

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 110 of 2023

Reserved on : 17.11.2025

Decided on: 28.11.2025

Sohan Lal ... Petitioner

Versus

Union of India ... Respondent

Coram

Hon’ble Mr. Justice Ajay Mohan Goel, Judge.

Whether approved for reporting?¹ Yes

For the petitioner : Mr. Sudhir Thakur, Senior Advocate
with Mr. Karun Negi, Advocate.

For the respondent : Mr. Nand Lal Thakur, Senior Panel
Counsel.

Ajay Mohan Goel, Judge

By way of this petition, the petitioner has assailed order dated 05.01.2023, passed by the learned Trial Court, in terms whereof, an application filed by the petitioner under Order 7, Rule 11 of the Civil Procedure Code, for the rejection of the plaint has been dismissed.

2. Facts necessary for the adjudication of this petition are that the Union of India has filed a suit for declaration and permanent prohibitory injunction, copy whereof is appended with the petition as Annexure P-1. The relief prayed for in the suit is that the judgment and decree passed in civil suit titled as Gorkhia vs.

¹ *Whether reporters of the local papers may be allowed to see the judgment?*

Union of India dated 01.05.2010, order of Additional District Judge (Fast Track Court Solan passed on 16.07.2012 in appeal titled as Union of India vs. Gorkhia, and the regular second appeal decided by the High Court of Himachal Pradesh in RSA No. 88/2014, decided on 31.03.2014, and the order passed in the review petition by the High Court be declared as null and void being obtained by misrepresentation and by playing fraud upon the Court.

3. A perusal of the plaint demonstrates that it stands mentioned therein that the Government of India and Ministry of Defence acquired land measuring 23-7-4 bighas in villages Khadoli, Nabti, Devthal, Katal ki Bagh and Garkhal District Solan, for the installation of Water Supply pipeline, pump house and reservoir etc for defence personnel at Kasuali vide notification issued under Section 4 of the Land Acquisition Act, dated 04.11.1975. Out of the total land acquired, 6-1 bighas of land was acquired in village Devthal was stated to be the subject matter of the suit. In terms of the plaint, the physical possession of the suit land was handed over/taken over by the plaintiffs on 08.01.1975 under Section 17 of the Land Acquisition Act, 1994 and the same was entered in the Military Land Register (MLR) of the Defence Estate Officer, Ambala. Thereafter, the Land Acquisition Collector, Solan had announced the award on 08.07,1976 for the land acquired in village Garkhal and

Khadoli and Award No. 2 on 09.07.1976 for land acquired in village Katal ka Bagh and Devthal and forwarded the copies of the awards to the plaintiffs on 15.07.1976. The Land Acquisition Collector in both the Awards had specifically mentioned that the land vests in the Central Government/defence department free from all encumbrances from Kharif 1975 and no land revenue shall be charged thereafter. The payment for the land acquired was also disbursed by the plaintiffs to the Land Acquisition Collector on 03.08.1976. The awarded amount worked out by the then Land Acquisition Collector for village Devthal was Rs.4236/- and the same was disbursed/ released to the defendant and other interested persons by Tehsildar Solan on 11.11.1976. The predecessor-in-Interest of defendant late Gorkhia filed a civil suit for mandatory and permanent injunction and possession against the plaintiffs alleging that he was the owner of the land comprised in Khasra No. 11/30, Khata/Khatauni 11/13 min, measuring 3-9 bighas, situated at Mauza Delthal, Pargana Bharoli, Tehsil and District Solan and that defendants had forcibly encroached upon a part of Khasra number 30 to the extent of 2-14 bighas for and by constructing a Pump House and one two room and one three room building thereupon. Gorkhia also alleged in the suit that he had requested the defendants but defendants were threatening to encroach further

land of Gorkhia. He had also prayed that if the Court comes to the conclusion that the construction should not be disturbed, then a decree for mandatory injunction be passed against the defendants, i.e. present plaintiffs for acquisition of the land. Gorkhia had obtained a demarcation alleging that Revenue Officer had found 2-14 bighas of his land encroached upon. The suit was contested by the defendants therein, who took a specific stand therein that the land was in possession of Government of India since the last 25 years and there was no question of any encroachment thereupon. Interference on behalf of the defendants was denied. It was categorically mentioned in the written statement that out of the land of Gorkhia in village Devthal, Khasra Nos. 42, 36, 39, 37, 40 and 49, were acquired and the old Khasra No. 42 was now Khasra No. 30/1 and the remaining khasra numbers stood merged to form a new Khasra No. 30, measuring 3-09 bighas. The suit was decreed by the learned Trial Court on 14.03.2008. The judgment and decree was assailed by the plaintiff before Additional district Judge by way of an appeal. Learned District Judge remanded the case back and upon remand, the learned Trial Court again decreed the suit on 01.05.2010, directing the defendants therein to acquire the land as per law. The appeal filed by the defendant was dismissed and so was the fate of the regular second appeal. The review filed was also

