
(2012) 01 AHC CK 0139
In the Allahabad High Court
Case No : Civil Revision No. 49 of 2011

Sadanand Mishra

APPELLANT

Vs

Ravindra Singh Chauhan

RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11
Constitution of India, 1950 — Article 226
Evidence Act, 1872 — Section 116

Citation : (2012) 3 ADJ 438

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Prakash Krishna, J.—The suit giving rise to the present revision demonstrates how a determined and dishonest tenant can drag on litigation to make life of his landlord a hell. This is fourth round of litigation at the High Court stage. On earlier two occasions, the respondent tenant (hereinafter referred to as tenant) approached this Court by means of two writ petitions being writ petition Nos. 52705 of 1999 and writ petition No. 63287 of 2010. On third time, the applicant Sadanand Mishra who is admittedly landlord (hereinafter called as landlord) had to file writ petition No. 10290 of 2009.

2. The bungalow No. 89 (Nawasi) Buddha Niketan Civil Lines, Etawah is the subject-matter of litigation of which the opposite party is tenant. Late Bharat Singh Chauhan father of the present tenant entered into occupation of the said property as tenant in the year 1977 on the strength of an allotment order passed in his favour by the Rent Control and Eviction Officer under the provisions of the U.P. Urban Buildings (Regulation of Letting, Rent and Eviction) Act No. 13 of 1972 and after him, the tenancy has been inherited by the present tenant.

3. The present revision at the instance of the landlord is directed against the order dated December 14, 2010 passed by the Civil Judge (Senior Division),

Etawah in Original Suit No. 650 of 2006 whereby the Court below has rejected the application filed by the landlord/applicant to reject the plaint under Order 7 Rule 11 CPC as it discloses no cause of action. Suit is vexatious, as also barred by time.

4. Before advertng to the facts of the aforestated revision it is apt to notice the facts of earlier three litigations in between the parties.

WRIT PETITION NO. 52705 OF 1999.

(hereinafter called as First Writ Petition)

5. The State Government issued a Government order for conversion if its lease hold and nazul land into freehold on payment of sum specified therein. It further provides that in case of failure of landlord/owner of such leases then and only then an occupant may apply for freehold.

6. The aforestated writ petition No. 52705 of 1999 was instituted by the tenant by impleading the District Magistrate, Etawah, Additional District Magistrate (Finance)/Prescribed Authority (Nazul Land), Etawah, Smt. Kalawati Devi (mother of the present landlord) and Sri Sadanand Mishra, on the allegations that the petitioner is legal tenant of the property No. 89, Buddha Niketan, Civil Lines, District Etawah situate at plot No. 285/1.74 which was allotted to his father in the year 1977 in pursuance of the allotment order dated 31st of August, 1977. The said plot is situate just the opposite of the Kutchehari, Etawah as also is opposite to the Bungalow of District Magistrate, Etawah. In paragraphs 7 and 8 of the writ petition it has been stated that the said land has been recorded in the name of one E.A. West Sahab in the revenue records. The respondent Nos. 3 and 4 (Kalawati Devi and Sadanand Mishra) hatched a conspiracy and tried to manipulate in the revenue records by showing that it is a Nazul plot while as a matter of fact, the land is recorded in the category of 6-Ga i.e. except Nazul land. In other words, the land in dispute according to the tenant is not a Nazul land. In other paragraphs thereof it has been averred that the landlord has filed an application for getting the aforesaid plot No. 285/1.74 converted into freehold land to which the tenant has filed a detailed representation praying that the land in question cannot be converted into freehold land as it is not a Nazul land and he is legal tenant of the aforesaid land. Hence, proceedings for conversion into freehold cannot be taken out without hearing the petitioner.

7. Challenging the order dated 8.10.1999 passed by the District Magistrate rejecting the petitioner's objection and accepting the application for conversion into freehold filed by the landlord, the petition was filed. In the relief clause of the petition, the tenant prayed for quashing the order dated 8th of October, 1999 and to quash the proceedings for conversion of the land in dispute into freehold land.

