



न्यायालय

# सहायक कलक्टर / उपखण्ड अधिकारी गुडामालानी-बाड़मेर

(पीठासीन अधिकारी -केशव कुमार मीना आर.ए.एस.)

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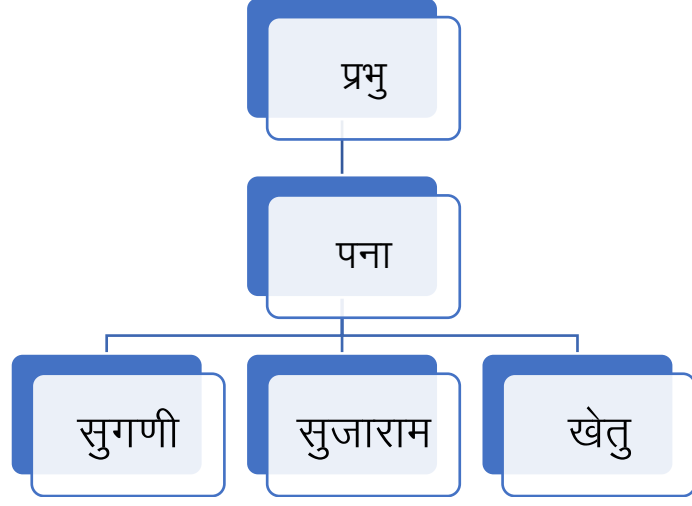
सिविल प्रक्रिया संहिता-1908

:-निर्णय:-

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1. आज यह पत्रावली प्रार्थना-पत्र सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के अन्तर्गत बाबत निर्णय प्रस्तुत हुई। प्रकरण का सुक्ष्म एवं सारतः वृत्तान्त इस प्रकार है कि वादी का पारिवारिक सजरा निम्न प्रकार है:-





2. प्रकरण में वादी ने अभिकथन किया है कि पनाराम की मृत्यु के बाद विरासत का नामांतरकरण अकेले सुजाराम के नाम दर्ज किया गया। जबकि वादी पनाराम की विधिक वारिस हैं। इस आधार पर वादी का पनाराम की सम्पत्ति में हिन्दु उत्तराधिकार अधिनियम-1956 की धारा-08 के तहत हक निहित है। वादी द्वारा प्रतिवादी सुजाराम से उक्त सम्पत्ति में वादी का नाम दर्ज करवाने का बारम्बार निवेदन किया। इस पर प्रतिवादी सुजाराम ने वादी को आश्वासन दिया कि वादी का नाम उक्त सम्पत्ति में दर्ज करवा देंगे। तत्पश्चात् प्रतिवादी सुजाराम द्वारा उक्त सम्पत्ति में वादी के हक को धोखे से दिनांक 25.01.2017 को हकतर्कनामा पंजीबद्ध करवाते हुए सुजाराम के पक्ष में हकतर्क करवा दिया। अतः उक्त हकतर्क को निरस्त करते हुए वादी का उक्त सम्पत्ति में निहित हक अनुसार खातेदारी अधिकारों की घोषणा करते हुए प्रतिवादीगण के विरुद्ध स्थाई निषेधाज्ञा का अनुतोष स्वीकार करने का निवेदन किया।
3. प्रकरण दर्ज रजिस्टर किया जाकर प्रतिवादीगण को तलब किया गया। प्रतिवादीगण असालतन-वकालतन उपस्थित न्यायालय हुए। प्रतिवादीगण द्वारा उक्त प्रकरण में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के अन्तर्गत प्रार्थना-पत्र प्रस्तुत कर प्रतिवादी का सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के अन्तर्गत प्रार्थना-पत्र स्वीकार किया जाकर दावा वादी खारिज किया जाने का निम्न प्रकार निवेदन किया-
  - कि वादी द्वारा प्रतिवादीगण के पक्ष में निष्पादित पंजीबद्ध हकतर्कनामा दिनांक 25.01.2017 के विरुद्ध माननीय सिविल न्यायालय में वाद विचाराधीन है। अतः हाजा न्यायालय का क्षेत्राधिकार नहीं होने के कारण हस्तगत दावा काबिल-ए-खारिज है।
  - वादी द्वारा प्रतिवादीगण के पक्ष में निष्पादित पंजीबद्ध हकतर्कनामा दिनांक 25.01.2017 के पश्चात् प्रतिवादीगण के विरुद्ध दावा करने का कोई बिनायदावा उत्पन्न नहीं हुआ है। साथ ही वादी द्वारा प्रतिवादीगण के पक्ष में निष्पादित पंजीबद्ध हकतर्कनामा दिनांक 25.01.2017 के पश्चात् दावा करने का अधिकार नहीं होने के कारण दावा विधि द्वारा वर्जित है।

4. प्रकरण में उभयपक्षकारान की उक्त प्रार्थना पत्र पर बहस सुनी गई। दौराने बहस विद्वान अधिवक्ता प्रतिवादी/प्रार्थी ने दौराने जिरह प्रार्थना पत्र के तथ्यों को दौहराते हुये प्रतिवादी का सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के अन्तर्गत प्रार्थना-पत्र स्वीकार किया जाकर दावा वादी खारिज किया जाने का निवेदन किया। दौराने बहस विद्वान अधिवक्ता वादी/अप्रार्थी ने प्रार्थी/प्रतिवादी का सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के अन्तर्गत प्रार्थना-पत्र खारिज फरमाया जाने का निम्न प्रकार निवेदन किया-

- कि वादीगण द्वारा हकतर्क के दस्तावेज को चुनौती नहीं दी जाकर घोषणा का दावा किया गया है। साथ ही घोषणा का अधिकार सिविल न्यायालय को नहीं होकर राजस्व न्यायालय को है। अतः वादी का दावा विधि द्वारा वर्जित नहीं है एवं दावे को सुनने का क्षेत्राधिकार श्रीमान न्यायालय को ही है।

5. प्रकरण में पत्रावली का अवलोकन किया गया व बहस पर मनन किया गया है। बाद पत्रावली अवलोकन व मनन बहस ज्ञात होता है कि प्रकरण सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के प्रार्थना पत्र से संबंधित है। प्रकरण में तथ्यों के कानूनी बिन्दुओं के परिप्रेक्ष्य में विश्लेषण से पूर्व सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 का उद्धरण यहां प्रासंगिक है। जो कि इस प्रकार है:-

**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 written upon paper insufficiently stamped, and the plaintiff, on being required by the court to supply the requisite stamp paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provision of Rule 9.

**Provided that** the time fixed by the court for the correction of the valuation or supplying of the requisite stamp papers 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 papers, 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.

6. इस संदर्भ में माननीय मद्रास उच्च न्यायालय द्वारा Smt. V. Bragan Nayagi vs R. R. Jeyaprakasam प्रकरण में दिनांक 01.04.2015 को दिये गये निर्णय के प्रासंगिक पैरा का उद्धरण प्रासंगिक है जो कि इस प्रकार है:-

While filing an application under Order 7 Rule 11 of the Code of Civil Procedure, the Court is bound to see whether the case on hand falls within six limbs stated in the said Rule. If the suit

is not falling under any of those categories, the plaint cannot be rejected.

7. सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 एवं माननीय मद्रास उच्च न्यायालय द्वारा Smt.V.Bragan Nayagi vs R.R.Jeyaprakasam प्रकरण में दिनांक 01.04.2015 को दिये गये निर्णय में बताये गये 06 आधारों के उक्त साधारण पठन से ज्ञात होता है कि किसी वाद पत्र को निम्न 06 आधारों पर खारीज किये जाने के प्रावधान बनाये गये हैं:-
1. वाद पत्र द्वारा वाद हेतुक का प्रकटीकरण नहीं किया जाना।
  2. वाद पत्र में अनुतोष के मूल्य की वास्तविकता से कम गणना करना तथा निर्धारित समय के अवसर के तहत उक्त त्रुटिपूर्ण गणना को दुरुस्त नहीं करना।
  3. वाद पत्र में अनुतोष के मूल्य की सटीक गणना करना परन्तु उसी अनुरूप उचित स्टाम्प वाद पत्र पर नहीं लगाना तथा निर्धारित समय के अवसर के तहत उक्त त्रुटिपूर्ण स्टाम्प की कमी को दुरुस्त नहीं करना।
  4. वाद पत्र के अभिकथनों के आधार पर वाद-पत्र का विधि द्वारा वर्जित पाया जाना।
  5. वाद पत्र का बहु प्रतिलिपियों में प्रस्तुत नहीं किया जाना।
  6. वादी द्वारा सिविल प्रक्रिया संहिता-1908 के आदेश-9 के प्रावधानों की अनुपालना करने में विफल होना।

### **Object**

8. सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के संपूर्ण विवेचन हेतु न्यायिक दृष्टान्तों का उद्धरण यहां प्रासंगिक है। सर्वप्रथम सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के **उद्देश्य (Object)** के संबंध में न्यायिक दृष्टान्तों उद्धरण यहां प्रासंगिक है। माननीय उच्चतम न्यायालय द्वारा सिविल अपील 9519 / 2019 उनवान *Dahiben vs Arvindbhai Kalyanji Bhanusali* में दिनांक 09.07.2020 को सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उद्देश्य (Object) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.*

9. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा निर्वाचन याचिका उनवान *Azhar Hussain vs Rajiv Gandhi* में दिनांक 25.04.1986 को सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उद्देश्य (Object) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*The whole purpose of confernment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocle need not be kept hanging over his head unnecessarily without*

*point or purpose. Even in an ordinary Civil litigation the Court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The Courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the Court is satisfied that the action would terminate in view of the merits of the preliminary point of objection.*

10. माननीय उच्चतम न्यायालय द्वारा सिविल अपील 448/2004 उनवान *Sopan Sukhdeo Sable & Ors vs Assistant Charity Commissioner* में दिनांक 23.01.2004 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उद्देश्य (Object) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, the Order X of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised.*

### **Role of the Court/Judge**

11. इसी प्रकार सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के तहत न्यायालय/न्यायाधीश की भूमिका (Role of the court/judge) के संबंध में न्यायिक दृष्टान्तों उद्धरण यहां प्रासंगिक है। माननीय उच्चतम न्यायालय द्वारा उनवान *T. Arivandandam vs T. V. Satyapal & Another* में दिनांक 14.10.1977 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के तहत न्यायालय/न्यायाधीश की भूमिका (Role of the court/judge) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*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 Or. VII r. 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 bearing so that bogus litigation can be shot down at the earliest stage. The Penal Code (Ch. XI) is also resourceful enough to meet such men, and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw*

*remarked on the assassination of Mahatma Gandhi "It is dangerous to be too good."*

12. माननीय उच्चतम न्यायालय द्वारा सिविल अपील 448/2004 उनवान *Sopan Sukhdeo Sable & Ors vs Assistant Charity Commissioner* में दिनांक 23.01.2004 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के तहत न्यायालय/न्यायाधीश की भूमिका (Role of the court/judge) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*The trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code.*

### **Material to be considered**

13. इसी प्रकार सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के तहत वाद पत्र के अभिकथनों के पठन (Material to be considered) के संबंध में न्यायिक दृष्टान्तों उद्धरण यहां प्रासंगिक है। माननीय उच्चतम न्यायालय द्वारा सिविल अपील 9519/2019 उनवान *Dahiben vs Arvindbhai Kalyanji Bhanusali* में दिनांक 09.07.2020 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के तहत वाद पत्र के अभिकथनों के पठन (Material to be considered) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed.*

### **Test**

14. इसी प्रकार सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के तहत वाद पत्र के परीक्षण (Test) के संबंध में न्यायिक दृष्टान्तों उद्धरण यहां प्रासंगिक है। माननीय उच्चतम न्यायालय द्वारा सिविल अपील 9519/2019 उनवान *Dahiben vs Arvindbhai Kalyanji Bhanusali* में दिनांक 09.07.2020 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के तहत वाद पत्र के परीक्षण (Test) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration. The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed.*

*Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed." In *Hardesh Ores (P.) Ltd. v. Hede & Co.*<sup>5</sup> the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words.*

### **How to read and examine the plaint**

15. इसी प्रकार सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के तहत वाद पत्र के पठन एवं परीक्षण (How to read and examine the plaint) के संबंध में न्यायिक दृष्टान्तों उद्धरण यहां प्रासंगिक है। माननीय उच्चतम न्यायालय द्वारा सिविल अपील 9519 / 2019 उनवान *Dahiben vs Arvinbhai Kalyanji Bhanusali* में दिनांक 09.07.2020 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के वाद पत्र के पठन एवं परीक्षण (How to read and examine the plaint) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC. 12.9 The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra.*

*A three-Judge Bench of this Court in *State of Punjab v. Gurdev Singh*,<sup>13</sup> held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words "right to sue" means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted.*

16. माननीय उच्चतम न्यायालय द्वारा सिविल अपील 448 / 2004 उनवान *Sopan Sukhdeo Sable & Ors vs Assistant Charity Commissioner* में दिनांक 23.01.2004 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के तहत वाद पत्र के पठन एवं परीक्षण (How to read and examine the plaint) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to*

*which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.*

### Essence

17. माननीय राजस्थान उच्च न्यायालय द्वारा सिविल अपील 330/2010 उनवान *Ram Kripal Das Ji Charitable Trust vs Phool Chand* में दिनांक 29.02.2012 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के सारांश (Essence) को स्पष्ट किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*11. Before dealing with the factual scenario, the spectrum of Order 7 Rule 11 in the legal ambit needs to be noted. The legal position in regard to Order 7 Rule 11 CPC may be summarised as below:*

*(i) The relevant facts which need to be looked into for deciding an application under Order 7 Rule 11 are the averments made in the plaint. The trial Court can exercise the power at any stage of the suit-before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.*

*(ii) The basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.*

*(iii) The Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code.*

*(iv) For deciding such an application not any particular plea has to be considered, and the whole plaint has to be read. Only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.*

*(v) Rule 11 of Order 7 CPC lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of the written statement. Instead, the word "shall" is used, clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of*

*the infirmities provided in the various clauses of Rule 11, even without intervention of the defendant. Even if no objection is taken by the defendant by filing an application under this provision, the court itself is empowered to reject the plaint if it finds that the case is covered within the four corners of this provision.*

*(vi) It is well settled that the question of jurisdiction namely whether a suit is exclusively triable by a revenue court or a Civil Court can take cognizance of it has to be decided on the allegations made in the plaint. It is also further settled that it is the substance of the plaint and the true nature of the suit that is to be seen to determine the question of jurisdiction. If in substance the relief claimed is one which the revenue court alone is entitled to give, the jurisdiction of the civil court will be ousted even though it may require the revenue court to incidentally determine some ancillary facts. In order to determine the true nature of the relief claimed in a suit, the pith and substance and not the form in which the relief may be couched has to be considered. Each case has to be examined on its own particular facts and no universal rule can be applicable to every case.*

18. उपरोक्त विधिक प्रावधान न्यायिक दृष्टांतों के परिपेक्ष्य में प्रकरण का विश्लेषण किया जाना अपेक्षित है। सर्वप्रथम प्रकरण में वादी के दिनांक 25.01.2017 को अपने हक को सुजाराम के पक्ष में हकतर्क करते हुए हकतर्कनामा पंजीबद्ध करवाने के पश्चात् वादी को उक्त दावा प्रस्तुत करने का वादहेतुक उत्पन्न नहीं होने के आधार पर सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-ए के तहत वाद कारण उत्पन्न नहीं होने के आधार पर दावा खारिज करने का प्रार्थना पत्र प्रस्तुत किया गया है। वादी द्वारा इस संबंध में अभिकथन किया गया है कि वादी द्वारा केवल घोषणा का दावा प्रस्तुत किये जाने तथा हाजा न्यायालय में घोषणा का दावा को वादी द्वारा उक्त दावा प्रस्तुत करने का वादहेतुक उत्पन्न होने के आधार पर वादी का दावा चलने योग्य है।
19. सर्वप्रथम प्रकरण में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-अ के तहत वाद हेतुक के प्रकटीकरण (Cause of action) के संबंध में न्यायिक दृष्टान्तों उद्धरण यहां प्रासंगिक है। माननीय उच्चतम न्यायालय द्वारा सिविल अपील 9159 / 2003 उनवान *M/S. Kusum Ingots & Alloys Ltd vs Union Of India And Anr* में दिनांक 28.04.2004 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-अ के तहत वाद हेतुक के प्रकटीकरण (Cause of action) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*Cause of Action:*

*Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not,*

the plaint or the writ petition, as the case may be, shall be rejected summarily.

