

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CM(M) No. 20/2026
CM No. 565/2026

Reserved on: 10.02.2026
Pronounced on: 25.02.2026
Uploaded on: 26.02.2026

*Whether the operative part or full judgment is pronounced: **Full***

**Satya Devi, Aged 73 years,
D/o Smt. Janki Devi,
R/o Gohlad, Tehsil Mendhar,
District Poonch**

.... Petitioner(s)

Through:- Mr. G.S. Thakur, Advocate.

Vs.

**1. Mumtaz Hussain,
S/o Mohd. Shafi,
R/o Village Gohlad,
Tehsil Mendhar, District Poonch**

**2. Zulfiqar Ahmed,
S/o Mohd. Shafi,
R/o Village Gohlad,
Tehsil Mendhar, District Poonch**

**3. Niaz Ahmed,
S/o Bir Wali,
R/o Village Gohlad,
Tehsil Mendhar, District Poonch**

**4. Abdul Razak,
S/o Sakhi Mohd.,
R/o Dhargloon,
Tehsil Mendhar, District Poonch**

.....Respondent(s)

Through:-

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE
JUDGMENT

Prayer:

1. Through the medium of the present petition preferred under Article 227 of the Constitution of India, the petitioner has sought the following relief:

“a) Issuance of appropriate order or direction, quashing/setting aside the order dated 04.09.2025 passed by the learned Civil Judge (Junior Division) Mendhar in case titled ‘Mumtaz Hussain

vs. Satya Devi', whereby the application filed by the petitioner alleging therein that the suit with respect to the same subject matter which is directly or substantially is the same has been decreed by the Court of learned Principal District Judge, Poonch and wrongly the application has been styled as application under Order 7 Rule 11(d) CPC which has been dismissed.

2. Before advertng to the grounds of challenge to the impugned order, it would be appropriate to reproduce the factual matrix which led to the filing of the present writ petition.

Factual Matrix:

3. The petitioner, being the sole legal heir of Smt. Janki Devi, inherited the land falling under Survey No. 181 measuring 6 kanals and 18 marlas, situated at Village Gohlad, Tehsil Mendhar, District Poonch, by virtue of a Will Deed duly registered before the Sub Registrar, Mendhar, on 29.01.1986. After the death of her mother, the land was mutated in favour of the petitioner vide Mutation No. 557 dated 20.05.1994.

4. The case of the petitioner is that she has been in continuous and peaceful possession of the said land. However, the respondents, in a clandestine manner and in connivance with the revenue authorities, managed to get their names entered in the revenue record with respect to land measuring 04 marlas out of the said land. Despite such illegal entry, possession of the land remained with the petitioner. The respondents started forcibly interfering with the possession of the petitioner in the year 2012, which constrained her to file a civil suit for permanent prohibitory injunction before the Court of learned Munsiff, Mendhar. In the said suit, the learned Munsiff, vide order dated 06.07.2012, temporarily restrained

the respondents from interfering with the possession of the petitioner; however, the said interim direction was later vacated.

5. The petitioner, being aggrieved of the order dated 12.03.2015, filed an appeal before the learned District Judge, Poonch. The learned District Judge, without appreciating the real controversy and the stand taken by the respondents, held that the appeal had been rendered infructuous and accordingly dismissed the same.

6. It is further stated that the petitioner had specifically pleaded before the learned Munsiff, Mendhar, that she is the owner in possession of land falling under Khasra No. 181 measuring 6 kanals and 18 marlas situated at Village Gohlad. According to the petitioner, it was incumbent upon the appellate Court to pass an order of status quo; however, the learned District Judge dismissed the appeal by observing that it had become infructuous.

7. The further case of the petitioner is that she was already pursuing a suit for permanent prohibitory injunction with respect to land falling under Khasra No. 181 measuring 06 kanals and 18 marlas situated at Village Gohlad. The said suit was instituted on 05.07.2012 and was thus prior in time. In the meanwhile, the respondents, on 03.01.2013, filed another suit for permanent prohibitory injunction in respect of the same subject matter.

8. In the aforesaid backdrop, the petitioner has moved an application for stay of the subsequent suit titled “*Mumtaz Hussain & Ors. vs Satya Devi*” and requested that the proceedings be stayed in terms of Section 10 CPC, on the ground that the matter in issue relating to the suit land was directly and substantially the same. However, the court below dismissed the said application on the ground that it was hit by the doctrine of estoppel.

9. It is further stated that this Court, in a petition preferred under Section 104 of the Constitution of Jammu & Kashmir (as then applicable), stayed the proceedings in Civil Suit File No. 625/Civil. During the pendency of the said proceedings, the suit filed by the petitioner before the learned Munsiff, Mendhar, came to be dismissed on 08.01.2019. Feeling aggrieved, the petitioner preferred an appeal before the learned District Judge, Poonch. The appellate Court allowed the appeal and decreed the suit in her favour by granting a decree of permanent prohibitory injunction restraining the respondents from interfering with the peaceful possession of the petitioner.