8. It is not in dispute between the parties that the said writ petition has been dismissed in default and an application to restore the above writ petition to its

original number is said to be still pending.

WRIT PETITION NO. 10290 OF 2009.

(hereinafter called as Second Writ Petition)

9. This writ petition was filed by the landlord after dismissal of the first writ petition in default praying a writ of Mandamus directing the respondents therein to execute freehold deed in his favour in the light of the order dated 8.10.1999 ordering freehold. In essence to give effect to the order dated 8.10.1999.

10. The writ petition was disposed of by issuing a direction to the authority concerned to take an appropriate decision in accordance with law.

WRIT PETITION NO. 63287 OF 2009.

(hereinafter called as Third Writ Petition)

11. It appears that in the light of the direction issued by this Court to take a final decision in the matter, as no interim order due to dismissal of the first writ petition restraining the respondents was in operation, a freehold deed was executed and registered in favour of landlord on 27th of August, 2010. Challenging the same, the above mentioned writ petition was filed which was opposed by the landlord and was disposed of by Division Bench of this Court at the admission stage by providing that the dispute sought to be raised in the writ petition is in the nature of civil dispute. The dispute is in respect of the title which can be raised by the petitioner (tenant) before Civil Court alone. For a period of one month the landlord had given an undertaking before the writ Court that he will not change the status of property in question.

SUIT NO. 650 OF 2010

12. Consequently, the aforesaid suit giving rise to the present revision has been filed by the tenant impleading his landlord alone as defendant therein. In paragraphs 1 and 2 of the plaint the tenant has stated that he is tenant of the property in question in pursuance of the allotment order dated 13th of October, 1996 along with his brother. In para 4 it has been stated that the rent was being paid earlier by his father and thereafter by him to Smt. Kalawati who received the rent as landlord. In subsequent paragraphs, he has given the history of title-ship of the plot No. 285 whereon the house in dispute is standing. To begin with that the property in dispute was originally leased out to late Sri E.A. West through registered lease-deed dated November 1, 1921 for a period of thirty years who had no right to transfer the leasehold right. The lease has not been renewed but his name continued to be recorded in the revenue record. After his death his widow Smt. Dora West did not acquire any right nor her name was recorded in any record and the property was transferred by her power of attorney holder namely Jackson/Sri Colvin. Late E.A. West did not deposit any amount nor he got the lease-deed renewed and as such all his right has come to an end. The tenant being in occupation of the property in dispute is entitled to

apply for grant of freehold right. But the landlord by pressurising the authorities in violation of principles of natural justice got tenant's objections rejected by the order dated 8th of October, 1999 against which a writ petition No. 52705 of 1999 (first writ petition) was filed wherein on 17th of December, 1999 an interim order was passed. To pressurise the administration, the landlord did file the writ petition No. 10290 of 1999 (second writ petition) on incorrect pleas without impleading the tenant therein which was decided by the order dated 19th of August, 2009. Consequently, the order ordering the conversion of Nazul land into freehold land one is illegal. The District Magistrate had constituted a Committee consisting of S.D.M., Saifae, SDM Sadar, Etawah and Additional District Magistrate, Etawah to inquire into the matter. The said Committee on 26th of August, 2010 submitted a report in favour of the landlord. The said Committee was unauthorisedly constituted and the recommendation made by the said Committee is illegal. The sale-deed executed by the power attorney holder of widow Smt. Dora West in favour of Ram Chandra Mishra, the predecessor in interest (father of the present landlord), is void.

13. In the relief clause a declaration has been sought for that it may be declared that it is the tenant who has got a right to get the land converted into freehold and the defendant landlord has got no right to get it freehold and the freehold order dated 26th of August, 2010 and the proceedings in consequence thereof are illegal, unauthorized and null and void.

14. The second relief claimed is that a decree for permanent injunction restraining the defendant permanently from interfering in the possession of tenant and forcibly evicting the tenant on the basis of getting the property in dispute freehold and/or selling the vacant land by subdividing into plots, be passed.