dismissed. In the plaint, it was further mentioned that Gorkhia had concealed true facts and had misrepresented and had played fraud upon the Court and thus had managed to obtain a decree of injunction. It was also mentioned in the plaint that Gorkhia while filing the application for demarcation of the suit land and other Khasra Nos. had categorically stated that he was owner in possession of the suit land and the same was not acquired by the defendants whereas he was fully aware that the same was duly acquired which was also evident from the revenue record. The plaint further mentions that the plaintiff had applied for demarcation of the suit land on 27.06.2014 and pursuant thereto, the Assistant Collector 2nd Grade had conducted demarcation in the presence of son of late Gorkhia and after the demarcation was carried out, the plaintiffs were found to be in occupation of the land and also in possession thereof. As per the plaintiffs, all these facts demonstrate that predecessor-in-interest of the defendant had concealed true facts from the court and on this basis, the subsequent suit has been filed.

4. The petitioners herein filed an application under Order 7, Rule 11 of the Code of Civil Procedure praying for the rejection of the plaint. It was mentioned in the application, copy whereof is appended with the present petition as Annexure P-3, that the issue

which was being raised again already stood decided upto the High Court of Himachal Pradesh and even the review that was preferred before the High Court was also dismissed. According to the petitioners, there was no cause of action to file and maintain the suit as the plaintiff had availed all the opportunities and on this basis, rejection of the plaint was sought. In terms of the impugned order, learned Trial court has dismissed the application by returning the following findings:-

“5. First ground taken by the applicant/defendant is that the plaint does not disclose the cause of action. From the perusal of averments made in plaint, it is clear that the plaintiff has filed a suit for getting a decree of declaration to the effect that decree and judgment passed in the Civil Suit titled as, Gorkiha Vs Union of India bearing registration No 129-S/1 of 7/2020 and order of Additional District Judge in its consequential appeal, Regular Second appeal by the Hon'ble High court of HP and order passed in review petition by the Hon'ble High court on 26.6.2015 be declared null and void ab initio. Further relief for permanent prohibitory injunction is sought against defendants.

6. It is settled position of law as mentioned above that cause of action is gathered from the averments of plaint and in the present case as averments of plaint is prima facie

stating the cause of action regarding decree of declaration as discussed above and a decree of permanent prohibitory injunction against the defendants. It has been laid down in "Saleem Bhai and others Vs. State of Maharashtra and others (2003) 1 Supreme Court Cases 557" that while determining the application under Order 7 Rule 11 CPC, only the averments made in the plaint are to be seen and defence taken or contests of written statement are wholly irrelevant for this purpose. Thus in the present case, plaint is not liable to be rejected under order 7 Rule 11(a) on the ground of want of cause of action

7 The second ground taken in the present application that the relief claimed by the plaintiff is under valued. As per the pleadings of the plaint and relief claimed ie. Declaration and permanent prohibitory injunction and valuation of the suit has been assessed accordingly. Thus the contention that the suit is undervalued is not maintainable.

8. The third ground is that the suit is barred by law under order 7 Rule 11(d). But as far as the present application under 7 Rule 11 is concerned, the applicant has not mentioned any other ground except want of cause of action and under valuation of the suit under which he is claiming that plaint is barred by law and liable to be rejected. As the contention of the applicant regarding want of action and

under valuation of the suit has already been discussed above. Thus this court has found no such ground from the reading of averments of the plaint which invoke the rider of order 7 Rule 11(d) to reject the plaint on the ground of it being barred by law.

10. Hence, in view of the discussion made above, I find no merits in the application as moved by the applicant, hence, this application deserves to be dismissed and is accordingly dismissed. Application stands disposed of. Same be registered and tagged with the main case file for record. Now the case be listed for filing replication on 28.3.2023.”

5. Feeling aggrieved, the defendant/petitioner has filed the present petition.

6. Learned Senior Counsel for the petitioners argued that the order passed by the learned Trial Court in the present case was not sustainable in the eyes of law. Learned Senior Counsel submitted that contents of the plaint itself were self demonstrative of the fact that what was being re-agitated by the plaintiff already stood decided by the appropriate Courts up to the High Court and because the plaintiff was again seeking adjudication on the same issues now under the guise of fraud as the civil suit was hit by the provisions of Order 7, Rule 11 of the Code of Civil Procedure as neither there was any cause of action in favour of the plaintiffs and further as the suit

was hit by the principle of res-judicata, the application filed under Order 7, Rule 11 of the Code of Civil Procedure deserved to be allowed. Learned Senior Counsel argued that the findings returned learned Trial Court that there was a cause of action pleaded in the plaint and that a perusal of the plaint did not render the same liable to be rejected under Order 7, Rule 11(D) of the Code of Civil Procedure were perverse findings and the same were liable to be set aside.