20. माननीय उच्चतम न्यायालय द्वारा सिविल अपील 9159/2003 उनवान *Swamy Atmananda & Ors vs Sri Ramakrishna Tapovanam & Ors* में दिनांक 13.04.2005 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-अ के तहत वाद हेतुक के प्रकटीकरण (Cause of action) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

In Stroud's Judicial Dictionary a cause of action is stated to be the entire set of facts that give rise to an enforceable claim; the phrase comprises every fact which, if traversed, the plaintiff must prove in order to obtain judgment.

A cause of action, thus, means every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.

21. माननीय मद्रास उच्च न्यायालय द्वारा उनवान *M/S. Narasu'S Coffee Company vs R. P. Sarathy* में दिनांक 17.04.2014 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-अ के तहत वाद हेतुक के प्रकटीकरण (Cause of action) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

It is a settled proposition of law that to reject the plaint under Order 7 Rule 11 (a) of the Code, the petitioner / defendant should establish that there is no legally sustainable cause of action, to seek the relief as prayed for in the plaint. Similarly, as per Rule 11 (d) of Order 7 of the Code, if the suit is barred by any statute or if it is an abuse of process of Court, it could be ordered. In order to establish that there is no cause of action and seek an order to reject the plaint, the defendant is not entitled to rely on his written statement. The applicant / defendant has to establish the fact that there is no cause of action, only based on the averments of the plaint and the admission made by the plaintiff, on the factual aspect.

22. माननीय उच्चतम न्यायालय द्वारा सिविल अपील 448/2004 उनवान *Sopan Sukhdeo Sable & Ors vs Assistant Charity Commissioner* में दिनांक 23.01.2004 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-अ के तहत वाद हेतुक के प्रकटीकरण (Cause of action) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

The trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code.

*The plea clearly overlooks the basic distinction between statements of the facts disclosing cause of action and the reliefs sought for. The reliefs claimed do not constitute the cause of action. On the contrary, they constitute the entitlement, if any, on the basis of pleaded facts. As indicated above, Order VI Rule 2 requires that pleadings shall contain and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim. If the plea of Mr. Savant, learned counsel for the respondent-trust is accepted the distinction between the statement of material facts and the reliance on them for the claim shall be obliterated. What is required in law is not the piecemeal reading of the plaint but in its entirety. Whether the reliefs would be granted on the pleaded facts and the evidence adduced is totally different from the relief claimed. All the reliefs claimed may not be allowed to a party on the pleadings and the evidence adduced. Whether part of the relief cannot be granted by the Civil Court is a different matter from saying that because of a combined claim of reliefs the jurisdiction is ousted or no cause of action is disclosed. Considering the reliefs claimed vis-a- vis the pleadings would not mean compartmentalization or segregation, in that sense.*

23. माननीय मद्रास उच्च न्यायालय द्वारा उनवान *Electronic Machine Tools Limited vs Power Engineers* में दिनांक 14.02.2011 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-अ के तहत वाद हेतुक के प्रकटीकरण (Cause of action) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*16. It is an admitted fact that the averments in the plaint are sufficient to prove that where the cause of action is mentioned and averred in the plaint, there is no need to decide as to whether the cause of action averred in the plaint is true and correct.*

24. माननीय उच्चतम न्यायालय द्वारा सिविल अपील 5665 / 2002 उनवान *Liverpool & London S.P. & I Asson. ... vs M.V. Sea Success I & Anr* में दिनांक 20.11.2003 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-अ के तहत वाद हेतुक के प्रकटीकरण (Cause of action) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

**REJECTION OF PLAINT:**

*Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in its entirety, a decree would be passed.*

**CAUSE OF ACTION:**

*A cause of action is a bundle of facts which are required to be pleaded and proved for the purpose of obtaining relief claimed*

in the suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence.

25. माननीय उच्चतम न्यायालय द्वारा उनवान *I.T.C. Limited vs The Debts Recovery Appellate* में दिनांक 19.12.1997 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-अ के तहत वाद हेतुक के प्रकटीकरण (Cause of action) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

Question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 C.P.C. 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.

26. माननीय उच्चतम न्यायालय द्वारा उनवान *Vijay Pratap Singh vs Dukh Haran Nath Singh And Another* में दिनांक 19.01.1962 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-अ के तहत वाद हेतुक के प्रकटीकरण (Cause of action) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him. By the Statute, the jurisdiction of the Court is restricted to ascertaining whether on the allegations a cause of action is shown: the jurisdiction does not extend to trial of issues which must fairly be left for decision at the hearing of the suit.

27. माननीय मद्रास उच्च न्यायालय द्वारा उनवान *V. K. John vs W. S. Seetharam* में दिनांक 18.12.2008 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-अ के तहत वाद हेतुक के प्रकटीकरण (Cause of action) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

32. It is trite law which has already been settled in catena of decisions including the above referred citations, an application under Order 7 Rule 11(d) can be filed if the allegations in the

*plaint appeared to be barred by any law and for this purpose, the averments made in the plaint alone are relevant and the Court would not be entitled to consider the entire defence at this stage. In so far as Order 7 Rule 11(a) of CPC is concerned, when no cause of action is disclosed, the Courts will not unnecessarily protract the hearing of the suit.*

28. माननीय मद्रास उच्च न्यायालय द्वारा उनवान *P .Chidambaram vs R. S. Raja Kannappan* में दिनांक 07.06.2012 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-अ के तहत वाद हेतुक के प्रकटीकरण (Cause of action) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*Normally, a plaint can be rejected only if there is absolutely no cause of action and the same cannot be rejected if there is a lack of cause of action.*

29. माननीय मद्रास उच्च न्यायालय द्वारा उनवान *M. Chinnaiyah vs Naina Mohammed* में दिनांक 30.07.2012 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-अ के तहत वाद हेतुक के प्रकटीकरण (Cause of action) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*The Trial Court can reject a plaint, only when it is found that any of the conditions under Rule 11 of Order 7 of CPC exists. The Trial Court has gone into the merits of the case and rejected the plaint on the ground that the averments stated in the plaint have not been substantiated by documentary evidence, which is clearly a matter of trial. The Trial Court can ascertain as to whether the plaint discloses cause of action or not, but cannot ascertain as to whether the plaintiff would be entitled to get the relief prayed for in the facts and circumstances disclosed in the plaint.*

30. माननीय मद्रास उच्च न्यायालय द्वारा उनवान *Central Government Employees vs Consolidated Civil Construction Ltd* में दिनांक 24.01.2012 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-अ के तहत वाद हेतुक के प्रकटीकरण (Cause of action) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

149. *In D. Ramachandran v. R.V. Janakiraman*<sup>64</sup> it has been held that the court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action.

150. *In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown. In Vijai Pratap Singh v. Dukh Haran Nath Singh*<sup>67</sup> this Court held: (AIR pp. 943-44, para 9) By the express terms of Rule 5 clause (d), the court is concerned to ascertain whether the allegations made in the petition show a cause of action. The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the

*relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him.*

151. *So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars. (See Mohan Rawale63.)*
152. *The reason for the aforementioned conclusion is that if a legal question is raised by the defendant in the written statement, it does not mean that the same has to be decided only by way of an application under Order 7 Rule 11 of the Code of Civil Procedure which may amount to prejudging the matter.*
153. *Thus, in terms of law laid down by the Hon'ble Supreme Court, the cause of action is a bundle of facts, which is required to be pleaded and proved for the purposes of obtaining the relief sought for and the Court would be empowered to reject the plaint on the failure of the plaintiff to disclose a cause of action, but the same would not mean that the averments made in the plaint or the document, which have to be relied on, although discloses a cause of action, plaint could be rejected on the ground that it is not sufficient to prove the fact. Further, the Hon'ble Supreme Court also cautioned that the Court cannot dissect the pleadings into several parts and the Court should not embark upon an elaborate enquiry into doubtful or complicated questions of law or facts. Thus the test would be as long as the claim discloses, some cause of action or if it raises some questions, which is fit to be decided, even if the facts of the case reveals that the plaintiff may not succeed, is not a ground to strike down the plaint.*