15. An application under Order 7 Rule 11 C.P.C. giving rise to the present writ petition was filed by the defendant/landlord (applicant) on the allegations that the plaintiff is tenant of defendant and the order of freehold was passed in the year 1999 after deposit of requisite money. The plaintiff never applied for freehold till date and he has no right to sue and there is no cause of action for the present suit. The plaintiff has been indulging in a series of legal proceedings and the present suit is manifestly vexatious and meritless. The plea that the present suit is barred by time as according to the plaint allegations the cause of action, if any, had arisen to the plaintiff in the year 1999. Hence the suit is barred by time and also by law.

16. The trial Judge by the order under revision has rejected the said application on the finding that the landlord has not filed any written statement so far, plea that by clever drafting plaint has been presented by concealing material facts will be examined in the light of the plaint allegations. It has noted the factum of the earlier three writ petitions. The plaintiff has disclosed that the cause of action is the order dated 26th of August, 2010 and is not the order of the year 1999. The suit is within the period of limitation from 26th of August, 2010. The question

whether the necessary parties have been impleaded or not will be examined at the appropriate stage.

17. Heard Sri A.K. Mishra along with Sri Arvind Tiwari in support of the revision and Sri T.P. Singh, learned senior counsel assisted by Shri Yogesh Kumar Saxena, learned counsel for the opposite party.

18. The learned counsel for the landlord submits that the filing of the present suit is nothing but stark abuse of the process of the Court. The relationship of landlord and tenant between the parties is not in dispute. A tenant cannot challenge the title or authority of his landlord, is an acknowledged legal position. By means of the present plaint, the tenant is trying to challenge the sale-deed executed by the power of attorney holder of the widow of the original lessee. The property in question is a Nazul land. It has come on record in the record of the first writ petition that the original lessee E.A. West had died on 2nd of September, 1923 leaving behind him his widow Smt. Dora West resident of Green Court Chelford, England whose name was recorded in the Nazul register in place of Mr. West. Smt. Dora West sold the leasehold right in the land in dispute by registered sale-deed in favour of Sri Ram Chandra Mishra (father of the landlord) who had executed a registered Will dated 25th of November, 1949 in favour of his son Sadanand Mishra, landlord. Sri Ram Chandra Mishra had died in May, 1959 the landlord was minor at that time and was under the guardianship of his mother Smt. Kalawati who looked after the property in dispute. The order of conversion was admittedly passed in the year 1999 which was impugned by the tenant unsuccessfully in the first writ petition, the same has been dismissed in default and is not restored till date. By camouflaging relief clause, the tenant is trying to assail the order granting the freehold, passed in the year 1999, which on the face of it on undisputed fact is barred by time. It was also argued that admittedly the freehold deed has been executed on 27th of August, 2010 but its cancellation has not been sought for purposely to avoid the payment of advalorem Court fees. In absence of any relief for cancellation of the execution of freehold deed, decree for declaration is not permissible under law. In nutshell, the argument is that vexatious and frivolous pleas have been raised in the plaint as the tenant happens to be active member of present political ruling party in the State and was Member of Legislative Assembly earlier.

19. In contra, the learned senior counsel, has sharply focused his argument only on two aspects of the case. Firstly, the landlord has obtained the freehold deed by playing fraud as is apparent from the letters dated 18th of November, 2009 and 29th of April, 2010 written by District Magistrate, Etawah to the State Government, Annexure-6 collectively. The Court was taken through the entire letter and it was submitted that the freehold deed could not be executed as has been pointed out by the District Magistrate in his communication referred to above for the reason that there is nothing on record to show that Smt. Dora West whose name was recorded in the Nazul register had appointed Shri Jackson as her lawful attorney. The lease-deed does not authorize the lessee to transfer his

leasehold right, the lease-deed was not renewed after expiry of original period of lease.

20. Secondly, that the present suit was instituted as was provided for by a judgment of this Court delivered in third writ petition and as such it cannot be said that the suit is either frivolous or vexatious.

