



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Civil Revision Petition No. 70/2020

1. State of Rajasthan, Through Its Chief Secretary, Government Secretariat, Bhagwandas Road, Jaipur (Rajasthan.)
2. Principal Secretary, General Administration Department, (G.A.D.) Rajasthan State Government, Government Secretariat, Bhagwandas Road, Jaipur (Rajasthan.)

-----Petitioners/Defendants

Versus

1. Maharaja Sawai Mansingh Second Museum Trust, City Palace, Jaipur (Rajasthan,) Through Authorized Representative (O.s.d.) Thakur Narain Singh S/o Lt. Shri Thakur Mansingh, R/o Siras House, Gangapole, Jaipur (Rajasthan.)

.....Respondent/plaintiff

2. Principal Secretary, (Tourism Art And Culture), chief Executive Officer, Amer Development And Management Authority, Rajasthan State Government, Government Secretariat, Bhagwandas Road, Jaipur (Rajasthan)
3. Jaipur Nagar, Through Its Mayor, Pandit Deendayal Upadhaya Bhawan, Lalkothi, Tonk Road, Jaipur (Rajasthan.)

-----Respondents/defendants

Connected With

S.B. Civil Revision Petition No. 152/2023

1. State of Rajasthan, Through Its Chief Secretary, Government Secretariat, Bhagwandas Road, Jaipur (Rajasthan)
2. Principal Secretary, General Administration Department, (G.A.D.) Rajasthan State Government, Government Secretariat, Bhagwandas Road, Jaipur (Rajasthan.)
3. Jaipru Nagar Nigam , Through Its Mayor/ Rajendra Hazari Guards Building, (Earlier Police Headquater) Tripoliya Bajar, Jaipur (Rajasthan)

-----Petitioners

Versus





1. Rajmata Padmini Devi W/o Late Maharaja Sawai Bhawani Singh Ji, Aged About 79 Years, R/o City Palace, Jaipur (Rajasthan)
2. Diya Kumari D/o Maharaja Bhawani Singh Ji, R/o The City Palace, Jaipur (Rajasthan)
3. Sawai Padmanabh Singh S/o Late Maharaja Sawai Bhawani Singhji, Age 79 Years R/o The City Palace, Jaipur (Rajasthan.)
Through Power of Attorney Holder Thakur Narayan Singh S/o Late Shree Mansingh R/o Siras House, Gangapol, Jaipur Rajasthan.

-----Respondents

S.B. Civil Revision Petition No. 159/2023

1. State Of Rajasthan Through Its Chief Secretary, Government Secretariat, Bhagwandas Road, Jaipur. (Rajasthan.)
2. Principal Secretary, General Administration Department, (G.A.D.) Rajasthan State Government, Government Secretariat, Bhagwandas Road, Jaipur (Rajasthan).
3. Principal Secretary (Home) Rajasthan State Government, Government Secretariat, Bhagwandas Road, Jaipur (Rajasthan.)
4. Director General Of Police (Home Security), Rajasthan State Government , City Palace Area, Jalebi Chowk, Jaipur (Rajasthan.)

-----Petitioners

Versus

1. Rajmata Padmini Devi W/o Late Maharaja Sawai Bhawani Singh Ji, R/o The City Palace, Jaipur (Rajasthan.)
2. Diya Kumari D/o Maharaja Bhawani Singh Ji, R/o The City Palace, Jaipur (Rajasthan.)
3. Sawai Padmanabh Singh S/o Late Maharaja Sawai Bhawani Singh Ji, R/o The City Palace, Jaipur (Rajasthan.)
Through Power Of Attorney Holder Thakur Narayan Singh S/o Late Shree Mansingh, R/o Siras House, Gangapol, Jaipur (Rajasthan.)

-----Respondents





S.B. Civil Revision Petition No. 160/2023

1. State Of Rajasthan, Through Its Chief Secretary, Government Secretariat, Bhagwandas Road, Jaipur. (Rajasthan)
2. Principal Secretary, General Administration Department, (G.A.D.), Rajasthan State Government, Government Secretariat, Bhagwandas Road, Jaipur (Rajasthan).
3. Amer Development And Managment Authority, Through Its Principal Executive Officer, Address Old Vidhan Sabha Building, Jaipur (Rajasthan.)

