

Present: Smt. Suparna Ray (JO Code:WB00711)
Judge, Commercial Court at Alipore
Title Suit 04 of 2025
CNR No. WBSP18-000059-2025

Order No. 33

Date: 06.11.2025

In the matter of:

Suit for declaration and permanent injunction valued at Rs. 60,000/- and Rs. 5,000/- respectively total Rs. 65,000/-.

AND

In the matter of:

Debasish Kumar & 04 Ors.

Vs.

Ananta Kumar Ghosh & 08 Ors.

Appearance:

Mr. S. P. Mukherjee...Ld. Sr. Adv.
Mr. Shuvasish Sengupta... Ld. Adv.
Mr. Pushan Kar...Ld. Adv.
Mr. Souvik Majumdar...Ld. Adv.
Ms. AnnapurbaBanerjee...Ld. Adv.
Ms. Ajeya Chowdhury...Ld. Adv.

.....for the Plaintiffs/Respondents.

Mr. Jaydip Kar...Ld. Sr. Advocate
Mr. Pranit Bag... Ld. Advocate
Ms. Sayantani Das...Ld. Advocate
Ms. Rituparna Chatterjee...Ld. Advocate
Ms. Megha Yadav...Ld. Advocate

.....for the Defendants/Petitioners.

Order

Today is fixed for passing the Order of an application filed by the defendant nos. 8 and 9 under Order VII Rule 11 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as the "CPC") for rejection of the plaint of the instant Title Suit being T.S. (Com) No. 04 of 2025.

Plaintiffs and defendant nos. 8 and 9 file their respective haziras.

Now, the instant record is taken up for passing order.

1. Before going into the instant case, it is to be noted that by an Judgment dated 27.03.2025 in ALP No. 02 of 2025, the Hon'ble High Court at Calcutta was pleased to make certain observations which are as follows:

“23. Accordingly Title Suit No. 469 of 2023 pending in the file of the learned Civil Judge (Senior Division) 4th Court, Alipore is hereby withdrawn and transferred to the Court/file of the Commercial Court at Alipore, 24 Parganas (S).

24. Keeping in mind all the factors as stated and above all, for the purpose of justice, the Commercial Court at Alipore is directed to hear the Commercial Suit being No. 48 of 2023 along with Title Suit No. 469 of 2023 transferred from the Court of learned 4th Civil Judge (Senior Division) at Alipore, by making all endeavour to conduct day to day hearing, without granting unnecessary adjournments, and dispose of the two suits to be heard analogously, preferably within a period of six months from the date of transfer of records as directed.

25. The Learned District Judge, at Alipore is directed to ensure the transfer of records in Title Suit No. 469 of 2023 from the court of learned 4th Civil Judge (Senior Division) at Alipore to the Commercial Court at Alipore within 15 days from the date of this order.”

2. Then, a review application was filed in respect of the aforesaid Judgment being registered as RVWO/12/2025, however, in the said review proceeding, the Hon'ble High Court was pleased to dismiss the same holding as ***“20. Thus there being no ground for review having been made out, RVWO/12/2025 arising out of ALP/2/2025 stands***

dismissed. Consequently, the connected application IA No. GA/1/2025 also stands dismissed”.

3. Thereafter, in another ALP/10/2022 by an Order dated 27.08.2025, the Hon’ble High Court further observed as follows:

“The Court has considered the submissions. It is a matter of record that the issue as to the transfer of Commercial Suit No. 48 of 2023 has already been considered by this Court in ALP 2 of 2025. The Co-ordinate Bench of this Court vide detailed order issued, inter alia, directions for analogous trial of Commercial Suit being 48 of 2023 and Title Suit 469 of 2023. Therefore, this Court considers that at this stage the transfer of Commercial Suit No. 48 of 2023 from the Learned Commercial Court at Alipore to this Court is not warranted. As far as the apprehension of the petitioners is concerned this Court reiterates in unequivocal terms and directs that the learned Commercial Court at Alipore shall conduct the Trial in analogous manner of Commercial Suit No. 48 of 2023 and Title Suit No. 469 of 2023 expeditiously in accordance with law.

With the able assistance of both the learned Counsel it appears that in Title Suit No. 48 of 2023 the interim applications IA/2/2023, IA/3/2023 and IA/28/2025 are pending. Similarly, in Title Suit 469 of 2023 an application under Order 7 Rule 11 CPC (not numbered) is pending. The learned Trial Court is directed to dispose of all the pending interim applications as expeditiously as possible and within 30 days after giving the parties an opportunity of being heard. The application being IA/28/2025 be heard and decided first as it may have some impact on the fate of the suit.”

4. This Court has regarded the observations made in the aforesaid orders by the Hon'ble High Court and considered the instant case to that extent.