21. In rejoinder, attention of the Court was invited towards the registered power of attorney dated 15th of November, 1924 executed by Dora West in favour of George Lethbri Colvin, Brigadier General of East India, Railway Regiment. It was pointed out that the said power of attorney is registered with the Sub Registrar Calcutta (Kolkata).

22. Considered the respective submissions of the learned counsel for the parties. It is well established that at the time of consideration of issue at the stage of Order 7 Rule 11 C.P.C. no amount of evidence can be looked into. At this stage, issue on merits of matter would not be within the realm of Court. Only and only plaint averments have to be looked into. The averments made in the plaint have been noticed above with some details. It is to be found out whether the allegations made in the plaint if proved to be correct will result in granting the desired relief to the tenant. The tenant on his own showing has come in possession of the disputed property in pursuance of the allotment order dated 31st of August, 1977. Copy of the said allotment order was filed as Annexure-1 to the first writ petition. It shows that Smt. Kalawati Devi Mishra is the landlady.

23. In para 8 of the first writ petition, the tenant has set out that the land in dispute is not a Nazul land. For the sake of convenience, the said paragraph is reproduced below:

That the respondent Nos. 3 and 4 hatched up a conspiracy and tried to manipulate in the revenue record to the extent that the aforesaid plot No. 285/1.74 being shown as Najool land. It appears that the respondents got some success in manipulating the revenue record by showing the aforesaid land No. 285/1.74 as Najool land while the Intkhab/Khatauni itself shows that it has been recorded under the category of 6-Ga that is except Najool land.

24. In the aforesaid writ petition, a counter-affidavit was filed by Tehsildar, Etawah on behalf of the District Magistrate and the Additional District Magistrate (W)/ Prescribed Authority, Nazul land, Etawah. Contents of para 8 of the writ petition have been denied by stating that the land in dispute is recorded in the revenue record as Nazul land. The allegation that the application filed by the landlord for converting the land in dispute from leasehold to freehold has been illegally filed and to manipulate the change of nature of land has been denied in para 7 thereof. In para 14 it has been stated that in pursuance of the Government Order dated 1st of December, 1998, the lessee is entitled to get the Nazul land converted into freehold. If the lessee is not ready to apply for freehold right only then tenant is entitled to apply for the same.

25. For the sake of convenience, the contents of paragraphs 6, 7 and 14 of the counter-affidavit of Tehsildar are reproduced below:

6. That the contents of paragraph No. 8 of the writ petition are incorrect and denied. It is submitted that the land in dispute No. 285 area 1.74 acres was granted on lease in favour of Sri Earnest Alexander West by the Collector, Etawah by lease-deed dated 1.11.1921 on behalf of the Secretary of India in Council for a period of 90 years. The renewal of the lease was to be done after every 30 years. The lessee, Sri E.A. West had died on 2.5.1923 leaving behind his wife Smt. Dora West resident of Green Court Chelford, England and her name was recorded in the Nazul register in place of Mr. West. Thereafter Smt. Dora West sold the lease hold rights in the land in dispute by a registered sale-deed in favour of Sri Ram Chandra Mishra, Assistant Engineer, P.W.D., Jhansi. Sri Ram Chandra Mishra had executed a registered will dated 25.11.1949 in favour of his son, Sri Sadanand Mishra. Sri Ram Chandra Mishra had died in May, 1951. At that time, Sri Sadanand Mishra was minor and was under the guardianship of his mother, Smt. Kalawati. Smt. Kalawati looked after the aforesaid property in dispute. In the Khatauni the property in dispute No. 285 area 1.75 acres is still recorded in the name of Mr. E.A. West, the original lessee and the Government is recorded as the owner of the property. In the lease-deed dated 1.11.1921, the land in dispute was prescribed as Nazul land. In the extract of Khatauni and wrong entry was made which was corrected in Case No. 2/ 1998-99 u/s 33/39 of L.R. Act by order dated 6.7.1999 passed by the Additional Collector, Etawah and the entry was directed to be corrected as Nazul land. The land in dispute is a Nazul land. The allegation contrary to it, are incorrect and are denied.