31. माननीय मद्रास उच्च न्यायालय द्वारा उनवान *Urooj Ahmed vs Preethi Kitchen Appliances* में दिनांक 25.09.2013 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-अ के तहत वाद हेतुक के प्रकटीकरण (Cause of action) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*5(a)(ii). A cause of action would constitute bundle of facts. It implies a right to sue. There is difference between a non disclosure of cause of action and a defective cause of action. There is no difficulty in appreciating the position of law that an application under Order VII Rule 11 of C.P.C., would govern a case of non disclosure of a cause of action. However, it does not govern a defective cause of action. A question as to whether a plaint discloses a cause of action is a question of fact which has to be governed on the basis of the claims made therein in*

*entirety. The Court has to take the averments as true and then apply its mind as to whether a plaint discloses a cause of action or not. Applying the abovesaid principles of law, we are of the view that the averments made in the plaint in the case on hand are sufficient enough to disclose a cause of action. The Honourable Apex Court in Kusum Ingots & Alloys Ltd., v. Union of India and another (2004) 6 Supreme Court Cases, 254) has held as follows:*

*"6.Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.*

32. माननीय मद्रास उच्च न्यायालय द्वारा उनवान *Instituto Hispania vs Mrs.Vinolia Lobo* में दिनांक 04.08.2009 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-अ के तहत वाद हेतुक के प्रकटीकरण (Cause of action) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*151. In ascertaining whether the plaint shows a cause of action, the court is not required to make an elaborate enquiry into doubtful or complicated questions of law or fact. By the statute the jurisdiction of the court is restricted to ascertaining whether on the allegations a cause of action is shown. In Vijai Pratap Singh v. Dukh Haran Nath Singh this Court held: (AIR pp.943-44, para 9). By the express terms of Rule 5 clause (d), the court is concerned to ascertain whether the allegations made in the petition show a cause of action. The court has not to see whether the claim made by the petitioner is likely to succeed: it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him.*

*152. So long as the claim discloses some cause of action or raises some questions fit to be decided by a judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The purported failure of the pleadings to disclose a cause of action is distinct from the absence of full particulars.*

33. सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-ए के तहत दावा के वादहेतुक नहीं होने के बिन्दु पर उपरोक्त न्यायिक दृष्टांतों के अवलोकन से यह सिद्धांत प्रतिपादित किये गये हैं कि वाद पत्र में वादी द्वारा किये गये अभिवचनों की सारगर्भित पठन के पश्चात् वाद पत्र में दावा लाने के अधिकार के तहत स्पष्ट वादहेतुक उत्पन्न होना चाहिए। अगर वादी द्वारा वाद पत्र में वादी द्वारा किये गये अभिवचनों की सारगर्भित पठन के पश्चात् वाद पत्र में दावा लाने के अधिकार के तहत स्पष्ट वादहेतुक उत्पन्न नहीं होकर आभासी वादहेतुक उत्पन्न करने हेतु वाद पत्र के अभिवचनों को बारीकी से संरचित किया जाना प्रतीत हो तो वाद को स्पष्ट वादहेतुक पर आधारित नहीं माना जा सकता है।
34. प्रकरण में वादपत्र के अभिवचनों के सारतः अवलोकन से ज्ञात होता है कि वादी द्वारा अपने वादपत्र के अभिवचनों में स्वीकार किया है कि वादी द्वारा दिनांक 25.01.2017 को जरिये पंजीबद्ध हकतर्कनामा अपने हक का सुजाराम के पक्ष में हकतर्क कर दिया गया है। इससे प्रतीत होता है कि जब वादी द्वारा स्वयं दिनांक 25.01.2017 को जरिये पंजीबद्ध हकतर्कनामा अपने हक का सुजाराम के पक्ष में हकतर्क कर दिया गया है। तो उक्त वादहेतुक पर वादी को दावा लाने का अधिकार समाप्त हो जाता है। अर्थात् उक्त वाद को लाने का वादहेतुक उत्पन्न नहीं होता है। इस आधार पर वादी को उक्त खातेदारी आराजी के संबंध में दावा लाने का आधार एवं वादहेतुक उत्पन्न होना स्पष्ट नहीं होता है। इस प्रकार प्रकरण में वादी को दावा लाने का अधिकार नहीं होने व वादी को दावा लाने हेतु कोई वादहेतुक उत्पन्न नहीं होने के आधार पर दावा सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के तहत प्रकरण वादहेतुक उत्पन्न नहीं होने की श्रेणी के अन्तर्गत प्रतीत होता है। उक्त दावा सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के तहत खारिज किये जाने की श्रेणी के अन्तर्गत प्रतीत होने के आधार पर खारिज किया जाना उचित प्रतीत होता है।
35. इसके साथ ही प्रकरण में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-डी के तहत वाद को रेस-ज्यूडिकेट से संबंधित विधि द्वारा वर्जित बताया गया है। इस संबंध में (Barred by Law) के संबंध में न्यायिक दृष्टान्तों उद्धरण यहां प्रासंगिक है।

#### **Barred by Law**

36. सर्वप्रथम माननीय मद्रास उच्च न्यायालय द्वारा उनवान *M.Nelson Babu vs K.Kamalesh Babu* में दिनांक 15.09.2009 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 आदेश-7 नियम-11 के उपबन्ध-डी के तहत विधि द्वारा वर्जित (Barred by Law) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*11. Order 7 Rule 11(d) has limited application. For its applicability, it must be shown that the present suit is barred under law. Such a conclusion must be drawn from the averments made in the plaint. What would be the relevant for invoking Order 7 Rule 11(d) of CPC are the averments made in the plaint and for that purpose, there cannot be any addition or subtraction. For the purpose of invoking the said provision, no amount of evidence can be looked into.*

37. माननीय मद्रास उच्च न्यायालय द्वारा उनवान *Dega Jayalakshmi & Others Vs. Kapoor Enterprises* में दिनांक 26.08.2009 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-डी के तहत विधि द्वारा वर्जित (Barred by Law) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Law within the meaning of clause (d) of Order VII Rule 11 must include the law of limitation as well.*

38. माननीय उच्चतम न्यायालय द्वारा सिविल अपील 3460 / 2000 उनवान *Popat and Kotecha Property Vs. State Bank of India Staff Association* में दिनांक 29.08.2005 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-डी के तहत विधि द्वारा वर्जित (Barred by Law) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*Clause (d) of Order VII Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 CPC. Clause (d) of Rule 11 of Order VII applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.*

39. माननीय मद्रास उच्च न्यायालय द्वारा उनवान *Balachandra Builders Vs. Anis and others* में दिनांक 01.03.2017 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-डी के तहत विधि द्वारा वर्जित (Barred by Law) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*24. Yet another contention of the learned counsel for the applicant/original 6th defendant is that the suit has to be rejected on the ground of limitation. According to the learned counsel though plea of limitation is generally mixed question of law and facts, when the suit itself is filed beyond the period of limitation, as specifically provided, the suit should be rejected under Order 7 Rule 11 (d), 7 and 8 CPC. In support of his contention, the learned counsel relied on the judgment reported in wherein the Hon'ble Apex Court in paragraph No.25 and 41 held as follows:*

*"25. The language of Order 7, Rule 11, C.P.C. is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the Suit appears from the statement in the Plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of clause (d) of Order 7, Rule 11 must include the law of limitation as well. It is well settled what whether a Plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the Plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the Plaint, if taken to be correct in their entirety, a decree would be passed.*

*The averments made in the Pleint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this court in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I and Popat and Kotecha Property v. state Bank of India Staff Assn.*

40. माननीय मद्रास उच्च न्यायालय द्वारा उनवान *Kasthuri and others Vs. Baskaran and another* में दिनांक 22.08.2003 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-डी के तहत विधि द्वारा वर्जित (Barred by Law) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*19. It is settled law as held by various Courts that where on the face of the plaint, a suit appears to be barred by any law, the Court shall dismiss the suit. But where it does not so appear, but requires further consideration or, in other words, if there be any doubt or if the Court is not sure and certain that the suit is barred by some law, the Court cannot reject the plaint under Clause (d) of Order 7 Rule 11 of C.P.C.*

*20. In this context, it would be relevant to quote the observation made by the Bombay High Court in A.I.R.1999 Bombay 161 (supra), with which I entirely agree. The observation is as follows:*