5. Delineation of the case as made out in the instant application is as follows.

6. The instant suit has been instituted by the plaintiffs against the defendants, *inter alia*, praying for the following reliefs:

- a. A decree for declaration that the plaintiffs have acquired absolute title over the suit premises by virtue of adverse possession;
- b. A decree for permanent injunction restraining the defendants and their men or agents from interfering in the plaintiffs' possession of the suit premises;
- c. A decree for declaration that the purported deed of conveyance dated 10th September, 2007 is null and void;
- d. A decree for delivery up and cancellation of the deed of conveyance dated 10th September, 2007 executed by the defendant nos. 1 to 7 in favour of the defendant no. 8;
- e. Costs;
- f. Further and/or other reliefs.

7. Affidavit of opposition to the aforesaid application has been filed and reply thereto has also been filed.

8. However, due to non-appearance of the defendant nos. 1 to 7 herein the instant suit has been proceeded *ex parte* against the said defendant nos. 1 to 7 by virtue of an Order dated 15th May, 2025 passed by this Court. Therefore, presently, the defendant nos. 8 and 9 are contesting the suit by filing their written statement. As stated above, the instant application under Order 7 Rule 11 has

also been filed by the said defendant nos. 8 and 9 (hereinafter referred to as the “contesting defendants”).

9. Since the instant application has been filed by the contesting defendants under Order 7 Rule 11, therefore, it is germane to look after the plaint in context so as to determine the scope of Order 7 Rule 11 of CPC.

10. On perusal of the plaint in context and also the prayers enumerated therein, it appears that the instant suit has been filed seeking for mainly two reliefs, *inter alia*:

- a. A declaration that the plaintiffs have acquired absolute title over the suit property by virtue of adverse possession and have prayed for consequential reliefs thereto.
- b. A declaration that the deed of conveyance dated September 10, 2007 in favour of the defendant no. 8 be adjudged as null and void and be delivered up and cancelled.

11. Before delving into the contentions of both sides, it is necessary to state the plaint case as the same be apposite to determine an application filed under Order 7 Rule 11.

12. Conspectus of the plaint case is as follows:

One Jitendra Nath Ghosh, the original owner of the property in question, by virtue of a deed dated 15th December, 1973 leased out the suit property to Kumar Industries (the plaintiffs concerned herein) for a period of 20 years and by efflux of time said deed expired on 30th November, 1993. Mr. Jitendra Nath Ghosh died on 15th September, 1995 leaving behind his seven sons. In the

meantime, the West Bengal Thika Tenancy (Acquisition and Regulation) Act, 2001 was promulgated and came into effect on and from 1st March, 2003 whereby Thika Tenancies were deemed to have vested with the State with retrospective effect from 18th January, 1982. The provisions of the said Act of 2001 mandates that Thika Tenancy and rights there under could be decided by a Thika Controller and Section 4, 5 and 27 of the said Act of 2001 are relevant in the present proceeding. On April 9, 2003 i.e. immediately after the said Act of 2001 was brought into effect, the properties of Kumar Industries claimed to be Thika Tenants and deposited rent with respect to the property in favour of the State of West Bengal. Then, on 10th September, 2007, the defendant no. 8 herein purchased the said suit property from the absolute owners of the said premises being seven sons of Jitendra Nath Ghosh. On 27th January, 2010 an order passed by the Learned Controller holding that the said Kumar Industries qualified as Thika Tenants under the said Act of 2001 and being aggrieved by this Order the defendant no. 8 preferred an application before the State Govt. under Section 13 of the Act of 2001 and the Joint Secretary to the Government of West Bengal in its Department of Land and Land Revenue requested the Kolkata Thika Controller to dispose of the application filed by hearing the parties and the said application was disposed of on August 1, 2012 against the defendant no. 8 and in favour of the Kumar Industries. Then the defendant no. 8 again filed an application before the West Bengal Land Reforms and

Tenancy Tribunal and the Ld. Tribunal rejected the said appeal on 18th November, 2013. The defendant no. 8 challenged the said order before the Hon'ble High Court at Calcutta and the said Hon'ble High Court set aside the order of WBLRTT on March 10, 2014. Thereafter, the matter was reached before the Hon'ble Supreme Court and the Hon'ble Apex Court finally decided the matter on 27th July, 2022 declaring that the plaintiffs were not Thika tenants within the meaning of the Act of 1981 giving reasons to that effect.