xxx

7. That with regard to the contents of paragraph No. 9 of the writ petition, it is correct that the respondent No. 4 had moved an application for converting the land in dispute from lease hold to free hold. It is incorrect to say that the aforesaid application has been filed illegally and to manipulate the change of the nature of the land.

xxx

14. That the contents of paragraph No. 17 of the writ petition are incorrect and denied. It is submitted that according to the Government order dated 1.12.1998 the lessee is entitled to get freehold land in Nazul land. If the lessee is not ready to get free hold right then the tenant is entitled to apply for the same. It is stated that the lessee has already applied for free hold rights and therefore, the petitioner cannot claim any right in the land in dispute.

26. It boils down to this that the tenant had earlier sought to raise a plea that the land in dispute is not a Nazul land. Now, in the suit he has taken a different stand that the land in dispute is a Nazul land.

27. There is no dispute that the State Government has issued a Government

order permitting the conversion of Nazul land into freehold land subject to payment of conversion charges prescribed therein. Under the said Government order, in respect of tenanted property the first right to get Nazul land converted into freehold land is indisputably of the landlord. In case, the landlord does not apply only then a tenant could apply.

28. It is not the case of the tenant that his landlord has not applied for conversion of Nazul land into a freehold land.

29. It is not the case of tenant that he ever applied for conversion nor any such plea was put forward before this Court by the learned senior counsel. The plaint also does not say that the tenant ever applied for conversion. The only argument by the learned senior counsel is that if the application of landlord for conversion is rejected, the tenant may take an appropriate proceedings for conversion.

30. A meaningful reading of the plaint would show that the tenant is challenging the execution of the sale-deed by power of attorney holder of Smt. Dora West. Initially, in the first writ petition he came out with the case that name of Smt. Dora West was never mutated in the record after death of her husband which was denied by Tehsildar in his counter-affidavit. Now, the tenant has pleaded in the plaint that E.A. West died on 2nd of May, 1923 and the lease was not renewed and as such his alleged widow Dora West could not get any right therein and therefore, her power of attorney holder could not execute the sale-deed in favour of the father of landlord. The tenant, thus, is trying to point out holes in the title of his landlord. u/s 116 of the Evidence Act, a tenant is estopped to challenge the title of his landlord. This is one aspect of the case.

31. In *Bansraj Laltaprasad Mishra Vs. Stanley Parker Jones*, , the Apex Court has held that the principle of estoppel arising from the Contract of tenancy is based upon a healthy and salutary principle of law and justice that a tenant who could not have got possession but for his in some inequitable situation taking undue advantage of the possession that he got and any probable defect in the title of his landlord. It is on account of such a contract of tenancy and as a result of the tenant's entry into possession on the admission of the landlord's title that the principle of estoppel is attracted. Section 116 enumerates the principle of estoppel which is merely an extension of the principle that no person is allowed to approbate and reprobate at the same time. Obviously, the stress is on the possession of the person who is in possession of the immovable property.

32. The other aspect of the case is that the land in dispute is a Nazul land which admittedly belongs to the State Government and the State Government has refuted the allegations of the tenant and has come out with a definite case in the shape of counter-affidavit of Tehsildar filed in the first writ petition that the leasehold right was validly transferred by the power of attorney holder of Dora West in favour of the father of the petitioner. The said sale-deed is dated 23rd of November, 1926 in favour of Ram Chandra Mishra, the father of landlord. Thus, evidently, the petitioner is questioning the sale-deed dated 23rd of November,