*"It is settled law that the plaint can be rejected as disclosing no cause of action if the Court finds that it is plain and obvious that the case put forward is unarguable. The phrase "does not disclose a cause of action" has to be very narrowly construed. Rejection of the plaint at the threshold entails very serious consequences for the plaintiff. This power has, therefore, to be used in exceptional circumstances. The Court has to be absolutely sure that on a meaningful reading of the plaint it does not make out any case. The plaint can only be rejected where it does not disclose a cause of action or where the suit appears from the statements made in the plaint to be barred by any provision of the law. While exercising the power of rejecting the plaint, the Court has to act with utmost caution. This power ought to be used only when the Court is absolutely sure that the plaintiff does not have an arguable case at all. The exercise of this power though arising in civil procedure, can be said to belong to the realm of criminal jurisprudence and any benefit of the doubt must go to the plaintiff, whose plaint is to be branded as an abuse of the process of the Court. This jurisdiction ought to be very sparingly exercised and only in very exceptional cases. The exercise of this power would not be justified merely because the story told in the pleadings was highly improbable or which may be difficult to believe."*

41. माननीय उच्चतम न्यायालय द्वारा सिविल अपील 4766/2001 उनवान *Ramesh B. Desai and Others Vs. Bipin Vadilal Mehta and Others*, में दिनांक 11.07.2006 को

दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-डी के तहत विधि द्वारा वर्जित (Barred by Law) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*The plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11 CPC. The principle is, therefore, well settled that in order to examine whether the plaint is barred by any law, as contemplated by sub-rule (d) of Order VII Rule 11 CPC, the averments made in the plaint alone have to be seen and they have to be assumed to be correct. It is not permissible to look into the pleas raised in the written statement or to any piece of evidence.*

42. माननीय मद्रास उच्च न्यायालय द्वारा उनवान *Chandra Vs. Reddappa Reddy* में दिनांक 10.06.2011 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-डी के तहत विधि द्वारा वर्जित (Barred by Law) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*When a part of the relief sought for in the plaint is within time and even if another part of the relief sought for in the plaint is barred by limitation, a plaint cannot be rejection in part. A plaint cannot be rejected in part is a well settled proposition of law. Therefore, the trial court is right in rejecting the application. Further, it has to be pointed out that it is also well settled that the question of limitation is a mixed question of law and fact and therefore that has to be decided only on the basis of the evidence adduced in the trial and therefore the trial court is right in rejecting the application.*

43. माननीय उच्चतम न्यायालय द्वारा सिविल अपील 2517 / 2007 उनवान *Hardesh Ores Pvt. Ltd vs M/S. Hede And Company* में दिनांक 15.05.2007 को दिये गये निर्णय में सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के उपबन्ध-डी के तहत विधि द्वारा वर्जित (Barred by Law) के संबंध में दृष्टान्त प्रतिपादित किया है। जिसके प्रासंगिक पैरा का उद्धरण इस प्रकार है:-

*21. The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII is applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of clause*

*(d) is quite clear but if any authority is required, one may usefully refer to the judgments of this court in Liverpool & London S.P. & I Association Ltd. Vs. M.V. Sea Success I and another : (2004) 9 SCC 512 and Popat and Kotecha Property Vs. State Bank of India Staff Association : (2005) 7 SCC 510.*

44. प्रकरण में बिन्दु के विश्लेषण से पूर्व पंजीकृत दस्तावेज के शून्यकरणीय व आरंभ से शून्य होने तथा राजस्व न्यायालय व सिविल न्यायालय के क्षेत्राधिकार को लेकर विधि की स्थिति को समझना आवश्यक है।

### Void : Voidable

45. इस संबंध में माननीय न्यायालयों द्वारा प्रतिपादित असंख्य न्यायिक दृष्टांतों के द्वारा सहदायक द्वारा सहदायिकी संपत्ति में अपने हिस्से के बेचान के पंजीकृत दस्तावेज के शून्य व शून्यकरणीय होने संकल्पना/अवधारणा की व्याख्या की गई है। इस श्रृंखला में कुछ महत्वपूर्ण न्यायिक दृष्टांतों द्वारा की गई विवेचना का उद्धरण प्रकरण में प्रासंगिक है। इस संबंध में माननीय उच्चतम न्यायालय द्वारा सिविल अपील संख्या 598 / 2005 बउनवान **Baljinder Singh vs Rattan Singh** में दिनांक 05.08.2008 को दिये गये निर्णय में शून्य व शून्यकरणीय होने की संकल्पना/अवधारणा के संबंध में विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण निम्न प्रकार है:-

24. *In Sadasivam v. K. Doraisamy (AIR 1996 SC 1724) it was found that when the father has executed sale deed in favour of a near relative and the intention to repay debt or legal necessity has not been proved as a sham transaction.*

25. *In Words and Phrases by Justice R.P. Sethi the expression 'void' and 'voidable' read as under:*

*"Void- Black's Law Dictionary gives the meaning of the word "void" as having different nuances in different connotations. One of them is of course "null or having no legal force or binding effect". And the other is "unable in law, to support the purpose for which it was intended". After referring to the nuances between void and voidable the lexicographer pointed out the following: "The word 'void' in its strictest sense, means that which has no force and effect, is without legal efficacy, is incapable of being enforced by law, or has no legal or binding force, but frequently the word is used and construed as having the more liberal meaning of 'voidable'. The word 'void' is used in statute in the sense of utterly void so as to be incapable of ratification, and also in the sense of voidable and resort must be had to the rules of construction in many cases to determine in which sense the legislature intended to use it. An act or contract neither wrong in itself nor against public policy, which has been declared void by statute for the protection or benefit of a certain party, or class of parties, is voidable only". (Pankan Mehra and Anr. v. State of Maharashtra and Ors. (2000 (2) SCC 756).*

*Per Fazal Ali, J- The meaning of the word "void" is stated in Black's Law Dictionary (3rd Edn.) to be as follows:*

*"Null and void; ineffectual; nugatory; having no legal force or binding effect; unable in law to support the purpose for which it was intended; nugatory and ineffectual so that nothing can cure it; not valid". Keshavan Madhava Menon v. State of Bombay (1951 SCR 228).*

*The expression "void" has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. Judicial Review of Administration Action, 5th Edn., para 5-044 (See also Judicial Remedies in Public Law at page 131; Dhurandhar Prasad Singh v. Jai Prakash University and Ors. (2001 (6) SCC 534) The other type of void act, e.g. may be transaction against a minor without being represented by a next friend. Such a transaction is a good transaction against the whole world. So far as the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate preceding the transaction becomes void from the very beginning. Another type of void act may be one, which is not a nullity, but for avoiding the same, a declaration has to be made. (See Government of Orissa v Ashok Transport Agency and Ors (2002 (9) SCC 28) The meaning to be given to the word "void" in Article 13 of the Constitution is no longer res integra, for the matter stands concluded by the majority decision of the Court in Keshavan Madhava Menon v. The State of Bombay (1951) SCR 228. We have to apply the ratio decidendi in that case to the facts of the present case. The impugned Act was a existing law at the time when the Constitution came into force. That existing law imposed on the exercise of the right guaranteed in the citizens of the India by Article 19(1)(g) restrictions which could not be justified as reasonable under clause (6) as it then stood and consequently under Article 13 (1) that existing Law became void "to the extent of such inconsistency". As explained in Keshavan Madhava Menon's case (supra) the Law became void in toto or for all purposes or for all times or for all persons but only "to the extent of such inconsistency", that is to say, to the extent it became inconsistent with the provisions of Part III which conferred the fundamental rights on the citizens. It did not become void independently of the existence of the rights guaranteed by Part III. (See Bhikaji Narain Dhakras and Ors. v. The State of Madhya Pradesh and Anr. (1955 (2) SCR 589).*

*The word "void" has a relative rather than an absolute meaning. It only conveys the idea that the order is invalid or illegal. In Halsbury's Laws of England, 4th Edn. (Re-issue) Vol. 1(1) in para 26, p.31 it is stated thus: "If an act of decision, or an order or other instrument is invalid, it should, in principle, be null and void for all purposes; and it has been said that there are no degrees of nullity. Even though such an act is wrong and lacking in jurisdiction, however, it subsists and remains fully effective unless and until it is set aside by a court of competent jurisdiction. Until its validity is challenged, its legality is preserved". (See State of Kerala v.*

*M.K. Kunhikannan Nambiar Manjeri Manikoth, Naduvil (dead) and ors. (1996 (1) SCC 435).*