4. On meaningful reading of the plaint, the contention of the plaintiffs in the instant suit appears that the plaintiffs have been in continuous possession of the property in issue from November, 1993 and the same is adverse to the title of the defendants and that they were under a mistaken belief that the suit property stood vested in the State, a belief which was nullified by the order of the Hon'ble Supreme Court of India dated July 27, 2022. As regards, it is to be referred to the paragraph 30 at page 15 of the plaint that the right to sue for a declaration arose in favour of the plaintiffs only on July 27, 2022 when the Hon'ble Supreme Court of India held that the suit premises did not vest in the State and that the plaintiffs were not thika tenants in respect of the said property after the lease expired in November, 1993. More so, there is specific admission of the plaintiffs in paragraph 24 of the plaint that they were under a mistaken belief that the suit premises was vested in the State, which is a further admission of the fact that the plaintiffs

never claimed to be owners by adverse possession before filing of this suit.

13. Before going into the contention of the contesting defendants, provisions of the Order 7 Rule 11 are to be enumerated hereunder:

The plaint shall be rejected in the following cases-

(a) *where it does not disclose a cause of action;*

(b) *where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*

(c) *where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*

(d) *where the suit appears from the statement in the plaint to be barred by any law:*

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

14. As per the contention of the contesting defendants, the instant suit as filed by the plaintiff herein is hit by the provision of Order 7 Rule 11(a), since in accordance with the contesting defendants, the present suit does not disclose any cause of action. More so, as per the contesting defendants, the instant suit is hit by principles of *res judicata* and also by the principles of estoppel.

15. In respect of non-disclosing of the cause of action, Mr. Kar, Ld. Sr. Counsel appearing for the contesting defendants has contended that the plaint in the suit is hit by Order VII Rule 11(a) of the CPC since the claim of adverse possession is, *ex facie*, unsustainable and clearly an afterthought since the entry of the plaintiffs in the property was lawful through the deed of lease in 1973 and after expiry thereof, the plaintiffs became trespassers as held by the Division Bench of Hon'ble High Court at Calcutta vide its order dated March 10, 2014. The Hon'ble Division Bench has held the plaintiffs to be trespassers, a view affirmed by the Hon'ble Supreme

Court of India in its order dated July 27, 2022 and as such, there can be no cause of action for adverse possession by the plaintiffs.

Mr. Kar has further submitted that it is the admitted plaint case and is also recorded in the order of the Hon'ble Division Bench that the plaintiffs and/or their predecessors had deposited rent with interest with the Thika Controller from 18.1.1982 till sometime in 2007, as regards, Ld. Sr. Counsel has referred to page 157- 3rd paragraph last line and last line of paragraph 10 of the plaint. When the plaintiffs were claiming to be Thika tenants in 2007, they cannot now claim anything to the contrary for that period or any period preceding that. Moreover, each day of illegal occupation of the property would give rise to a fresh cause of action in favour of the

defendants which, as a corollary, rules out a claim of adverse possession in favour of the plaintiffs.

According to Mr. Kar, the lawful entry of the plaintiffs and simply remaining in possession for long will not entitle the plaintiffs to adverse possession. As regard, he has relied on the Judgment reported in **(2020) 11 SCC 263 [Uttam Chand vs. Nathu Ram]** and further the Judgment reported in **(2019) 13 SCC 324 [Ram Nagina Rai v Deo Kumar Rai]**. Therefore, on that score, Mr. Kar has submitted that there can remain no doubt that the plaint fails to disclose a cause of action and the suit has been filed in abuse of process of law.

16. The second limb of contentions of Mr. Kar, Ld. Sr. Counsel appearing on behalf of the contesting defendants is that the suit is barred by laws in force in India. In respect of that, Mr. Kar has submitted that the plaintiffs had never raised the issue of adverse possession prior to filing of the plaint in 2023 or July 27, 2022 and as such, any plea of adverse possession made by the plaintiffs is hit by principles of *res judicata* and principles of estoppel.

It is submitted by Mr. Kar that the plaint is clearly barred by laws of limitation and the same is not a mixed question of law and fact in the present scenario, since the facts are admitted and undisputed and the reason for the plaint being barred by law of limitation.

In respect of above, Mr. Kar has submitted that the Article 65 of the Limitation Act, 1963 provides that the period of 12 years

would begin when the possession of the plaintiffs becomes adverse to the defendants and the cause of action as stated by the plaintiffs in para 30 of the plaint clearly states that it is on and from July 27, 2022 when the Hon'ble Supreme Court has finally held that the plaintiffs were not thika tenants. If this is taken to be true, then the suit cannot be filed before July 2034 (12 years from July 2022) and as such, the instant suit is premature. If it is the contention of the plaintiffs that upon expiry of the lease in 1993, the period of 12 years to claim adverse possession would start and would end in the year 2005, then the plaintiffs' right for declaration of title would have to be guided by Article 58 of the Limitation Act. According to Article 58, the period of limitation is three (03) years and the same starts from the time when the right to sue first accrues. This right would then end in the year 2008 and as such, no claim can be made by the plaintiffs post 2008. There was no dispute regarding Thika Tenancy in 2008 and the entire dispute involving Thika tenancy only started in August, 2010. Although the plaintiffs have verbally submitted that they are claiming adverse possession since 1993, they have failed to address the issues regarding limitation during submissions.