-----Petitioners

Versus

1. Rajmata Padmini Devi W/o Late Maharaja Sawai Bhawani Singh Ji, R/o The City Palace, Jaipur (Rajasthan.)
2. Diya Kumari D/o Maharaja Bhawani Singh Ji, R/o The City Palace, Jaipur (Rajasthan.)
3. Sawai Padmanabh Singh S/o Late Maharaja Sawai Bhawani Singh Ji, R/o The City Palace, Jaipur (Rajasthan). Through Power Of Attorney Holder Thakur Narayan Singh S/o Late Shree Mansingh, R/o Siras House, Gangapol, Jaipur (Rajasthan.)

-----Respondents

For Petitioner(s)	:	Mr. Bharat Vyas, Senior Advocate, AAG assisted by Mr. Jai Vardhan Joshi & Mr. Mukesh Joshi, Advocates
For Respondent(s)	:	Mr. Ramesh Chandra Sharma, Advocate assisted by Mr. Anant Sharma, Advocate Mr. Deepak Sharma, Advocate

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

17/04/2025

REPORTABLE

1. These four civil revisions petitions were filed by petitioner(s)-defendant(s) after dismissal of their application under Order VII Rule 11 of CPC by learned Trial Court in four different



suits filed by respondent(s)-plaintiff(s). Since, these revisions petitions raised a common question of law and arising out of right and obligations under the covenant executed prior to coming into force of the Constitution of India, therefore, we are deciding these four revision petitions with common order. Defects pointed out by the office in S.B. Civil Revision Petition Nos. 152/2023, 159/2023 and 160/2023, are ignored and overruled.

Relevant Facts:-

2. Lead case is S.B. Civil Revision Petition No. 70/2020 filed aggrieved from dismissal of application under Order VII Rule 11 CPC in civil suit No. 66/2019 passed by learned Additional District Judge No.7, Jaipur Metro, Jaipur on 27.02.2020 whereby objections raised by petitioner were dismissed.

2.1 Respondent No.1-plaintiff has filed a civil suit for mandatory injunction, possession of property, permanent injunction and recovery of occupation charges on the ground that plaintiff-a registered trust, managing the property entrusted and also mentioned in covenant dated 30.03.1949 is entitled to possession of properties described in para No.4 of the plaint, given on license to defendants. The plaintiff is also entitled for mesne profits @ ₹5 lac per month.

2.2 The plaintiff has also stated that the covenant was executed between Sawai Man Singh-II and Union of India and after death of Sawai Man Singh, Sawai Bhawani Singh was recognized as successor by Union



of India. On 30.07.1972, Bhawani Singh has entrusted the property mentioned in para No.4 of plaint to present trust-plaintiff and since then the Trust is managing the property. The total area including building and annexures is 10692.22 square yards.

3. S.B. Civil Revision Petition No. 152/2023 is filed by defendant(s) aggrieved from dismissal of application under Order VII Rule 11 read with Section 151 CPC on 09.05.2023 in civil suit No. 6/2023 passed by learned Additional District Judge No.1, Jaipur Metro-II, Jaipur.

3.1 Respondent(s)-plaintiffs have filed a civil suit for mandatory injunction, recovery of possession, permanent injunction and mesne profit on the ground that under the Covenant dated 30.03.1949, Sawai Man Singh-II has acquired the property "Rajender Hazari Guards Building (Old Police Headquarters)" and same was inherited by Sawai Bhawani Singh on death of Sawai Man Singh and after death of Sawai Bhawani Singh by present plaintiffs. The plaintiffs have also claimed ₹1 crore per month as mesne profit.

3.2 The plaintiffs have also stated that there was an understanding between Government of Rajasthan, Amer Development and Management Authority (ADMA) and Sawai Bhawani Singh for development of this property as Global Arts Square to use same for commercial purpose.



4. S.B. Civil Revision No.159/2023 is filed by petitioner(s)-defendant(s) aggrieved from dismissal of application under Order VII Rule 11 read with Section 151 CPC on 03.06.2023 in civil suit No. 14/2023 by learned Additional District Judge No.1, Jaipur Metro-II, Jaipur.

4.1 The respondents-plaintiffs have filed a suit for mandatory injunction, possession, permanent injunction and mesne profit for the property known as "Jaipur Account Offices and Jaipur Treasury". The plaintiffs have claimed ₹50 lac per month as mesne profit.