*"Voidable act" is that which is a good act unless avoided, e.g. if a suit is filed for a declaration that a document is fraudulent, it is voidable as the apparent state of affairs is the real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given, a transaction becomes void from the very beginning. There may be voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable. Government of Orissa v. Ashok Transport Agency and Ors. (2002 (9) SCC 28)".*

46. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील संख्या 4481/2001 बउनवान **Dhurandhar Prasad Singh vs Jai Prakash University** में दिनांक 24.07.2001 को दिये गये निर्णय में शून्य व शून्यकरणीय होने की संकल्पना/अवधारणा के संबंध में विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण निम्न प्रकार है:-

*The expressions void and voidable have been subject matter of consideration before English Courts times without number. In the case of Durayappah v. Fernando and others [1967] 2 All England Law Reports 152, the dissolution of municipal council by the minister was challenged. Question had arisen before the Privy Council as to whether a third party could challenge such a decision. It was held that if the decision was complete nullity, it could be challenged by anyone, anywhere. The Court observed at page 158 thus:-*

*The answer must depend essentially on whether the order of the Minister was a complete nullity or whether it was an order voidable only at the election of the council. If the former, it must follow that the council is still in office and that, if any councillor, ratepayer or other person having a legitimate interest in the conduct of the council likes to*

*take the point, they are entitled to ask the court to declare that the council is still the duly elected council with all the powers and duties conferred on it by the Municipal Ordinance.*

*In the case of In re McC. (A minor) [ 1985 ] 1 Appeal Cases 528, the House of Lords followed the dictum of Lord Coke in the Marshalsea Case quoting a passage from the said judgment which was rendered in 1613 where it was laid down that where the whole proceeding is coram non judice which means void ab initio, the action will lie without any regard to the precept or process. The Court laid down at page 536 thus:-*

*Consider two extremes of a very wide spectrum. Jurisdiction meant one thing to Lord Coke in 1613 when he said in the Marshalsea Case (1613) 10 Co. Rep.68b, at p.76a:*

*when a court has jurisdiction of the cause, and, proceeds in verso ordine or erroneously, there the party who sues, or the officer or minister of the court who executes the precept or process of the court, no action lies against them. But when the court has not jurisdiction of the cause, there the whole proceeding is coram non judice, and actions will lie against them without any regard of the precept or process.*

*The Court of the Marshalsea in that case acted without jurisdiction because, its jurisdiction being limited to members of the Kings household, it entertained a suit between two citizens neither of whom was a member of the Kings household. Arising out of those proceedings a party arrested by process of the Marshalsea could maintain an action for false imprisonment against, inter alios, the Marshal who directed the execution of the process. This is but an early and perhaps the most quoted example of the application of a principle illustrated by many later cases where the question whether a court or other tribunal of limited jurisdiction has acted without jurisdiction (coram non judice) can be determined by considering whether at the outset of the proceedings that court had jurisdiction to entertain the proceedings at all. So much is implicit in the Lord Cokes phrase jurisdiction of the cause.*

*In another decision, in the case of Director of Public Prosecutions v. Head [1959] Appeal Cases 83, House of Lords was considering validity of an order passed by Secretary of the State in appeal preferred against judgment of acquittal passed in a criminal case. The Court of Criminal Appeal quashed the conviction on the ground that the aforesaid order of Secretary was null and void and while upholding the decision of the Court of Criminal Appeal, the House of Lords observed at page 111 thus:-*

*This contention seems to me to raise the whole question of void or voidable: for if the original order was void, it would in law be a nullity. There would be no need for an order to quash it. It would be automatically null and void*

*without more ado. The continuation orders would be nullities too, because you cannot continue a nullity. The licence to Miss Henderson would be a nullity. So would all the dealings with her property under Section 64 of the Act of 1913. None of the orders would be admissible in evidence. The Secretary of State would, I fancy, be liable in damages for all of the 10 years during which she was unlawfully detained, since it could all be said to flow from his negligent act; see section 16 of the Mental Treatment Act, 1930.*

*But if the original order was only voidable, then it would not be automatically void. Something would have to be done to avoid it. There would have to be an application to the High Court for certiorari to quash it.*

*This question was examined by Court of Appeal in the case of R. v. Paddington Valuation Officer and another, Ex parte Peachey Property Corporation, Ltd. [1965] 2 All England Law Reports 836 where the valuation list was challenged on the ground that the same was void altogether. On these facts, Lord Denning, M.R. laid down the law observing at page 841 thus:-*

*It is necessary to distinguish between two kinds of invalidity. The one kind is where the invalidity is so grave that the list is a nullity altogether. In which case there is no need for an order to quash it. It is automatically null and void without more ado. The other kind is when the invalidity does not make the list void altogether, but only voidable. In that case it stands unless and until it is set aside. In the present case the valuation list is not, and never has been, a nullity. At most the first respondent-acting within his jurisdiction-exercised that jurisdiction erroneously. That makes the list voidable and not void. It remains good until it is set aside.*

*De Smith, Woolf and Jowell in their treatise Judicial Review of Administrative Action, Fifth Edition, paragraph 5-044, has summarised the concept of void and voidable as follows: Behind the simple dichotomy of void and voidable acts (invalid and valid until declared to be invalid) lurk terminological and conceptual problems of excruciating complexity. The problems arose from the premise that if an act, order or decision is ultra vires in the sense of outside jurisdiction, it was said to be invalid, or null and void. If it is intra vires it was, of course, valid. If it is flawed by an error perpetrated within the area of authority or jurisdiction, it was usually said to be voidable; that is, valid till set aside on appeal or in the past quashed by certiorari for error of law on the face of the record. Clive Lewis in his works Judicial Remedies in Public Law at page 131 has explained the expressions void and voidable as follows:-*

*A challenge to the validity of an act may be by direct action or by way of collateral or indirect challenge. A direct action is one where the principal purpose of the*

*action is to establish the invalidity. This will usually be by way of an application for judicial review or by use of any statutory mechanism for appeal or review. Collateral challenges arise when the invalidity is raised in the course of some other proceedings, the purpose of which is not to establish invalidity but where questions of validity become relevant.*

*Thus the expressions void and voidable have been subject matter of consideration on innumerable occasions by courts. The expression void has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. The other type of void act, e.g., may be transaction against a minor without being represented by a next friend. Such a transaction is good transaction against the whole world. So far the minor is concerned, if he decides to avoid the same and succeeds in avoiding it by taking recourse to appropriate proceeding the transaction becomes void from the very beginning. Another type of void act may be which is not a nullity but for avoiding the same a declaration has to be made. Voidable act is that which is a good act unless avoided, e.g., if a suit is filed for a declaration that a document is fraudulent and/or forged and fabricated, it is voidable as apparent state of affairs is real state of affairs and a party who alleges otherwise is obliged to prove it. If it is proved that the document is forged and fabricated and a declaration to that effect is given a transaction becomes void from the very beginning. There may be a voidable transaction which is required to be set aside and the same is avoided from the day it is so set aside and not any day prior to it. In cases, where legal effect of a document cannot be taken away without setting aside the same, it cannot be treated to be void but would be obviously voidable.*

47. प्रकरण में शून्य व शून्यकरणीय होने की संकल्पना/अवधारणा की अवधारणा को समझने के पश्चात पंजीकृत दस्तावेज के शून्य व शून्यकरणीय होने के आधार पर सिविल न्यायालय एवं राजस्व न्यायालय के क्षेत्राधिकार के विवाद के संबंध में कानूनन स्थिति की स्पष्टता को समझना आवश्यक है। इस संबंध में माननीय राजस्थान उच्च न्यायालय जयपुर द्वारा सिविल प्रथम अपील संख्या 330/2010 बउनवान **Ram Kripal Dasji Charitable Trust vs Phool Chand** में दिनांक 29.02.2012 को दिये गये निर्णय में पंजीकृत दस्तावेज के शून्य व शून्यकरणीय होने के आधार पर सिविल न्यायालय एवं राजस्व न्यायालय के क्षेत्राधिकार के विवाद के संबंध में विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण निम्न प्रकार है:-

11. (.....)