It is further contended that a prayer for cancellation of the deed of conveyance dated September 10, 2007 could only be made till 3 (three) years i.e. September 10, 2010, according to Article 59 of the Limitation Act, 1963 and after 2010, no such prayer can be made as it is clearly barred by limitation. Assuming, but not

conceding, the plaintiff to be true and correct, plaintiffs in para 14 and 15 (a) of the plaintiff stated that they obtained knowledge of the fact of such deed in 2012. Three (03) years time to challenge the deed even in that scenario expired in 2015. The plaintiffs have made no submissions or countered or dealt with this aspect of limitation in their submissions. As such, by their own admission in the plaintiff, the instant application under O 7 R 11 should succeed. The plaintiffs have also submitted that the predecessor-in-interest of the defendant no. 8 could not have transferred right, title and interest in the property in 2007 as they themselves lost the right in respect of the property in 2005. The same is a legal fallacy as the plaintiffs' claim at this juncture is severely barred by limitation. As such, in either situation, the suit is barred by laws of limitation and the facts are undisputed and cannot be controverted or improved in trial.

Mr. Kar has concluded that the plaintiffs in their plaintiff have failed to state the entity against whom a claim of adverse possession is being made since the same cannot be made against the State or the predecessor-in-interest of the petitioners, as the same would be clearly barred by limitation. The claim also cannot be made against the petitioners as then the suit would be premature. The plaintiffs claiming adverse possession will have to clearly and unequivocally state against whom such claim or right is being enforced. If the plaintiffs are not sure who is the true owner, the question of their being in hostile possession and denying the

title of the true owner does not arise. In respect of that, Mr. Kar has referred to the judgment reported in **(2006) 7 SCC 570 [T. Anjanappa v Somalingappa]** and also the *Uttam Chand's case (supra)*.

17. Besides the aforesaid contention, Mr. Kar has further submitted that the plaintiffs were fully aware of the expiry of lease and its consequences and have sought to raise the claim of adverse possession by approbating and reprobating since the plaintiffs had consciously contended since April 10, 2003 that they were thika tenants till such contention was struck down by the Hon'ble Supreme Court of India on July 27, 2022. Ground of adverse possession was never taken before July 27, 2022 or before filing of the present suit and as such, the plea of adverse possession is clearly barred by *res judicata/ constructive res judicata*.

18. However, in respect of aforesaid submission, Mr. Kar, Ld. Sr. Counsel has further relied on the cases reported in **(2024) SCC Online SC 318 [M. Radheshyamlal vs. V. Sandhya & Ors.]**, **(1968) SCC Online SC 206 [Ningawwa vs. Byrappa Shiddappa Hireknrabar & Ors.]** and **(2011) 10 SCC 404 [State of Haryana vs. Mukesh Kumar & Ors.]**.

19. On the contrary, Mr. Mukherjee, Ld. Sr. Counsel and Mr. Sengupta, Ld. Counsel appearing for the plaintiffs have countered the aforesaid contentions of the contesting defendants.

20. As per the Ld. Counsel for the plaintiffs, at the time of deciding an application under Order 7 Rule 11 of the CPC, it is well settled

that the statements made in the plaint are to be taken as true and correct. As regard, Ld. Counsel has relied upon the Judgement of the Hon'ble Court reported in **(2004) 3 SCC 137 [Sopan Sukhdeo Sable & Ors. vs. Assistant Charity Commissioner & Ors.]**.

21. In view of Ld. Counsel for the plaintiffs, partial rejection of plaint is not permissible. As regards, Ld. Counsel has relied upon the *Sopan Sukhdeo's* case (*supra*) and also the Judgement reported in **(1982) 3 SCC 487 [Roop Lal Sathi vs. Nachhattar Singh Gill]** and has contended that it is apparent from the plaint that the principal prayer in the suit is for declaration of title of the plaintiffs by adverse possession and the declaration of the deed as null and void and its cancellation is consequential. In any event, the suit cannot be partially rejected. Ld. Counsel has further relied on the Judgement reported in **(2025) SCC Online SC 1208 [Vinod Infra Developers Ltd. vs. Mahaveer Lunia & Ors.]** and submitted that in the said decision the Hon'ble Supreme Court of India held that if one of the prayers is not tenable and other prayers is maintainable for the independent cause of action, the plaint cannot be rejected.

