

**(2017) 02 MP CK 0139**  
**In the Madhya Pradesh High Court**  
**Case No : 469-2008**

State of Madhya Pradesh

APPELLANT

Vs

Bablu and Others

RESPONDENT

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**Date of Decision :** 21-02-2017

**Acts Referred:**

[Code of Civil Procedure, 1908](#), [Order 7 Rule 11](#), [Section 115](#) - Revision

**Citation :** (2017) 02 MP CK 0139

**Hon'ble Judges :** Sujoy Paul

**Bench :** Division Bench

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## Judgement

1. This revision filed under section 115 of the CPC takes exception to the order dated 3.10.2008 passed by Civil Judge Class-I, Raisen in Succession Case No.../07.
2. Briefly stated, the relevant facts are that the applicant had instituted Succession Case No.13/07 in the Court of Civil Judge Class-I, Itarsi. The said case was decided by judgment dated 18.2.2008 and accordingly Succession Certificate was granted in favour of the applicant (Annexure A-2).
3. Aggrieved, the non-applicant No.1 filed an appeal before the Additional District Judge, Hoshangabad which was dismissed by the said Court on 10.3.2008. The appellate court opined that the present applicant, being wife of Sunil Mehto, was entitled for succession on the basis of facts mentioned in Schedule No.1 and the non-applicant No.1 had no right whatsoever. For these reasons, the appeal was dismissed (Annexure A-3).
4. The non-applicant No.1 and 2 instituted a different Succession case before the Civil Judge Class-I on the ground that Late Sunil Mehto was son of non- applicant No.1 and brother of non-applicant No.2. Said Sunil Mehto expired on 20.4.2007. Upon receiving the notices, the present applicant entered appearance and filed an application under Order 7 Rule 11 CPC. It was contended that the plaintiff has deliberately suppressed the fact that M.A.No.13-A/08 was dismissed by the court

on 10.3.2008 and accordingly succession certificate dated 18.2.2008 had attained finality. For this suppression of fact, cost may be imposed on the applicant. In addition, it is submitted that in view of judgment of appellate court, the suit was not maintainable.

5. Ms Sudipta Choubey, learned counsel for the applicant contended that in view of judgment of the appellate court, the present suit is hit by principle of res judicata. Reliance is placed in the case of *Saroja Vs. Chinnusamy*-(2007) 8 SCC 329. She submitted that the court below erred in not allowing the application preferred under Order 7 Rule 11 CPC.

6. No other point is pressed by learned counsel for the applicant.

7. Nobody appeared for the other side.

8. I have heard learned counsel for the applicant at length and perused the record.

9. The court below did not entertain the application under Order 7 Rule 11 CPC on the ground that at the stage of decision of an application under Order 7 Rule 11 CPC, only plaint averments are to be seen. As per plaint averments, it cannot be said that the suit is barred by any law. In other words, as per plaint averments alone, it cannot be said that necessary ingredients for attracting Order 7 Rule 11 CPC are available. The court below further held that so far objections mentioned in Order 7 Rule 11 are concerned, after filing of written statement, the said objections can be considered.

10. The core issue is whether such an order is legal and justified. This is settled in law that at the time of consideration of an application under Order 7 Rule 11 CPC, the court is only required to see the plaint averments. From the plaint averments, it is not clear that any such decision was taken in the appeal preferred by Kodulal Mehto. Apart from this, the order of appeal (Annexure A-3) prima facie shows that Kodulal Mehto was the appellant but said order does not contain the name of Jagdish Mehto who is one of the applicant in the present succession case.

11. At this stage, it cannot be said that the order of court below is without jurisdiction or suffers from any perversity. The court below has rightly held that on the basis of plaint averments alone, the conditions mentioned in Order 7 Rule 11 CPC are not attracted. The court below has rightly made it clear that all the objections of appeal will be considered at appropriate stage. The principle laid down by the supreme Court in the judgment cited by Ms Sudipta Choubey, cannot be disputed. However, the said principle can be applied at appropriate stage. In this view of the matter, I find no reason to interfere in the impugned order. It will be open for the present applicant to file written statement and take all possible objections in it. It will also be lawful for the court below to frame preliminary issues regarding maintainability of the case. It is expected that the court below will deal with all objections raised by the present applicant and pass

appropriate order in accordance with law expeditiously.

12. With aforesaid observations, revision is disposed of. No cost.