*(vi) It is well settled that the question of jurisdiction namely whether a suit is exclusively triable by a revenue court or a Civil Court can take cognizance of it has to be*

*decided on the allegations made in the plaint. It is also further settled that it is the substance of the plaint and the true nature of the suit that is to be seen to determine the question of jurisdiction. If in substance the relief claimed is one which the revenue court alone is entitled to give, the jurisdiction of the civil court will be ousted even though it may require the revenue court to incidentally determine some ancillary facts. In order to determine the true nature of the relief claimed in a suit, the pith and substance and not the form in which the relief may be couched has to be considered. Each case has to be examined on its own particular facts and no universal rule can be applicable to every case.*

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*In my view unless a clear finding to that effect is given, the relief claimed by the appellant cannot be granted. Under the provisions of Rajasthan Tenancy Act, declaration and permanent injunction regarding an agricultural land can be granted only by a revenue court. It cannot be disputed that a suit for declaration of tenancy rights regarding an agricultural land has to be filed under Section 88 whereas a suit for permanent injunction has to be filed under Section 188 of the Rajasthan Tenancy Act. Section 207 of the Rajasthan Tenancy Act provides that all suits of the nature specified in the III Schedule of the Act shall be heard and determined by a revenue court and no court other than a revenue court shall take cognizance of any such suit. A suit for declaration finds place in Item No.5 whereas suit for permanent injunction finds place in Item No.23 C of the III Schedule. It is thus, very much clear that the present suit was clearly barred by law as Section 207 of the Rajasthan Tenancy Act bars such a suit from being taken cognizance and considered by a court other than a revenue court. The learned trial Court has rightly arrived at a conclusion that the suit is not entertainable by a civil Court.*

48. इसी प्रकार माननीय राजस्थान उच्च न्यायालय जोधपुर द्वारा सिविल रिवीजन संख्या 137 / 2015 बउनवान **Hasti Cement Pvt. Ltd. & Anr vs Sandeep Charan** में दिनांक 07.03.2018 को दिये गये निर्णय में पंजीकृत दस्तावेज के शून्य व शून्यकरणीय होने के आधार पर सिविल न्यायालय एवं राजस्व न्यायालय के क्षेत्राधिकार के विवाद के संबंध में विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण निम्न प्रकार है:-

*From what has been noticed hereinbefore, it can be safely concluded that if the allegation in the plaint/substance of the allegations in the plaint allege the instrument to be void and no cancellation is required and without seeking such cancellation the relief of declaration pertaining to tenancy rights with regard to the agricultural land in question can be obtained by the plaintiff, only the revenue courts would have jurisdiction to deal with the subject matter of the suit and consequently the jurisdiction of civil*

*courts would be barred. However, if the allegations made in the plaint make out a case of document being voidable, relief of cancellation of such a voidable document can only be granted by civil court and irrespective of the fact that the instrument pertains to agricultural land, the suit would not be barred under Section 207 of the Tenancy Act. Therefore, the trial court in each case, where a issue in this regard is raised, based on the stage of the suit i.e. either based on the plaint averments or the evidence available on record would have to come to a conclusion as to whether the facts as alleged, if established or as established in a case where evidence has been led makes the instrument void or voidable and decide accordingly.*

*The fact that even in a case of a void document a relief of declaration in this regard has been sought, as laid down in the case of Rukmani (supra) once the declaration about status of Tenancy rights is granted, the consequential relief to the effect that the instrument in question is void and ineffective can always be granted by the revenue court.*

49. इस प्रकार उपरोक्त न्यायिक दृष्टांतों के अवलोकन से विवादित संपत्ति पर खातेदारी अधिकार निहित होने व विवादित संपत्ति का पंजीकृत दस्तावेज द्वारा अंतरण किए जाने की स्थिति में राजस्व न्यायालय व सिविल न्यायालय के क्षेत्राधिकार के मध्य संशय की स्थिति को स्पष्ट करते हुए निम्न प्रकार कानूनन स्थिति स्पष्ट की गई है:—

1. पंजीकृत दस्तावेज के आरंभ से शून्य होने की स्थिति में राजस्व न्यायालय से अनुतोष प्राप्त किया जा सकता है। साथ ही पंजीकृत दस्तावेज के शून्यकरणीय होने की स्थिति में केवल सिविल न्यायालय का क्षेत्राधिकार होता है।
2. अगर वादपत्र में विवादित संपत्ति के अंतरण के पंजीकृत दस्तावेज को निरस्त करवाने का मुख्य अनुतोष है तथा अन्य अनुतोष आनुषंगिक है उस स्थिति में केवल सिविल न्यायालय का क्षेत्राधिकार होता है।
3. अगर वादपत्र में विवादित संपत्ति पर खातेदारी अधिकार की घोषणा का अनुतोष मुख्य अनुतोष है तथा विवादित संपत्ति के अंतरण के पंजीकृत दस्तावेज को निरस्त करवाने का आनुषंगिक अनुतोष है उस स्थिति में केवल राजस्व न्यायालय का क्षेत्राधिकार होता है।

50. इसी प्रकार माननीय उच्चतम न्यायालय द्वारा सिविल अपील संख्या 1269—1270 / 2019 बउनवान **Pyarelal vs Shubhendra Pilonia (Minor)** में दिनांक 29.01.2019 को दिये गये निर्णय में पंजीकृत दस्तावेज के शून्य व शून्यकरणीय होने

के आधार पर सिविल न्यायालय एवं राजस्व न्यायालय के क्षेत्राधिकार के विवाद के संबंध में विवेचना की है। जिसके प्रासंगिक पैरा का उद्धरण निम्न प्रकार है:-

*11 Section 9 of the Code of Civil Procedure provides thus:*

*“9. Courts to try all civil suits unless barred - The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.*

*Explanation I - A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.*

*Explanation II - For the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place.” Section 9 empowers civil courts to try all suits of a civil nature unless expressly or impliedly barred by any statute.*

*12 Section 256 of the Tenancy Act provides thus:*

*“256. Bar to jurisdiction of civil courts — (i) Save as otherwise provided specifically by or under this Act, no suit or proceeding shall lie in any civil court with respect to any matter arising under this Act or the rules made thereunder, for which a remedy by way of suit, application, appeal or otherwise is provided therein. सत्यमेव जयते*

*(2) Save as aforesaid no order passed by the State Government or by any revenue court or officer in exercise of the powers conferred by this Act or the rules made thereunder, shall be liable to be questioned in any civil court.” Section 256 bars the jurisdiction of civil courts, save as otherwise provided under the Tenancy Act. Civil courts are expressly barred from trying a suit or proceeding with respect to matters arising under the Tenancy Act or rules made under it for which a remedy by way of a suit, application, appeal or otherwise is provided in the Tenancy Act.*

*13 Section 207 of the Tenancy Act provides thus:*

*“207. Suits and applications cognizable by revenue court only— (1) All suits and applications of the nature specified in the*

*Third Schedule shall be heard and determined by a revenue court.*

*(2) No court other than a revenue court shall take cognizance of any such suit or application or of any suit or application based on a cause of action in respect of which any relief could be obtained by means of any such suit or application.*

*Explanation.— If the cause of action is one in respect of which relief might be granted by the revenue court, it is immaterial that the relief asked for from the civil court is greater than, or additional to, or is not identical with, that which the revenue court could have granted.”*

*Section 207 of the Tenancy Act states that no court other than a revenue court shall take cognizance of suits and applications of the nature specified in the Third Schedule. Such suits can be heard and determined by a revenue court which has exclusive jurisdiction.*

*The explanation clarifies that if the cause of action is one in respect of which relief may be granted by the revenue court, then it is immaterial that a relief sought from the civil court is greater than, in addition to or not identical to the relief sought from the revenue court. Where a suit is of a nature specified in any of the provisions of the Third Schedule, the bar under Section 256 is attracted and the revenue courts have exclusive jurisdiction to try the suit.*

*14 In Bank of Baroda v Moti Bhai<sup>4</sup>, a two judge Bench of this Court dealt with the question of jurisdiction under Sections 207 and 256 of the Tenancy Act. A bank had sanctioned a demand loan facility to the respondent for which the respondent executed a promissory note and a simple mortgage in favour of the bank. On his failure to repay the loan, the Bank instituted a suit in the civil court for recovery. The respondent raised a preliminary objection that the suit was essentially one for enforcing the mortgage and that the revenue court had the exclusive jurisdiction to entertain the suit by reason of the provisions contained in the Tenancy Act. The Trial court dismissed the objection. Allowing the revision filed by the respondent, the High Court held that that the mortgage deed in respect of agricultural lands formed an essential part of the cause of action. Upon an analysis of Sections 207 and 256 of the Tenancy Act, a two judge Bench of this Court set aside the judgment of the High Court with the following reasons:*