22. The Ld. Counsel for the plaintiffs has further contended that the disputed question of fact cannot be decided at demurer stage. In the plaint, the plaintiffs have averred various factors to establish adverse possession such as nature of possession, continuous and uninterrupted possession, knowledge of the true owner, and extinguishment of the title of the true owner and in absence of title,

the subsequent transfer is wrongful and illegal and null and void. The said factors are disputed question of facts which can only be established after thorough marshaling of the evidence at the time of trial and cannot be decided at the time of disposal of an application under Order 7 Rule 11 of CPC. As regard, Ld. Counsel has referred to a Judgement of the Hon'ble Court reported in **(2019) 9 SCC 369 [Brijesh Kumar vs. Sharda Bai]** wherein the Hon'ble Supreme Court held that adverse possession is hostile possession by assertion of a hostile title in denial of the title of the true owner. During the course of argument, Ld. Counsel has also referred to the Judgement of the Hon'ble Court reported in **(2005) 7 SCC 510 [Popat and Kotecha Property vs. State Bank of India Staff Association]**.

23. The further contention of the Ld. Counsel of the plaintiffs is that the limitation is a mixed question of fact and law in the present case. In respect of that Ld. Counsel has relied on the Judgement reported in **(2018) 6 SCC 422 [Chhotanben & Anr. vs. Kiritbhai Jalkrushnabhai Thakkar]**, wherein the Hon'ble Supreme Court held that where the issue regarding the suit being barred by limitation in the facts of the case is a triable issue, the plaint cannot be rejected at the threshold in exercise of power under Order 7 Rule 11 of CPC.

24. The Ld. Counsel for the plaintiffs has further submitted that the declaration of title by adverse possession is maintainable as

earlier the plea of adverse possession can only be taken as a defense in the written statement and it was always used as a shield and not as a sword. However, the law changed after the judgment of the Hon'ble Supreme Court reported in **(2019) 8 SCC 729** [**Ravinder Kaur Grewal & Ors. vs. Manjit Kaur & Ors.**]. More so, as per the contention of the Ld. Counsel for the plaintiffs, the plea of adverse possession is not a pure question of law, but a mixed question of fact and law. As per Ld. Counsel, to establish the adverse possession, a person is required to establish : **a.** the date on which he came on possession, **b.** nature of possession, **c.** factum of possession, **d.** knowledge to the true owner, **e.** duration of possession and **f.** that possession was open and undisturbed. In respect of this contention, Ld. Counsel has relied on the decision of the Hon'ble Supreme Court reported in **(2010) 14 SCC 316** [**ChattiKonati Rao vs. Palle Venkata Subba Rao**].

25. According to Ld. Counsel for the plaintiffs, plea of res judicata cannot be a ground under Order 7 Rule 11 of the CPC. The Ld. Counsel has submitted that the contesting defendants here took a plea that the rights of the parties have already been finally adjudicated. However, the plaintiffs' cause of action is an independent cause of action and therefore, the plea of res judicata cannot be taken as a ground under Order 7 Rule 11 of the CPC. As regards, Ld. Counsel has relied on the Judgements of the Hon'ble Court reported in **(2021) 9 SCC 99** [**Srihari Hanumandas Totala vs. Hemant Vithal Kamat & Ors.**] and the case reported in **(2025)**

SCC Online SC 1425 [Pandurangan vs. T. Jayarama Chettiar and Anr.].

26. Beside the aforesaid, Ld. Counsel appearing for the plaintiffs, during the course of hearing, has also relied on the cases reported in **(2020) 7 SCC 366 [Dahiben vs. Arvinbhai Kalyanji Bhanusali (Gajra) and Ors.]**, **(2020) 17 SCC 260 [Shakti Bhog Food Industries Limited vs. Central Bank of India and Anr.]**, **(2023) SCC Online SC 1407 [Geetha and Ors. vs. Nanjundaswamy and Ors.]** and **(2022) SCC Online 2193 [Gurdev Singh vs. Harvinder Singh]**.

27. The conspectus of facts of the instant case as evaporated above are reproduced hereunder:

- i. A deed of lease dated December 15, 1973 was entered into between the erstwhile owners of the subject property and the predecessors of the plaintiffs which admittedly expired by efflux of time on November 30, 1993. Subsequently on September 10, 2007, by a deed of conveyance the subject property was transferred in favour of the defendant no. 8.
- ii. On April 10, 2003, the predecessors of the plaintiffs initiated a proceeding before the Thika Controller, Kolkata claiming to be thika tenants of the said property.

On January 27, 2010, the said proceeding was held in favour of the plaintiffs. The order dated January 27, 2010 was affirmed by the concerned authority on August 1, 2012, upon contest, and subsequently by the West Bengal Land Reforms and Tenancy Tribunal (in short, "WBLRTT") on November 18, 2013.