4.2 The plaintiffs have mentioned that by Covenant dated 30.03.1949 the suit property was left/given to Sawai Man Singh-II as private property and after death of Sawai Man Singh on 24.06.1970, Sawai Bhawani Singh was recognized as successor of Union of India. After death of Sawai Bhawani Singh on 16.04.2011, the property was inherited by plaintiffs.

5. S.B. Civil Revision Petition No. 160/2023 is filed by petitioner(s)-defendants(s) aggrieved from dismissal of application under Order VII Rule 11 read with Section 151 CPC on 20.05.2023 in civil suit No. 9/2023 passed by learned Additional District Judge No.9, Jaipur Metro-II.

5.1 The respondents-plaintiffs have filed a civil suit for mandatory injunction, possession, permanent injunction and mesne profit for suit property known as



“Town Hall (Old Vidhan Sabha)”. The plaintiffs have claimed ₹1 crore per month as mesne profit.

5.2 The plaintiffs have mentioned that “Town Hall” was shown as private property of Sawai Man Singh -II and he was entitled to full ownership, use and enjoyment with right of succession. After death of Sawai Man Singh, the property was inherited by Sawai Bhawani Singh and after death of Sawai Bhawani Singh, the property was inherited by the plaintiffs.

5.3 The plaintiffs have mentioned that during lifetime of Sawai Bhawani Singh the Government has obtained his consent for development of property as a joint venture. The plaintiffs have further mentioned that after construction of New Vidhan Sabha (Assembly Building), the use and purpose of license has extinguished. The plaintiffs have further mentioned that development of Global Arts Square is not within official use as prescribed under the covenant.

6. These four revision petitions were preferred on the ground that covenant was executed on 30.03.1949 between Sawai Man Singh-II (erstwhile ruler of Jaipur State) and Union of India, before the coming into force of the Constitution of India. Article 363 of Constitution of India prescribes a bar for consideration of matters mentioned and relating to covenant executed prior to coming into force of Constitution of India. The petitioner(s)-defendant(s) filed an application under Order VII Rule 11 CPC for rejection of plaint in view of bar





under Article 363 of Constitution of India, but in all four Civil Suits filed by plaintiff(s), same were dismissed.

Submission of parties:-

7. Learned AAG Mr. Bharat Vyas appearing on behalf of petitioners submitted that Article 363 of Constitution of India bars the filing of any suit or any proceeding before any Court in relation to a Covenant or a treaty executed prior to coming into force of Constitution of India. He further submitted that a Covenant executed between an erstwhile ruler of Jaipur and Union of India cannot become a subject matter of adjudication between the parties of Covenant before any Court. He also submitted that none of the party can enforce any right under the Covenant before any Court of law. He further submitted that the Covenant itself prescribes that certain properties will remain as private property of erstwhile ruler of Jaipur and same shall be used and maintained by the Government. He submitted that the words "license" or "occupier as licensee" were not mentioned in Covenant, therefore, the plaintiff(s) has no right to file a suit on the ground that the license of State Government to use or the purpose mentioned in the suit was terminated or extinguished so the properties in question are required to be restored back to the owner or successor of the properties. He further submitted that the Trial Court was required to consider the bar contained under Article 363 of Constitution of India and by operation of this bar a suit filed by plaintiff(s) is not maintainable before any court of law.





8. Learned AAG has placed reliance upon judgment of Hon'ble Supreme Court in case of **Karan Singh Vs. State of Jammu and Kashmir & Ors. MANU/SC/0332/2004** and submitted that Article 363 bars jurisdiction of Courts in any dispute arising out of any provision of treaty, agreement, covenant etc., entered into before commencement of constitution by any ruler of an Indian State. He also placed reliance upon judgment in case of **State of Rajasthan Vs. Sawai Tejsinghji Maharaja of Alwar AIR 1968 Raj. 52, Sawai Tej Singh Vs. Union of India (1979) 1 SCC 512, Rajmata Krishna Kumari Vs. State of Rajasthan and Ors. 20074 (1) RLW Raj. 570, Draupadi Devi & Ors. Vs. Union of India (2015) 8 SCC 672, and Director of Estate Vs. Maharaja Brigadier Sawai Bhawani Singh and Ors. (MANU/RH/1278/2007)** and affirmed by Division Bench of this Court in D.B. Special Appeal (Writ) No.1108/2008.
9. Aforesaid contentions were opposed by learned counsels appearing on behalf of respondents(s)-plaintiff(s) and submitted that plaintiffs have filed a civil suit on the basis of rights accrued under general civil law and same is maintainable before a Civil Court. He further submitted that Hon'ble Supreme Court has already directed the Trial Court for disposal of civil suit as expeditiously as possible and there is no ground to consider these civil revision petitions. He further submitted that the petitioners have raised issue of jurisdiction of civil Court and same is a mixed question of