10. The respondents thereafter preferred a review petition, which also came to be dismissed vide order dated 30.01.2025.

11. In the meantime, the respondents filed yet another suit titled “*Mumtaz Hussain & Ors. vs Satya Devi*” before the Court of learned Sub Judge, Poonch, which was dismissed in default on 19.04.2024. The petitioner, in view of the changed circumstances, made a statement before this Court on 09.11.2023 that since the dispute qua the same subject matter already stood decreed in her favour, the petition had been rendered infructuous and was accordingly dismissed as not pressed.

12. The respondents thereafter filed a Civil Second Appeal, registered as RSA No. 12/2025. Therefore, according to the petitioner, the proceedings in Suit No. 625/Civil were hit by the doctrine of *res judicata* and there was no occasion for the court below to conduct further proceedings.

13. The further stand of the petitioner is that she filed an application before the learned trial Court, though styled under Order VII Rule 11 CPC, but in substance the purpose of the application was to bring to the notice of the Court below that the dispute regarding land falling under

Khasra No. 181 min measuring 06 kanals and 18 marlas already stood decreed in her favour by the appellate Court, i.e., learned Principal District Judge, Poonch. However, the court below, without considering this aspect, dismissed the application on the ground that it was one under Order VII Rule 11 CPC. Feeling aggrieved of the same, the petitioner has preferred the present petition.

Arguments on behalf of the petitioner:

14. Learned counsel for the petitioner has vehemently argued that the impugned order dated 04.09.2025 passed by the learned Civil Judge (Junior Division), Mendhar, is bad in the eyes of law. It is contended that the court below failed to exercise the jurisdiction vested in it and misdirected itself in dismissing the application.

15. It is argued that the suit was hit by Section 11 CPC (*res judicata*) and the court below ought to have decided the application keeping in view that mere mentioning of a wrong provision does not disentitle a party from relief. It is submitted that it is a settled proposition of law that citing of a wrong provision does not debar the court from granting appropriate relief.

16. Mr. G.S. Thakur, learned counsel for the petitioner, has further argued that once the plea of *res judicata* was specifically raised, the court below was required to deal with the said plea. Instead, the application was dismissed mechanically, thereby compelling the petitioner to face unnecessary proceedings. It is also argued that when the subject matter of dispute *inter se* the parties was the same and a decree had already been passed in favour of the petitioner, the court below ought to have stayed the suit, and failure to do so amounts to miscarriage of justice.

Legal Analysis:

17. I have heard learned counsel for the petitioner and perused the record.

18. The petitioner, being a defendant in the suit pending before the learned Civil Judge (Junior Division), Mendhar, had filed an application under Order VII Rule 11 CPC seeking rejection of the plaint. The said application has been dismissed by the court below for the reasons recorded in the impugned order, which are under challenge before this Court.

19. From a perusal of the record and the impugned order, it emerges that the main ground urged by the petitioner for rejection of the plaint was that the plaint was barred by law, *inter alia*, being hit by Section 10 CPC and the doctrine of *res judicata*.

20. It is not in dispute that the petitioner had earlier filed an application under Section 10 CPC seeking stay of the proceedings, which came to be dismissed. After suffering dismissal of the said application, the petitioner preferred another application under Order VII Rule 11 CPC.

21. In addition, it has also been the specific stand of the non-applicant before the Court below that the suit was at the stage of defence evidence and last and final opportunity had been granted to the defendants for leading evidence, and the application under Order VII Rule 11 CPC had been filed only to delay the trial.

22. With a view to clinch the controversy in question, it would be apt to reproduce Order VII Rule 11 CPC, which reads as under:

“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 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;

[(e) where it is not filed in duplicate;]

[(f) where the plaintiff fails to comply with the provisions of rule 9:]

[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.]”

23. From a bare perusal of the aforesaid provision, it is clear that a plaint can be rejected only in the contingencies specifically enumerated therein, the details whereof have been noticed hereinabove. It is also a settled proposition of law that, while deciding an application under Order VII Rule 11 CPC, the Court is required to consider only the averments made in the plaint and the documents filed along with it. The defence taken by the defendant in the written statement or otherwise cannot be looked into at that stage.

24. The learned trial Court, for the purpose of deciding the application under Clauses (a) and (d) of Rule 11 of Order VII CPC, was required to confine itself to the averments made in the plaint and not to the pleas taken by the defendant in the written statement. The learned trial Court, after examining the averments contained in the plaint, rightly came to the conclusion that rejection of the plaint under Order VII Rule 11 CPC was not warranted in the application so preferred.

