claiming title over the suit property in terms of Arts. 64 and 65 of the Limitation Act, 1963, burden would be on the defendant to prove that he has acquired title by adverse possession.

16. In *Md. Mohammad Ali (dead) by LRs. V/s. Jagdish Kalita and Ors.*, 2004 1 SCC 271, it was held :

'By reason of the Limitation Act, 1963 the legal position as was obtaining under the old Act underwent a change. In a suit governed by Art. 65 of the 1963 Limitation Act, the plaintiff will succeed if he proves his title and it would no longer be necessary for him to prove, unlike in a suit governed by Arts. 142 and 144 of the Limitation Act, 1908, that he was in possession within 12 years preceding the filing of the suit. On the contrary, it would be for the defendant so to prove if he wants to defeat the plaintiff's claim to establish his title by adverse possession.'

17. In *S.M. Karim (supra)*, this Court was considering a question of Benami as also adverse possession. In the aforementioned context, it was opined :

'Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did, and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title" was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea. The cited cases need hardly be considered, because each case must be determined upon the allegations in the plaint in that case. It is sufficient to point out that in *Bishun Dayal V/s. Kesho Prasad and another*, AIR 1940 PC 202, the Judicial Committee did not accept an alternative case based on possession after purchase without a proper plea.'

24. The essential averments in the plaint are that the property in question was owned by the forefather of the original plaintiffs as well as original defendants viz., Kasam Musa Ghanchi, who was the darbari farmer and was cultivating the land. It has been averred that the original plaintiffs and the original defendants are the direct heirs of Kasam Musa Ghanchi and being the legal heirs, they are having equal share in the land in question. It has been averred that one of the legal heirs viz., Haji Isha had relinquished his rights from the land in question and pursuant thereto, Entry No.78 came to be mutated in the record of rights but admittedly, the daughters of Kasam Musha had not waived their rights but despite that, their names have been deleted from the record of rights, therefore being the legal heirs of fourth and fifth generation of legal heirs of daughters, they are having right, title and interest in the land in question and for getting their rights, initially they had requested the original defendants to part their

share, which was agreed by the original defendants but thereafter, they have retracted from their statement and tried to create third party rights, which is the cause of action for filing suit. However in view of the decision of the Hon'ble Supreme Court in case of Jitendra Singh (supra), it is admitted position of fact that mutation of entry in favour of particular person does not confer any right, title or interest and it is only for the fiscal purpose and law is settled in this regard.

25. One of the contentions raised by the appellants with regard to delay in filing suit without mentioning the cause of action is required to be considered. In the plaint, the original plaintiffs have categorically stated about the cause of action mentioning inter alia that they are the heirs of Kasam Musa and the land in question is ancestral property, however when the attempts were being made for partition with the help of Muslim Jamat in the month of June, 2022, initially positive response was received but thereafter, behind the back of the original plaintiffs, the original defendants were trying to sale out the land in question to third party, which resulted into publication of notice in the newspaper and, thereafter, suit has been filed for declaration to declare them as owner of the land in question to the extent of 42.86% and handover possession thereof. Thus from the above facts, it cannot be said to be delay in filing suit and the case would fall under Order 7, Rule 11(d) of the CPC but be that as it may, it is for the civil court to decide such issue while conducting suit proceedings and in view of the number of decisions of the Hon'ble Supreme Court as well as this Hon'ble Court, at this stage, this Court may not appreciate evidence in detailed.

26. Considering the legal principles as enunciated by various judgments, in an application under Order 7, Rule 11 of CPC, the Court has to only examine whether the plaint and the contents of the documents are such that there is no scope for the parties to go to trial on the claims made by the original plaintiffs and that the plaint deserves to be rejected at the threshold. It would necessarily will have to be analyzed as to whether in the facts and circumstances of the present case and considering the pleadings in the plaint as well as documents annexed thereto whether the present suit would be covered under the provisions of Articles 58 and 59 of the Limitation Act. There is a latent ambiguity which is giving rise to the necessity for leading of evidence in the present case which would require a full trial with an opportunity for the parties to lead evidence. At this stage, no emphatic finding can be rendered as to whether the suit will be covered under the provisions of Articles 58 and 59 of the Limitation Act. The plaint cannot be rejected on the ground that it is barred by limitation on the face of it. The question as raised by the applicant will have to be answered after giving an opportunity to the parties to lead evidence as it is found to be a mixed question of law and facts. The judgments relied upon by the learned counsel for the applicant will not come to the aid of the applicant in view of the aforesaid observations. The rest of the contentions as raised by the applicant herein along with the judgments relied upon are more and less in the nature of opposition to the suit and by way of reply to the averments and the same cannot be taken into

consideration at this stage.

27. I have considered the findings given and conclusion arrived at by the learned trial court while passing impugned order and found that the learned trial court has given cogent reasons and findings for rejection of the application under Order 7, Rule 11 of the CPC. The learned trial court has dealt with all the submissions and contentions as raised by the parties. The learned trial court has also properly appreciated the law as laid down by the Honble Supreme Court through various judgments as relied upon by the parties to the lis.

28. In view of the aforesaid observations, the present Civil Revision Application is devoid of merits and is dismissed accordingly. Notice is discharged. Interim relief granted earlier stands vacated forthwith. No order as to costs.

29. Connected civil application stands rejected accordingly.