- iii. The order of the WBLRTT was challenged before the Hon'ble High Court at Calcutta by the defendant no. 8 and the said order was set aside by Hon'ble Court on March 10, 2014. The order of the Hon'ble High Court was challenged by the plaintiffs herein before the Hon'ble Supreme Court of India which was first held in their favour; but in review filed by the defendants herein, the order was reversed and the decision of the Division Bench of the Hon'ble High Court at Calcutta was affirmed, finally on July 27, 2022. The Hon'ble Supreme Court thus, finally held that the property was not a thika property. In effect, the Hon'ble Supreme Court upheld that the property did not vest in the State and that the defendant no. 8 was entitled to occupancy charges from the plaintiffs.
- iv. The review thereof and the curative petition filed by the plaintiffs herein were both dismissed and the order passed in favour of the defendant no. 8 dated July 27, 2022 attained finality.

28. Thereafter, the defendants (particularly the Mani Square) filed a suit before this Court being T.S. (Com) 48 of 2023 which is pending before this Court. However, in the said suit, the defendants (the plaintiffs therein) also filed an application praying for occupational charges and this Court by an Order dated 22.07.2025 passed an order directing the plaintiffs herein to pay the occupational charges to the defendants (particularly to the Mani Square) during the pendency of the suit registered as T.S. (Com) 48 of 2023 before this Court. The Order dated 22.07.2025 has been challenged by the plaintiffs herein before the Hon'ble High Court in AO-COM 27 of 2025, wherein the Hon'ble Court has been pleased to affirm the Order dated 22.07.2025 as passed by this Court.

29. It is further to be stated that the suit being T.S. (Com) 48 of 2023 was filed on 20.03.2023 by the present defendants (Mani Square) before this Court. It is also to be stated that in respect of the application filed in the said suit under Order XXXIX Rule 1 and 2 of the CPC, this Court was pleased to grant an *ad interim* order in favour of the defendants (Mani Square), *vide* the Order dated 01.04.2023. However, the plaintiff also filed the present suit being T.S. Com 04 of 2023 on 05.04.2023 (although, the same was initially filed before the Ld. Civil Judge, Senior Division at Alipore then it was transferred before this Court by the Order of the Hon'ble High Court at Calcutta).

30. In paragraph no. 30 at page 15 of the plaint of the instant suit, it is found that there is a specific plea of the plaintiffs that the

right to sue for a declaration arose in favour of the plaintiffs only on July 27, 2022 when the Hon'ble Supreme Court of India held that the suit premises did not vest in the State and that the plaintiffs were not thika tenants in respect of the said property after the lease expired in November, 1993. Further, it is the specific admission of the plaintiffs in paragraph 24 of the plaint that they were under a mistaken belief that the suit premises was vested in the State, which is a further reveals the fact that the plaintiffs never claimed to be owners by adverse possession before filing of this suit. As regards, stipulation is sought for from the Article 65 of the Limitation Act, 1963 which provides that the period of 12 years would begin when the possession of the plaintiffs becomes adverse to the contesting defendants. Article 65 of the 1963 Act is reproduced hereunder:

<u>Description of Suit</u>	<u>Period of Limitation</u>	<u>Time from which period begins to run</u>
For possession of immovable property or any interest therein based on title. Explanation. — For the purposes of this article— (a)where the suit is by a remainder man, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when	Twelve years.	When the possession of the defendant becomes adverse to the plaintiff.

<p>the estate of the remainder man, reversioner or devisee, as the case may be, falls into possession;</p> <p>(b) where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;</p> <p>(c) where the suit is by a purchaser at a sale in execution of a decree when the judgment debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.</p>		
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31. The plaintiffs in paragraphs 14 and 15 (a) of the plaint state that they obtained knowledge of the fact of such deed under reference in 2012. But, 3 years' time to challenge the deed even in that scenario expired in 2015. The plaintiffs though have made no submissions or countered or dealt with this aspect of limitation in their submissions, but in this respect they have stated in the plaint

when the cause of action to file this suit arose. Statements of the paragraph nos. 14 and 15(a) of the plaint are reproduced hereunder:

“14. In or about 2012, one Mani Square Ltd. and Srikant Jhunjhunwala, being the defendant nos. 8 and 9 herein, challenged the order dated August 1, 2012 by filing OA 2833 of 2012 on August 30, 2012 and on November 18, 2013, the West Bengal Land Reforms and Tenancy Tribunal disposed of OA no. 2833 of 2013 by upholding the decision of the Thika Controller. A Copy of the order dated November 18, 2013 is annexed hereto and marked with the letter “E”.