facts and law which requires evidence of both the parties and after considering the evidence the Court may decide such issue, specifically framed after completion of pleadings of the parties. He also submitted that even under the Covenant, the plaintiff(s), successors of Sawai Bhawani Singh may not become remediless and they have a right to file appropriate proceedings before the Court of law to crystallize their rights to enjoy the fruits of the property. He also submitted that the properties in question are in abandoned and dilapidated condition and State is trying to use them for commercial purposes. He further referred the Minutes of certain meetings between defendant(s), Amer Development And Management Authority and Sawai Bhawani Singh and submitted that the Officers of the Government are trying to part the property to private individuals. He also referred the Covenant and submitted that the properties have to be used for official purpose by Government not by any other third party but when the Government is not using these properties and same are lying in abandoned and dilapidated condition then the plaintiff(s) have a right to claim possession of these properties and also mesne profit. He further referred Article 363 of Constitution of India and submitted that no question about interpretation of Covenant is raised and these suits were not filed for interpretation, rather these civil suits filed to claim possession and mesne profit and same are maintainable only before a Civil Court.





10. He also referred the provision of Order VII Rule 11 CPC and submitted that where there is a disputed question then a civil suit cannot be dismissed by a Trial Court under Order VII Rule 11 CPC. Learned counsel has referred several communication from 18.03.1949 till 14.12.2022, in support of his submissions. Learned counsel has also placed reliance upon judgments in case of **Bhanu Ram Vs. Janak Singh & Ors. 2012 (2) WLC (SC) Civil 254, Kamala and Ors. Vs. K.T. Eshwarasa and Ors. 2018 (12) SCC 661, Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors. : (2021) 9 SCC 99, Gopal Vs. Manohar Lal and Ors. 2016 (3) DNJ (Raj.) 1208, Babulal and Ors. Vs. Board of Revenue, Rajasthan Ajmer & Ors. 2011 (2) DNJ (Raj.) 730, Pali Central Co-operative Bank Limited & Anr. Vs. Smt. Pushpa Devi & Anr. 2013 (3) DNJ (Raj.) 1418, Pawan Kumar Vs. Babu Lal since deceased through legal heirs and Ors. 2019 (4) SCC 367, Jagat Singh Vs. The Jaipur Development Authority, Jaipur S.B. CSA No. 12/1987 (Order dated 07.09.1987) and affirmed in S.L.P. (Civil) No. 2803/1989 (Order dated 10.04.1995) titled as JDA Vs. Jagat Singh (Supreme Court), Satish Kumar Pareek Vs. The State of Raj. & Ors. (D.B. Civil Writ Petition (PIL) No. 7133/2004, order dated 05.05.2008), Director of Estate Jaipur Vs. Maharaja Brigadier Sawai Bhawani Singh Rajput Through LR's and Ors. 2018 (2) DNJ (Raj.) 659, Prince Kamzi Vs. Sandeep Khaturia & Ors. 2023 (2) DNJ (Raj.) 537,**





Gobar Ram Vs. Ram Pratap 2021 (4) WLC (Raj.) 415, Hari Mohan Sharma and Ors. Vs. Chanranjeet Singh Rekhi & Ors. 2019 (12) SCC 412, New Swim and Smile Swimming Pool Vs. Smt. Usha Soni & Anr. (2019) 1 WLC (Raj.), UC 165 and submitted that the purpose of Order VII Rule 11 CPC is to dismiss a suit barred by law but civil suits filed in respect of private properties already earmarked and assigned to erstwhile ruler of Jaipur is maintainable as there is no question of interpretation of any condition of Covenant or enforcement of any right under the Covenant. He submitted that the Trial Court has rightly dismissed the application after considering the entire material on record and there is no scope of interference in revision. He further submitted that on multiple times issue relating to affairs of property earmarked in Covenant came before this Hon'ble Court and this Hon'ble Court has held that there is no bar under Article 363 of Constitution of India. He submitted that the judgments of this Hon'ble Court in such cases have already attained finality, therefore, there is no ground to interfere in the order passed by the Trial Court. He also submitted that the defendants are trying to use the properties in question for any other purpose other than mentioned in Covenant and now these properties are lying vacant after construction of Government Buildings/Vidhan Sabha/Police Headquarters in other ares of city.