25. Reliance is placed upon the judgment of the Hon'ble Supreme Court in **“Saleem Bhai and others vs. State of Maharashtra and others”, 2003 AIR SC 759**, wherein it was held that:

“9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC 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 Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court. The order, therefore, suffers from non-exercising of the jurisdiction vested in the court as well as procedural irregularity. The High Court, however, did not advert to these aspects.”

26. With a view to test the legality of the order passed by the learned trial Court, it would be appropriate to understand the expression “*barred by law*.” In legal parlance, the said expression signifies that the suit must be prohibited by some statutory provision, rendering it legally unsustainable from the very inception.

27. The question, therefore, which arises for consideration is whether the plaint filed by the respondents could be said to be “*barred by law*” within the meaning of Order VII Rule 11(d) CPC. In the present case, the petitioner has taken two pleas, i.e., doctrine of *res judicata* and Section 10 CPC, as main grounds for rejection of the plaint.

28. As regards the plea of *res judicata*, the same can be invoked only when the matter has been finally heard and decided. The question of *res judicata*

is a mixed question of law and fact, which requires examination of pleadings, issues and judgments in the earlier proceedings. Such a question ordinarily cannot be decided at the stage of Order VII Rule 11 CPC.

29. Admittedly, the decision on which the respondents were relying before the learned trial Court has not attained finality and is pending adjudication in appeal before the Hon'ble Supreme Court. Therefore, this Court is of the view that the doctrine of res judicata cannot be invoked in the present matter as a ground for rejection of the plaint under Order VII Rule 11(d) CPC.

30. The learned trial Court, after considering the averments made in the plaint and the documents produced along with it, has rightly observed that rejection of the plaint under Order VII Rule 11 CPC was not warranted, the application being devoid of merit, and accordingly dismissed the same.

31. This Court finds itself in agreement with the reasoning given by the learned trial Court and does not find any legal infirmity or jurisdictional error therein. The order passed by the trial Court is well founded and in consonance with the law laid down by the Hon'ble Supreme Court.

32. Reliance is placed upon the judgment of the Hon'ble Supreme Court in **“Srihari Hanumandas Totala vs. Hemant Vithal Kamat and others”**, **AIR 2021 SC 3802**, wherein it was held that:

“16. Order 7 Rule 11(d) of CPC provides that the plaint shall be rejected “where the suit appears from the statement in the plaint to be barred by any law”. Hence, in order to decide whether the suit is barred by any law, it is the statement in the plaint which will have to be construed. The Court while deciding such an application must have due regard only to the statements in the plaint. Whether the suit is barred by any law must be determined from the statements in the plaint and it is not open to decide the issue on the basis of any other material including the

written statement in the case. Before proceeding to refer to precedents on the interpretation of Order 7 Rule 11(d) CPC, we find it imperative to refer to Section 11 of CPC which defines *res judicata*:

“11. **Res judicata**—No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.”

20. On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(d) can be summarized as follows:

- (i) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;
- (ii) The defense made by the defendant in the suit must not be considered while deciding the merits of the application;
- (iii) 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; and
- (iv) 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.”**

(emphasis supplied)

33. Insofar as the alternate ground taken by the petitioner before the learned trial Court for rejection of the plaint is concerned, the same was not maintainable in view of the fact that an earlier application filed by the petitioner under Section 10 CPC had already been adjudicated upon and dismissed. Having suffered dismissal of the said application, the petitioner

could not have re-agitated the same issue through the medium of another application, which is now the subject matter of the present petition. The finding recorded by the learned trial Court in the earlier application precludes the petitioner from raising the same issue again.

34. On this count also, the learned trial Court has recorded a finding which is strictly in accordance with law and borne out from the record. Thus, on both the grounds urged by the petitioner before the learned trial Court, reasons have been assigned and the same have rightly been rejected.

35. No ground has been made out which would warrant interference by this Court with the order passed by the learned trial Court. The impugned order neither suffers from any jurisdictional error nor from any patent illegality or perversity so as to invite exercise of supervisory jurisdiction.

36. It is trite that the jurisdiction of this Court under Article 227 of the Constitution of India is supervisory in nature and is meant to keep the subordinate courts within the bounds of their authority. The said jurisdiction cannot be invoked to correct every erroneous order or to act as a Court of appeal. Interference is warranted only where there is manifest miscarriage of justice or flagrant violation of law, which is not the case herein.

37. The learned trial Court has considered the matter in its correct perspective, applied the settled principles governing Order VII Rule 11 CPC, and has returned findings which are in consonance with law. This Court does not find any reason to take a different view.