15. a) That in the meantime, (unknown to the plaintiffs and/or their predecessor) the heirs of Jitendra Nath Ghosh, being Ananta Kumar Ghosh, Prasanta Kumar Ghosh, Susanta Kumar Ghosh, Dolly Ghosh, Arabinda Kumar Ghosh, Ardhendu Kumar Ghosh and Subhendu Kumar Ghosh, being the defendant nos. 1 to 7 purported to transfer the suit premises to seven companies including Mani Square Ltd, being the defendant no. 8 herein, by executing a purported deed of conveyance dated September 10, 2007 and they also allegedly informed the Assessor, Tollygunge Tax Department, Kolkata Municipal Corporation about the purported deed of conveyance (hereinafter referred to as the “said purported deed of conveyance”).”

32. It is settled that the Order 7 Rule 11 of the Code of Civil Procedure, 1908 is the statutory provision that empowers the court to reject a plaint at the threshold, before proceeding with the trial.

33. In the present case, the defendants mainly invoked clause (d) of Order 7 Rule 11, which allows rejection of plaint "where the suit appears from the statement in the plaint to be barred by any

law." The critical phrase here is "appears from the statement in the plaint." This language makes it abundantly clear that the power under Order 7 Rule 11(d) can be exercised only when the suit's being barred by law is manifest from the plaint itself - that is, from the averments made by the plaintiff in the plaint document. The court cannot look beyond the plaint to examine the defendant's defense, consider counter-affidavits, or evaluate external evidence to determine whether the suit is barred by law.

34. On contemplation of the plaint in question, the following issues are evaporated:-

- When a plaint seeks multiple reliefs and different limitation periods apply to different reliefs, can the entire plaint be rejected under Order 7 Rule 11(d) if one or more reliefs appear to be time-barred, even if at least one relief is within the limitation period?
- Can the question of whether defendants have perfected their title through adverse possession be determined at the threshold stage under Order 7 Rule 11, or does it require examination of evidence through trial?

35. In so many Judgments, the Hon'ble Supreme Court of India unequivocally held that the power under Order 7 Rule 11 is drastic in nature - it deprives a party of their right to have their case heard on merits. Therefore, it must be exercised with extreme caution and only when the bar is apparent on the face of the plaint itself.

36. In the instant suit plaintiffs seek both the declaration of title on adverse possession and also cancellation of deed of conveyance

dated 10.09.2007 executed by defendant no.1 to 7. Therefore, this Court should identify the principal or primary relief sought.

37. In the context of the instant suit, this Court relies on the Judgment of the Hon'ble Supreme Court of India in the case of ***Indira v. Arumugam & Anr.*** reported in **(1998) 1 SCC 614**, wherein it was held by Hon'ble Apex Court that "*When the suit is based on title for possession, once the title is established based on relevant documents and other evidence, unless the defendant proves adverse possession for the prescriptive period, the plaintiff cannot be non-suited.*" Therefore, this principle establishes that in title-based possession suits, the burden is on the party who claims adverse possession to prove "adverse possession" for the full 12-year period. Until such adverse possession is established through evidence, the suit cannot be dismissed on the ground of limitation.

38. Further, the Hon'ble Supreme Court of India in the case of ***N. Thajudeen v. Tamil Nadu Khadi & Village Industries Board*** reported in **2024 SCC Online SC 3037**, held that "*A suit for declaration of title to immovable property would not be barred so long as the right to such a property continues and subsists. When such right continues to subsist, the relief for declaration would be a continuing right and there would be no limitation for such a suit.*"

39. A cardinal principle established by the Hon'ble Supreme Court in the judgment reported in **2025 SCC OnLine SC 1208 (*Vinod Infra Developers Ltd. v. Mahaveer Lunia*)**, which may be termed as the "Multiple Reliefs Doctrine" in the context of Order 7

Rule 11(d). Hon'ble Apex Court observed that this principle has significant practical implications for how courts should approach complaints seeking several reliefs. In this Judgement the Hon'ble Supreme Court has also been pleased to observe that where several reliefs are sought in suit, if any one of the reliefs is within the period of limitation, the plaint cannot be rejected as barred by law by taking recourse to Order 7 Rule 11(d) of CPC.

40. According to the observation of the Hon'ble Supreme Court of India in the afore-mentioned Judgement reported in **2025 SCC OnLine SC 1208 [Vinod Infra Developers Ltd. v. Mahaveer Lunia]**, the rationale for this principle is rooted in both procedural fairness and practical justice. Firstly, the Order 7 Rule 11 does not permit partial rejection of plaint. A plaint must either be rejected in its entirety or allowed to proceed. The rule does not contemplate striking out some reliefs while retaining others at the threshold stage. Secondly, if even one relief is within limitation and is otherwise maintainable, the plaintiff has a legitimate right to have that relief adjudicated upon through trial. Denying such adjudication merely because some other reliefs may be time-barred would be manifestly unjust. Thirdly, the interconnection between various reliefs may be such that it is difficult to segregate them at the threshold. Fourthly, during trial, the court retains the power to examine each relief separately and reject those that are barred by limitation while granting those that are within time. This can be

done more appropriately after evidence is led rather than at the preliminary stage based only on plaint averments.