11. Heard learned AAG appearing for petitioners and learned counsels appearing for respondent-plaintiffs. Perused the material submitted by both the parties along with written brief submission. Also perused the judgments as referred by learned AAG and learned counsel for respondent(s)-plaintiff(s).

Rationale behind Order VII Rule 11 CPC :-

12. The applications under Order VII Rule 11 CPC in all four civil suits were dismissed by learned trial court observing that the trial court is required to peruse the plaint and documents filed along with the plaint. The objection raised by defendant(s) is mixed question of fact and law. To decide question of jurisdiction of Civil Court, evidence is required.
13. Order VII Rule 11 CPC deals with the grounds for rejection of plaint aiming to prevent frivolous or defective suits. The provision enables the Court to reject a plaint, if certain conditions are satisfied. The provision of Order VII Rule 11 CPC is reproduced as under:-

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 :

(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-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. In case of **T. Arivandandam vs. T.V. Satyapal, (1977) 4 SCC (1) 467**, Hon’ble Supreme Court while examining the aforesaid provision has held that the trial court must remember that if on a meaningful and not a 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 under Order X of the Code.
15. The object of the said provision is further considered by Hon’ble Supreme Court in **Sopan Sukhdeo Sable vs. Assistant Charity Commissioner, (2004) 3 SCC 137**, and in **Popat and Kotecha Property vs. State Bank of India Staff Association, (2005) 7 SCC 510**, and held that



no court shall permit the plaintiff to unnecessarily protract the proceedings in a suit in case the suit does not disclose a cause of action or barred by any law or law of limitation.

16. In case of **Saleem Bhai vs. State of Maharashtra, (2003)**

1 SCC 557 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 at any stage of the suit i.e. 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 VII 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.

17. Hon'ble Supreme Court in case of **Dahibhen Vs. Arvindbhai Kalyanji Bhanusali through LRs and Ors.**

2020 SCC Online (SC) 562 while dealing with an appeal against an order allowing rejection of a suit at the threshold, had occasion to consider various precedents to discuss the intent under Order VII Rule 11 of CPC. Hon'ble Supreme Court observed that if no cause of action is disclosed in the plaint, or if the suit is barred by law, court would not permit protraction of the proceedings and it would be necessary to put an end to the shame litigation so that further judicial time is not wasted.

18. After placing reliance upon **Azhar Hussain Vs. Rajiv Gandhi 1986 SCC (SUPP) 315**, Hon'ble Supreme Court





opined that the entire purpose of conferment of such power is to ensure that a litigation, which is meaningless and bound to prove abortive should not be permitted to occupy the time and space of the Courts. The power on the Court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 CPC are required to be strictly adhered to.

19. Hon'ble Supreme Court while dealing with such an application seeking rejection of a plaint clarified that while determining any application filed under Order VII Rule 11 CPC, the court should restrict itself to the plaint and should not go into the detail facts as provided under the written statement or even in the application filed for rejection of plaint. While scrutinizing the averments in the plaint, the Court can read documents annexed and relied upon in the plaint.
20. Order VII Rule 11(d) of CPC provides that a plaint should be rejected if the suit is barred by any law. Hon'ble Supreme Court in case of **Ramisetty Venkatanna Vs. Nasyam Jamal Saheb 2023 INSC 458** has observed that plaint should be rejected under Order VII Rule 11 (a)(d) of CPC if it is vexatious, illusory cause of action and barred by law.
21. Learned counsel for respondents has referred judgment in case of **Bhau Ram Vs. Janak Singh & Ors. (supra)**, wherein it was held that only averment in plaint can be considered while deciding application for rejection. In case of **Kamala and Ors. Vs. K.T. Eshwarasa and Ors. (supra)**, it



was held that no amount of evidence or defence can be looked into while deciding application under Order VII Rule 11 CPC. In case of **Pawan Kumar Vs. Babulal since deceased (supra)**, Hon'ble Supreme Court has held that the test is whether from statement made in plaint it appears without doubt or dispute that suit is barred then only a suit can be rejected. In case of **Hari Mohan Sharma and Ors. Vs. Chanranjeet Singh Rekhi & Ors. (supra)**, Hon'ble Supreme Court has held that objection with regard to necessary or proper party is a triable issue. In case of **Srihari Hanumandas Totala Vs. Hemant Vithal Kamat & Ors. (supra)**, Hon'ble Supreme Court has held that only averment in plaint may be considered at this stage.