7. On the other hand, learned Senior Panel Counsel for the respondent argued that as the civil suit filed by the plaintiff was duly maintainable as cause of action was mentioned therein because the judgment and decree was obtained by the predecessor-in-interest of the defendants by playing fraud upon the Court, the application under Order 7, Rule 11 of the Code of Civil Procedure was rightly rejected by the learned Trial Court. He also argued that the suit was not hit by the principle of res-judicata because new grounds stood taken in the plaint which were not earlier decided and therefore, the findings returned by the learned Trial court while dismissing the application did not call for any interference.

8. I have heard learned Senior Counsel for the petitioner as well as learned Senior Panel Counsel for the respondent and also carefully gone through the impugned order as well as the plaint as

also the application filed under Order 7, Rule 11 of the Code of Civil Procedure.

9. No doubt, the suit presently filed by the respondent herein is for declaration that the decrees, which have been pronounced by the Courts earlier in favour of the predecessor-in-interest of the petitioners herein were a result of fraud. Whereas the contention of the petitioners herein is that the plaint has been filed on the same grounds which were taken by the plaintiff as a defendant in the previous suit in the written statement as well as the appeal preferred by it, this is denied on behalf of the respondent herein.

10. Hon'ble Supreme Court in **Srihari Hanumandas Totala vs. Hemant Vithal Kamat and others** (2021) 9 Supreme Court Cases 99, while dealing with the provisions of Order 7, Rule 11 of the Code of Civil Procedure vis-a-vis the principle of res-judicata has been pleased to hold that to determine whether a suit is barred by res-judicata, it is necessary that the previous suit is decided and the issues in the subsequent suit were directly and substantially in issue in the former suit, the former suit was between the same parties or parties through whom they claim, litigating under the same title, and that these issues were adjudicated and finally decided by a Court competent to try the subsequent suit. Thereafter,

Hon'ble Supreme Court has been pleased to hold that since adjudication of the plea of res-judicata requires consideration of the pleadings, issues and decision in the previous suit, such a plea will be beyond the scope of Order 7, Rule 11(d) of the Code of Civil Procedure, where only the statements in the plaint will have to be perused. For the sake of ready reference, relevant paragraphs of the abovementioned judgment of the Hon'ble Supreme Court are being quoted as under:-

“25.3. To determine whether a suit is barred by res judicata, it is necessary that (i) the "previous suit" is decided, (ii) the issues in the subsequent suit were directly and substantially in issue in the former suit; (iii) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (iv) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit.

25.4. Since an adjudication of the plea of res judicata requires consideration of the pleadings, issues and decision in the "previous suit", such a plea will be beyond the scope of Order 7 Rule 11(d), where only the statements in the plaint will have to be perused.”

11. In the backdrop of said pronouncements of the Hon'ble Supreme Court, if one again peruses the contents of the application

filed under Order 7, Rule 11 of the Code of Civil Procedure, one finds that therein also, the grounds taken by the present petitioners were that the intent of filing the subsequent suit was to re-open the controversy by way of a de-novo trial on the issues on the issues which already stood decided upto the High Court. It is specifically averred in the application that the plaintiff had already availed sufficient opportunity at all stages to assail the previous decree and therefore, the plaintiff should not be allowed to re-open the controversy which was not sustainable in the eyes of law.

12. This Court is of the considered view that in order to asses as to whether the filing of the subsequent suit in fact amounted to re-opening of the controversy or not, obviously, the parameters laid down by Hon'ble Supreme Court in the abovementioned judgment shall have to be gone into by the Court and these parameters obviously cannot be gone into in an application filed under Order 7, Rule 11 of the Code of Civil Procedure. The deference of the defendants in the present proceedings alongwith the evidence which may be led by the parties in support of their respective contentions will have to be gone into by the Court and only then the Court can return the findings as to whether the subsequent suit was not maintainable and the plaintiff was just trying to reopen an already decided controversy or not and

whether or not the earlier judgments and decrees were obtained by playing fraud as alleged.

Accordingly, in light of above observations, as this Court is of the considered view that the impugned order does not call for any interference, this petition being devoid of merit is dismissed. Pending miscellaneous application(s), if any also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

November 28, 2025
(*narender*)