1926 in the suit. The said sale-deed cannot be questioned by a third person namely the tenant who has or had no concern with the property in dispute. Such a challenge at the instance of third person in the year 2010 after about 74 years is patently barred by time. The sale-deed has been given effect to and has been acted upon. It was accepted also by the Rent Control and Eviction Officer while passing the allotment order in favour of the tenant. The tenant is deriving his right of tenancy on the basis of the allotment order which is founded upon ownership and landlordship of the mother of landlord and it is based on its turn on the sale-deed dated 23rd of November, 1926. By cleverly drafting of the plaint, the tenant has avoided the mention of the date of the said sale-deed purposely to give a colour to his case to get over the plea of limitation. If the sale-deed is valid, it cannot be questioned at this distance of time as held herein above, all subsequent proceedings i.e. the recommendation made by the three members committee recommending the conversion of Nazul land in freehold land falls automatically. The trial Judge was not right in oversimplifying the matter by making an observation that the tenant is challenging the recommendation made by the three members committee. It may be recalled that the occasion to constitute three members committee arose on account of all sorts of objections raised by the tenant. To get the record straight and with a view to find out the truth, the three members committee was constituted, otherwise there was no such occasion.

33. At this juncture, the basic argument of the learned senior counsel for the tenant based on with reference to the letter dated 19th of November, 2009 be considered. This is the sheet-anchor of the tenant's case. This is a letter written by District Magistrate to the State Government, seeking guidance in the matter. That is all. The said letter is in the nature of interdepartmental correspondence. It has nothing to do either with the landlord or the tenant. A direction from the State Government was sought for on the ground that the power of attorney of Sri Jackson is not on record, the lease-deed does not show that the leasehold rights are transferable. The next renewal was due in the year 1980 but it was not renewed. The said letter was written according to the landlord under the pressure exercised by the tenant who is active member of the State ruling party and is also an Ex MLA. It cannot be said that there is no substance in the argument of the landlord as on a close reading of the letter would show that the name of Smt. Dora West was recorded in the revenue record and she had appointed an attorney who executed the sale-deed dated 23.11.1926 in favour of Sri Ram Chandra Mishra, father of the landlord. The objection is that the record does not show that Sri Jackson was appointed as a lawful attorney by Smt. Dora West. I fail to understand as to how this is relevant now when the execution of sale-deed dated 23rd of November, 1926 is an accomplished fact and is not being disputed either by Smt. Dora West or anybody else claiming through her or by the State Government. It is for the Government to maintain the record properly. How a person can take advantage of his own fault in not maintaining the record properly. Even the State Government did not dispute the transfer of leasehold

interest under the sale-deed dated 23rd November, 1926 at any point of time. The dispute is being sought to be raised under the letter at the instance of the tenant who has no locus standi to question the sale-deed dated 23.11.1926. The second objection in the said letter is that the lease-deed is silent as to whether it is transferable or not. Every lease is transferable unless provided otherwise. There being no restriction for transfer and even if there was any such restriction, obviously at this distance of time, any such objection could not legally be raised. The fact that the lease-deed was not got renewed in the year 1980 is also of no much consequence as there is no bar for conversion of Nazul land to freehold land even where the lease has expired. Even otherwise also, in such leases the renewal of leases for a further period of thirty years up to maximum of two renewals is almost automatic. The fact remains that the State Government at no point of time resumed the land. Nor it has forfeited the lease. The Government order making provision of Nazul land into freehold also covers expired leases.

34. Besides the above, there is substance in the argument that the said letter was written without providing any opportunity of hearing to the landlord and therefore, it has no legal effect on the right of the landlord. Also it was never communicated to him. Therefore, the argument that it is a case of fraud has got no substance. At any rate, it is not a case of fraud and if anybody is held to be liable for fraud, it is the tenant who is taking shifting stand. The pleas raised by him are in the nature of fishing and roving inquiry. In view of above, there is no merit in the tenant's argument with regard to first point.

In T. Arivandandam Vs. T.V. Satyapal and Another, , the Apex Court has held as follows :

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 VII Rule 11 C.P.C. 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 Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Court should insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage.

35. In I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others, , it has been laid down that mere non supply of goods does not amount to fraud as understood in this branch of law. It has been further held that clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. The ritual of repeating a word or creation of an illusion in the plaint can certainly be unraveled and exposed by the Court while dealing with an application under Order 7 Rule 11(a). Inasmuch as the mere allegation of withdrawal of monies without movement of goods does not amount to a cause of action based on fraud", the Bank cannot take shelter under the words fraud" or "misrepresentation" used in the plaint.