22. In case of **Gopal Vs. Manohar (supra)**, a Co-ordinate Bench of this Court has held that question of jurisdiction is a mixed question of law and plaint can be rejected only if it is barred by law. In case of **Babu Lal & Ors. Vs. Board of Revenues (supra)**, a Co-ordinate Bench has held that the Trial Court is required to examine the facts of the plaint along with supporting material in considering the application. In case of **Pali Central Co-operative Bank Limited & Anr. Vs. Smt. Pushpa Devi & Anr. (supra)**, a Co-ordinate Bench held that a Civil Court has jurisdiction to decide dispute relating to civil rights. In case of **Prince Kazmi Vs. Sandeep Khaturia & Ors. (supra)**, a Co-ordinate Bench has held that application under Order VII Rule 11 CPC can be decided after recording the evidence of parties on the point.





In case of **Gobar Ram Vs. Ram Pratap (supra)**, it was held that only plaint averments and documents on which the plaint is based have to examine while deciding the application. In case of **Smile Swimming Pool Vs. Smt. Usha Soni & Anr. (supra)**, a Co-ordinate Bench of this Court has held that issue of non-impleadment of party has to raised in written statement and not in application under Order VII Rule 11 CPC.

23. Having considered the legal position as referred hereinabove, it is crystal clear that a plaint filed under Order VII Rule 11 CPC can be rejected under Order VII Rule 11 CPC on grounds mentioned therein but while considering the application, the Court can only look at plaint and the documents annexed with the plaint or relied upon in plaint which means that a meaningful reading of plaint, document annexed or relied by plaintiff are required to be considered while considering application under Order VII Rule 11 CPC. A plaint which does not disclose a cause of action or which is barred by law, which includes law of limitation can be dismissed at any stage before pronouncement of judgment. The legal position makes it clear that the duty conferred under the Court can be exercised on application of any of the defendant or suo moto by the Court itself so as to save precious judicial time. Herein, this case learned AAG has placed reliance upon Article 363 of Constitution of India and submitted that all four suits filed by respondent(s)-



plaintiff(s) are barred by law, therefore, under Order VII Rule 11(d) of CPC are required to be rejected.

24. The legal position till date clearly empowers the Court to reject a suit, if it fulfills the condition as prescribed under Order VII Rule 11 CPC but the only condition is that the Court cannot look into defence or averment made in either the written statement or in application itself. While considering the application, the Court cannot presume that the objection raised about maintainability of suit is a mixed question of facts and law. If law is clear and suit appears to be barred by law then the plaint is necessarily be rejected at very threshold.

Bar to institute a civil suit:-

25. Section 9 of CPC provides that the Court shall have jurisdiction to try all suits of a civil nature except suit of which cognizance is expressly or impliedly barred. It is well-settled that consent of parties cannot confer nor take away jurisdiction of any Court which means if a Civil Court has jurisdiction neither acquiescence nor waiver or estoppel can create the same.
26. In case of **A.R. Antulay vs R.S. Nayak & Anr. AIR 1988 SC 1531**, Hon'ble Supreme Court has held that the power of Court or jurisdiction is legislative in character. In case of **Chief Engineer, Hydel Project & Ors vs Ravinder Nath & Ors. (2008) 2 SCC 350**, Hon'ble Supreme Court has held that a decree passed without jurisdiction is nullity and its invalidity can be set up even at the stage of execution. It is



essentially based on a principle "coram non judice". In case of **Kiran Singh And Others vs Chaman Paswan And Others AIR 1954 SC 340** has held that a defect of jurisdiction goes to the root of the matter and such a basic and fundamental defect cannot be cured by consent of the parties. Conversely, if a Court to decide a dispute, the same cannot be taken away or ousted by consent of the parties. In case of **Abdulla Bin Ali Vs. Gullapa & Ors. (1985) 2 SCC 54**, Hon'ble Supreme Court held that the jurisdiction does not depend upon the defence taken by the defendants in the written statement. A similar view was expressed in case of **Bank of Baroda vs Moti Bhai And Ors. (1985) 1 SCC 475** and held that on the question of jurisdiction, one must always have regard to the substance of the matter and not to the form of the suit.