*“5. A combined reading of these two sections would show that the jurisdiction of civil courts is barred only in respect of suits and applications of the nature specified in the Third Schedule to the Act and in respect of suits or applications based on a cause of action in respect of which any relief could be obtained by means of a suit or application of the nature specified in the Third Schedule. The civil court has no jurisdiction to entertain a suit or proceeding with respect to any matter arising under the Act or the Rules made thereunder, provided that a remedy by way of a suit, application or appeal or otherwise is provided in the Act.*

*A loan given by a Bank to an agriculturist, which is in the nature of a commercial transaction, is outside the contemplation of the Act and can, by no stretch of imagination, be said to be in respect of any matter arising under the Act... The business of the Bank, in so far as lending transactions are concerned, is not to lend moneys on mortgages but the business is to lend moneys.*

*8. On the question of jurisdiction, one must always have regard to the substance of the matter and not to the form of the suit. If the matter is approached from that point of view, it would be clear that, primarily and basically, the suit filed by the Bank is one for recovering the amount which is due to it from the respondents on the basis of the promissory note executed by respondent 1 and the guarantee given by respondents 2 and 3.” (Emphasis supplied) Section 207 read with Section 256 of the Tenancy Act bars the jurisdiction of the civil courts in respect of suits and applications of the nature specified in the Third Schedule to the Act. The question before us is whether the relief claimed by the appellant can be granted exclusively by a revenue court under the provisions of the Tenancy Act.*

*15 Section 88 of the Tenancy Act provides thus:*

*“88. Suits for declaration of right:- (1) Any person claiming to be a tenant or a co-tenant may sue for a declaration that he is a tenant or for a declaration of his share in such joint tenancy.*

*(2) A tenant of Khudkasht may sue for a declaration that he is such a tenant.*

*(3) A sub-tenant may sue the person from whom he holds for declaration that he is a sub-tenant. (4) A landholder other than a State Government may sue a person claiming to be a tenant or co-tenant of a holding or a tenant of Khudkasht or a sub-tenant for a declaration of the right of such person.”*

*Sl. No. 5 of the Third Schedule provides thus:*

*“THE THIRD SCHEDULE Suits, Applications and Appeals under the Act (See Sections 207, 214, 215 & 217)  
S. Section Description of suit, application or Period of Time Proper Court/ No. of Act appeal limitation from Court Fees Officer which competent period to dispose begins to of run*

**“THE THIRD SCHEDULE  
Suits, Applications and Appeals under the Act  
(See Sections 207, 214, 215 & 217)**

S.No.	Section of Act	Description of suit, application or appeal	Period of limitation	Time from which period begins to run	Proper Court Fees	Court/Officer competent to dispose of
5.	88	Suit for declaration of the plaintiffs right :- (i) as a tenant, or (ii) as a tenant of khudkasht, or (iii) as a sub-tenant, or (iv) for a share in a joint tenancy		None	One rupee	Assistant Collector

*Sl. No. 5 in the Third Schedule read with Section 207 of the Tenancy Act stipulates that a suit for the declaration of a right provided in Section 88 would lie before a revenue court. In a suit where the relief sought for is the declaration of the right stipulated in Section 88, Sections 207 and 256 read with the Third Schedule bar the jurisdiction of civil courts and vest jurisdiction exclusively with a revenue court.*

51. इस प्रकार उपरोक्त न्यायिक दृष्टांतों के अवलोकन से विवादित संपत्ति पर खातेदारी अधिकार निहित होने व विवादित संपत्ति का पंजीकृत दस्तावेज द्वारा अंतरण किए जाने की स्थिति में राजस्व न्यायालय व सिविल न्यायालय के क्षेत्राधिकार के मध्य संशय की स्थिति को स्पष्ट करते हुए निम्न प्रकार कानूनन स्थिति स्पष्ट की गई है:-

1. राजस्व न्यायालय से विवादित संपत्ति पर खातेदारी अधिकार की घोषणा प्राप्त करने के पश्चात ही विवादित संपत्ति के अंतरण के पंजीकृत दस्तावेज को निरस्त करवाने बाबत सिविल न्यायालय में अनुतोष प्राप्त किया जा सकता है।

52. इस प्रकार उपरोक्त न्यायिक दृष्टांत के अवलोकन से स्पष्ट है कि अगर वादपत्र में विवादित संपत्ति पर खातेदारी अधिकार की घोषणा का अनुतोष मुख्य अनुतोष है तथा विवादित संपत्ति के अंतरण के पंजीकृत दस्तावेज को निरस्त करवाने का आनुषंगिक अनुतोष है उस स्थिति में केवल राजस्व न्यायालय का क्षेत्राधिकार होता है।

53. प्रकरण में वादी द्वारा अपने वादपत्र में अभिकथन किया गया है कि दिनांक 25.01.2017 को निष्पादित पंजीबद्ध हकतर्कनामा सुजाराम द्वारा वादी को धोखे से तहसील में लाकर अन्य दस्तावेजों पर दस्तख्त करवाने के दौरान धोखे से निष्पादित करवाया है। इससे प्रतीत होता है कि दिनांक 25.01.2017 को निष्पादित पंजीबद्ध हकतर्कनामा को शून्यकरणीय होने के आधार पर घोषणा का दावा हाजा न्यायालय में प्रस्तुत किया गया है। इस संबंध में विधि की स्थिति स्पष्ट है कि पंजीकृत दस्तावेज के आरंभ से शून्य होने की स्थिति में राजस्व न्यायालय से अनुतोष प्राप्त किया जा सकता है। साथ ही पंजीकृत दस्तावेज के शून्यकरणीय होने की स्थिति में केवल सिविल न्यायालय का क्षेत्राधिकार होता है। इस प्रकार दिनांक 25.01.2017 को निष्पादित पंजीबद्ध हकतर्कनामा को शून्यकरणीय होने के आधार पर घोषणा का दावा को सुनवाई का क्षेत्राधिकार राजस्व न्यायालय का नहीं होकर सिविल न्यायालय का है। क्योंकि उक्त पंजीबद्ध हकतर्कनामा को हाजा न्यायालय में आरम्भ से ही शून्य, अवैध व निष्प्रभावी होने के आधार पर चुनौती नहीं दी गई है। बल्कि उक्त पंजीबद्ध हकतर्कनामा को शून्यकरणीय होने के आधार पर चुनौती दी गई है। जिसका हाजा न्यायालय को क्षेत्राधिकार नहीं है। इस प्रकार वादी द्वारा प्रस्तुत हस्तगत दावा सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के तहत विधि द्वारा वर्जित प्रतीत होता है।

54. इस प्रकार उपरोक्त न्यायिक दृष्टान्तों के अवलोकन से स्पष्ट है कि प्रकरण का निर्णयन गुणावगुण के आधार पर किया जाना अपेक्षित नहीं है। प्रकरण में उक्त आधार पर दावा सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के तहत प्रकरण विधि द्वारा वर्जित की श्रेणी के अन्तर्गत प्रतीत होता है। साथ ही प्रकरण में वादी को दावा लाने का अधिकार नहीं होने व वादी को दावा लाने हेतु कोई वादहेतुक उत्पन्न नहीं होने के आधार पर दावा सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के तहत प्रकरण वादहेतुक उत्पन्न नहीं होने की श्रेणी के अन्तर्गत प्रतीत होता है। अतः सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के तहत खारिज किये जाने की श्रेणी के अन्तर्गत प्रतीत होने के आधार पर वादपत्र खारिज किया जाना उचित प्रतीत होता है। अतः

आदेश है कि

*सिविल प्रक्रिया संहिता-1908 के आदेश-7 नियम-11 के तहत अप्रार्थी द्वारा प्रस्तुत प्रार्थना पत्र स्वीकार किया जाकर दावा खारिज किया जाता है।*

उक्त निर्णय आज 13.10.2025 को मेरे द्वारा सरे इजलास सुनाया जाकर हस्ताक्षर एवं मोहर युक्त जारी किया गया।

(केशव कुमार मीना आर.ए.एस)  
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