41. In respect of the issue that whether a suit can be rejected at the threshold on the ground that the plaintiff have not perfected their title through adverse possession, it is stated that the adverse possession is a doctrine whereby a person who is not the true owner of property can acquire valid title to it by remaining in open, continuous, and hostile possession of the property for the period prescribed by the Limitation Act (12 years under Article 65).

42. In the present suit, the plaintiff needs to establish the claim of adverse possession and thus, the plaintiff required to prove that despite the defendant's title or otherwise, the plaintiff has acquired a superior right through adverse possession.

43. In very many Judgements, the Hon'ble Supreme Court held that the adverse possession "cannot be an issue on which the plaint could be rejected at the threshold." The reasoning is compelling that the adverse possession is essentially a mixed question of fact and law. Determining whether possession has been adverse for the required period involves examination of:

- The nature and character of possession;
- Whether possession was open and notorious;
- Whether it was continuous without interruption;
- Whether it was hostile to the true owner;
- The *animus possidendi* (intent to possess);

These are factual questions that cannot be determined by merely looking at the plaint. They require evidence to be led by both parties.

The plaint states the plaintiff's case of adverse possession of the suit property. The plaintiff would naturally claim continuing title. The defendant's claim denying the adverse possession is his defense, which cannot be considered while examining the plaint under Order 7 Rule 11.

Moreso, accepting the defendant's denial of claim of adverse possession of the plaintiff, at the threshold stage without trial, would amount to deciding the matter on the defendant's say-so rather than the plaintiff's plaint averments - which would be contrary to the fundamental principle governing Order 7 Rule 11.

44. In the Judgment of the Hon'ble Supreme Court of India in the case of *Indira v. Arumugam & Anr.* reported in **(1998) 1 SCC 614**, the Hon'ble Court established the principle that in suits for possession based on title, once the plaintiff establishes title through documents and evidence, the burden shifts to the defendant to prove adverse possession for the prescriptive period. The plaintiff cannot be non-suited merely on the ground of long passage of time unless the defendant successfully discharges the burden of proving all elements of adverse possession. Therefore, relying on the aforesaid view, in the instant case it is to be stated that the adverse possession is a matter requiring proof through trial and cannot be determined at the threshold under Order 7 Rule 11.

45. Now, upon delineation of the facts of the present case as well as the well settled legal proposition as relegated herein, this Court opines that the determination whether a suit is barred by law under Order 7 Rule 11(d) must be based solely on the averments made in the plaint. The defendant's defense, counter-affidavits, or external evidence cannot be considered at this stage. And, the question whether plaintiffs have perfected their title through adverse possession is a mixed question of law and fact that cannot be determined at the threshold under Order 7 Rule 11. It requires examination of evidence through trial.

46. So, at the preliminary stage, the Court is required to confine its examination strictly to the averments made in the plaint and not venture into the merits or veracity of the claims. If any triable issues arise from the pleadings, the suit cannot be summarily rejected.

47. Hence, this Court held that the plaint in context raises triable issues concerning the legality of the deed executed by Ghosh in favour of the Mani Square and others as well as the claim of adverse possession by the Kumars and those issues must be adjudicated in trial.

48. It would not be out of place to mention here that an application to reject the plaint under Order VII Rule 11 of the Civil Procedure Code, 1908 can be rejected if the plaint discloses a valid cause of action, even if it includes claims that are legally weak. In the present case the claim of adverse possession and a declaration

of the deed being void are not “manifestly un-maintainable” on the face of the plaint itself. Argument that a claim is barred by a statute of limitation or that the plaintiff lacks the necessary evidence are matters to be dealt with trial. At the risk of repetition, the ground of limitation, in the present context, is a mixed question of facts and law that also requires a trial. Beside this, the plaint cannot be rejected on the ground of *res judicata* unless the facts clearly and directly point to its applicability based on the plaint itself.

49. In view of above, the instant application filed by the defendants under Order VII Rule 11 of the Code of Civil Procedure, is hereby considered and rejected without any order as to costs.

Fix **07.11.2025 at 12:30 p.m.** for further order.

Parties to act on the basis of the downloaded copy of the order sheet from the website/E-court App.

Dictated and corrected by me,

Sd/-

Judge, Commercial Court at Alipore,
for South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram

Sd/-

Judge, Commercial Court at Alipore,
for South 24 Parganas, Purba Midnapore,
Paschim Midnapore & Jhargram