27. In view of legal position about jurisdiction of civil Court, it is apparently clear that in case suit is expressly or impliedly barred then the Civil Court has no jurisdiction to entertain and continue the civil suit. In case a Civil Court has no jurisdiction to entertain or continue a civil suit then a plaint is required to be rejected under Order VII of Rule 11(d) of CPC.

Bar under Article 363 of Constitution of India:-

28. These revision petitions were filed after dismissal of application under Order VII Rule 11 CPC by the Trial Court in four civil suits filed by respondent(s)-plaintiff(s). We are reproducing Article 363 of Constitution of India as under:-





363. Bar to interference by courts in disputes arising out of certain treaties, agreements, etc.

(1) Notwithstanding anything in this Constitution but subject to the provisions of article 143, neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement, covenant, engagement, sanad or other similar instrument which was entered into or executed before the commencement of this Constitution by any Ruler of an Indian State and to which the Government was a party and which has or has been continued in operation after such commencement, or in any dispute in respect of any right accruing under or any liability or obligation arising out of any of the provisions of this Constitution relating to any such treaty, agreement, covenant, engagement, sanad or other similar instrument.

(2) In this article--(a) "Indian State" means any territory recognised before the commencement of this Constitution by his Majesty or the Government of the Dominion of India as being such a State; and (b) "Ruler" includes the Prince, Chief or other person recognised before such commencement by his Majesty or the Government of the Dominion of India as the Ruler of any Indian State.

29. The language used under Article 363 bar the jurisdiction of the Courts in dispute arising out of treaties, agreements, engagements, sanad or similar instrument which was entered into or executed before the commencement of the constitution between the Ruler of Indian States and the Union of India or its predecessors. The exception to this bar is Article 143, which allows the President of India to seek an advisory opinion of the Supreme Court on any question of law or fact. The provision behind introduction of Article 363 is to address disputes relating to historical agreements and treaties made before the Constitution's commencement.
30. Learned counsel for respondent(s)-plaintiff(s) has referred judgment in case of **Talat Fatima Hasan Through Her Constituted Attorney Syed Mehdi Husain Vs. Syed**



Murtaza Ali Khan (Dead) by Legal Representative and

Ors. (2020) 15 SCC 655 to substantiate the right of rulership and incidents thereof, distinguished from ownership of private properties of ruler, so declared by him, hence, rule of primogeniture not ipso facto applicable in case of succession of such private properties. The judgment referred by learned counsel has no bearing upon instant case as we are not considering any issue relating succession.

31. Two specific commissions **Sarkaria Commission (1983)** and **Punchhi Commission (2010)** have considered and referred the provision relating to Article 363. Though, Sarkaria Commission was with regard to Centre-State relation and implication of historical treaties and agreement on Centre-State relation, but it has discussed the historical agreement and their impact on Centre-State relations. The Punchhi Commission, (2010) discussed the historical context of agreement with princely States. The sum and substance of Article 363 is that if any dispute arises out of any specific treaty, agreement, Covenant or other legal document executed prior to commencement of Indian Constitution then same cannot be resolved by invoking the jurisdiction of any Court or Tribunal under the Indian Justice system.
32. This issue was considered in detail by a Special Bench (5 Judges) of Hon'ble Supreme Court in case of **State of Seraikella vs Union of India And Another AIR 1951 SC 253** and after considering the Article 363 of Constitution of India and referring the judgment in case of **Moon Vs.**



Burden 1948-2-EX-22, and **Beadling Vs. Golt 1922-139-TLR-128** held that Article 363 over-rides the other provision of Constitution. Hon'ble Supreme Court in a majority decision led by Hon'ble the Chief Justice Kania held that even the jurisdiction of Supreme Court under Article 363(1) of Constitution supersedes any other provision under Article 374(2) and the Supreme Court has no jurisdiction to entertain the suit arising out of instrument executed before the Constitution, even if such suits were pending at the time of coming into force of Constitution.