36. Applying the above test, to the facts of the case, it is crystal clear that the plaint discloses no cause of action and it is liable to be rejected at its threshold. The trial Judge was not right in rejecting the application of the landlord on superficial reading of the plaint without giving a thought that a tenant cannot challenge the title of his landlord or ultimately, the tenant is seeking the cancellation of sale-deed of the year 1926 indirectly by drafting the plaint cleverly. It also lost the sight of the fact that the order permitting the conversion of Nazul land to freehold land was passed in the year 1999 which was unsuccessfully challenged in the first writ petition and the order parsed in the first writ petition is still operative.

37. Now, I take up the second point urged by the tenant i.e. the suit is maintainable in view of the judgment of this Court delivered in the third writ petition. For the sake of convenience the entire judgment is produced below :

It appears to this Court that the dispute amongst the two contesting parties are in the nature of civil dispute. Respondent No. 4 claimed to be the owner of the property when petitioner claiming to be the tenant but both are in respect of lease hold land. However, the respondent No. 4 has contended that the District Magistrate has already declared the land as free hold.

An any event, we do not want to enter into such controversy since the dispute appears to be in respect of the title in question as raised by the petitioner before this Court. It has to be decided by the competent civil Court alone.

Against this background, in case petitioner files suit and appropriate application for injunction before the competent civil Court as early as possible preferably within a month from this date the matter can be resolved as early as possible.

Since the learned counsel appearing for the respondent No. 4 has given an undertaking not to change the status of the property in question in the coming one month, the interest of the petitioner is protected in such time but since he will file the suit and makes application for injunction, if any, it will be decided in accordance with law by the civil Court. This undertaking which has been given by the respondent is strictly without prejudice to the rights and contention of the parties and will not touch the independent adjudication of merits of the case by the Court concerned.

We dispose of the writ petition with the above observation without expressing any opinion on the merits of the case. N order is passed as to costs.

38. On a plain and simple reading of the above judgment of this Court would show that the Court was of the view that a title dispute to a landed property can more appropriately be adjudicated upon by civil Court than writ Court, therefore, jurisdiction under Article 226 of the Constitution of India was refused to be invoked. This is one thing to say but it does not follow necessarily that it would make a suit maintainable even if the plaint does not discloses a cause of action or it is barred under any law or the plaint allegations are frivolous or vexatious.

The tenant was directed to raise the dispute before a proper forum i.e. civil Court, that is all. The High Court did not and had not examined the controversy on merit by leaving it open for consideration in a civil suit. By a judicial order if a suit is not permissible in law, it will not become maintainable. Its converse as held recently in *Dayaram v. Sudhir Batham*, JT 2011 (12) 175 (P.19), is also true. Besides the above, maintainability of a suit of civil nature and that a plaint is liable to be rejected under Order 7 Rule 11 CPC are conceptually two different things. Consideration herein is the criteria of the ingredients of Order 7 Rule 11 CPC in respect of plaint in question. Therefore, the second point raised by the tenant is also meritless.

39. The upshot of the above discussion is that the plaint discloses no cause of action and is liable to be rejected as such. Also the claim set out in the plaint is barred by time and the relief sought for cannot be granted in the suit. It is clear case of overreaching process of law and amounts to sharp practice which should be sternly put down by this Court. The sale-deed is dated 23.11.1926 and the order ordering freehold not challenged in the suit is dated 8th of October, 1999. Thus, there is no triable issue in the suit. The tenant has failed to show his right to sue. He has not applied for conversion into freehold land even. Being in possession as tenant, intention is to grab the property by any means.

40. Perhaps, the landlord has committed the gravest blunder of his life in letting of the suit property to the tenant under the allotment order and that is the reason why he has been made to run from one Court to another for the last more than one decade. The conduct of the tenant deserves condemnation which I indicate by imposition of exemplary cost of Rs. 15,000/- payable to the landlord. In the result, the revision succeeds and is allowed. The impugned order is set aside and the plaint of the suit stands rejected under Order 7 Rule 11 CPC under clauses (a) and (d) thereof with costs.