38. The Hon'ble Apex Court in '**M/s Garment Craft vs. Prakash Chand Goel**', (2022) 4 SCC 181, has held as under:

“18. Having heard the counsel for the parties, we are clearly of the view that the impugned order is contrary to law and cannot be sustained for several reasons, but primarily for deviation from the

limited jurisdiction exercised by the High Court under Article 227 of the Constitution of India. The High Court exercising supervisory jurisdiction does not act as a court of first appeal to reappreciate, reweigh the evidence or facts upon which the determination under challenge is based. Supervisory jurisdiction is not to correct every error of fact or even a legal flaw when the final finding is justified or can be supported. The High Court is not to substitute its own decision on facts and conclusion, for that of the inferior court or tribunal. 1 The jurisdiction exercised is in the nature of correctional jurisdiction to set right grave dereliction of duty or flagrant abuse, violation of fundamental principles of law or justice. The power under Article 227 is exercised sparingly in appropriate cases, like when there is no evidence at all to justify, or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the court or tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure there is no miscarriage of justice. Explaining the scope of jurisdiction under Article 227, this Court in “**Estralla Rubber v. Dass Estate (P) Ltd.**” has observed:-

“6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the

finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.”

39. This Court in case titled ‘**Smt. Suman Sharma and others vs. Darbari Lal and another**’, CM(M) No. 204/2024, decided on 20.09.2024, has held as under:

“14. Before proceeding further, it would be apt to consider the scope of judicial intervention by the courts while exercising power under Article 227 of the Constitution of India. The law has been settled by the Apex Court in authoritative pronouncements that the power under Article 227 of the Constitution of India is to be exercised sparingly in appropriate cases like, when, there is no evidence at all to justify the finding or the finding is so perverse that no reasonable person can possibly come to such a conclusion that the Court or the Tribunal has come to. It is axiomatic that such discretionary relief must be exercised to ensure that there is no miscarriage of justice.

15. The Apex Court in catena of judgments has already held that the High Court has to exercise such wide powers under Article 227 with great care and circumspection and the same cannot be exercised to correct all errors of a judgment of Court and Tribunal acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases, where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. Even the power to re-appreciate the evidence would only be justified in rare and exceptional situations, where the grave injustice would be done, unless the Court interferes and the exercise of such discretionary power would depend upon the peculiar facts of each case with the sole objective of ensuring that there is no miscarriage of justice. The Supreme Court in the case of **Jai Singh Vs. Municipal Corporation of Delhi; (2010) 9 SCC 385** has held as under: -

15. We have anxiously considered the submissions of the learned counsel. Before we consider the factual and legal issues involved herein, we may notice certain well recognized principles governing the exercise of jurisdiction by the High Court under Article 227 of the Constitution of India. Undoubtedly the High Court, under this Article, has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi judicial tribunals, exercise the powers

vested in them, within the bounds of their authority. The High Court has the power and the jurisdiction to ensure that they act in accordance with the well established principles of law. The High Court is vested with the powers of superintendence and/or judicial revision, even in matters where no revision or appeal lies to the High Court. The jurisdiction under this Article is, in some ways, wider than the power and jurisdiction under Article 226 of the Constitution of India. It is, however, well to remember the well known adage that greater the power, greater the care and caution in exercise thereof. The High Court is, therefore, expected to exercise such wide powers with great care, caution and circumspection. The exercise of jurisdiction must be within the well recognized constraints. It cannot be exercised like a „bull in a china shop“, to correct all errors of judgment of a court, or tribunal, acting within the limits of its jurisdiction. This correctional jurisdiction can be exercised in cases where orders have been passed in grave dereliction of duty or in flagrant abuse of fundamental principles of law or justice. The High Court cannot lightly or liberally act as an appellate court and re-appreciate the evidence. Generally, it cannot substitute its own conclusions for the conclusions reached by the courts below or the statutory/quasi judicial tribunals. The power to re-appreciate evidence would only be justified in rare and exceptional situations where grave injustice would be done unless the High Court interferes. The exercise of such discretionary power would depend on the peculiar facts of each case, with the sole objective of ensuring that there is no miscarriage of justice.”

40. Tested on the aforesaid principles, this Court does not find that the impugned order suffers from any manifest perversity, patent illegality, jurisdictional error, or gross miscarriage of justice. The learned trial Court has exercised its jurisdiction in accordance with law and has assigned cogent reasons while dismissing the application under Order VII Rule 11 CPC. Merely because another view may be possible on the same set of facts would not justify interference under Article 227 of the Constitution of India.

41. In view of the above discussion, the petition, being devoid of merit, is accordingly **dismissed**. The order dated 04.09.2025 passed by the learned

Civil Judge (Junior Division), Mendhar, in case titled “*Mumtaz Hussain vs. Satya Devi*” is upheld.

(Wasim Sadiq Nargal)
Judge

Jammu:
25.02.2026
Michal Sharma/PS

<i>Whether approved for reporting:</i>	:	Yes
<i>Whether the order is speaking</i>	:	Yes