33. The judgment in case of **State of Seraikella vs Union of India And Another (supra)** was relied in case of **H.H, Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior Etc. Vs. Union of India and Anr. reported as AIR 1971 SC 530 [MANU/SC/0050/1970]** and **The State of Karnataka by its Chief Secretary vs State of Tamil Nadu by its Chief Secretary (2018) 4 SCC 1**. Further, this judgment was referred in case of **State of Himachal Pradesh Vs. Union of India (2011) 13 SCC 344, Maharaj Umeg Singh and Others vs The State of Bombay And others AIR 1955 SC 540,** and **State of Bihar Vs. Union of India, AIR 1970 SC 1446**. The principle of law as settled upon Article 363 of Constitution of India reinforces the limitation on jurisdiction of Courts in the country and by denying jurisdiction the jurisdiction of the Courts, the purpose of maintaining stability in the agreements entered with rulers of Indian States has been



achieved. If any of the party seeking to challenge administrative action based on constitutional instrument have to find alternatively legal avenues and the only remedy is Article 143 of Constitution of India.

34. In case of **Karan Singh Vs. State of Jammu and Kashmir and Ors. (supra)**, Hon'ble Supreme Court has considered bar under Article 363 of Constitution and answered following question:-

"Bar of Article 363 of the Constitution of India to the maintainability of the writ petition?"

While referring the judgment in case of **H.H, Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior Etc. Vs. Union of India and Anr. (supra)**, **Union Of India vs Prince Muffakam Jah & Ors. AIR 1995 SC 498**, and **Kunwar Shri Vir Rajendra Singh vs Union of India & Ors. (1970) 2 SCR 361** has held that any right arising out of or relating to treaty, Covenant agreement etc. as mentioned in Article 363 is barred to be determined by any Court.

35. Learned counsel for respondent has referred the judgment in case of **Jagat Singh Vs. The Jaipur Development Authority (supra)** CSA No. 12/1987 affirmed in SLP (Civil) No. 2803/1989, **Satish Kumar Pareek Vs. The State of Raj. & Ors (supra)**, and **Director of Estate Vs. Maharaja Brigadier Sawai Bhawani Singh and Ors. (supra)**, wherein the proceeding was found to be maintainable. The judgments relied by learned counsel for respondent does not



pertains to applicability and enforcement of rights conferred under the Covenant and also bar under Article 363 of Constitution of India, therefore, these judgments are not helpful and applicable in the instant case.

Applicability of bar in the instant suit:-

36. The statement annexed with Covenant which describes the private properties both movable or immovable is also placed on record and same is relied upon by the plaintiff(s). Some portion is reproduced as under for ready reference:-

“A. Property which will be family property of His Highness and preserved for future successors.

In Jaipur State.

1. City Palace, subject to the following conditions:-

- (a) *The buildings housing the Art Treasurers, such as carpets, manuscripts, armoury and historical records that are to be converted into a National Trust, to be continued to be used for the said purpose and to be maintained by the Trust or by the new Government.*
- (b) *The buildings known as Diwan-i-Am, Sharbatobhadre Chandre Mahal and the Jai Niwas Gardens (which are family property) are to be used for ceremonial and State functions of the Raj. Pramukh and should be maintained by the Rajasthan Government for the said purpose.*
- (c) *The buildings in the inner enclosure, at present occupied by the Jaipur Accounts Offices and the Jaipur Treasury to be continued to be used and maintained by the Government.*
- (d) *Jaleb Chowk, including Town Hall and Rajendra Hazari Guards buildings- which are within the City Palace are- to be handed over to the Rajasthan Government for official use, and to be maintained by the Government.*
- (e) *Zenani Deorihi buildings: These are to belong to and be maintained by the*





Government , but will not be put to any other use so long as any of the present Zenana inmates is alive.

- (f) *Atish and Baggikhana buildings: If these buildings are to be utilized for Government purposes, funds will be provided by the Government for constructing suitable new buildings for housing the Atish and the Baggikhana.*

2. Rambagh Palace, including :-

.....
.....”

37. Aforesaid clearly indicate that the buildings in inner parts including Jaleb Chowk and Town Hall, will be used by Rajasthan Government for official use. The maintenance of building is also responsibility and obligation of Rajasthan State Government. The main condition of the Covenant is that these immovable properties shall be preserved for future successors but these properties as mentioned in Part-A are not meant for disposal in any manner. The properties which can be disposed of by His Highness and future successors are mentioned in Part-B of said Covenant.
38. The part-A of immovable properties have to be preserved for future successors and His Highness or their successors have no right to dispose of these properties. The bifurcation of properties in schedule is for some specific purpose and object, therefore the properties in Part-A can only be used for official purpose and not for any commercial purposes. These properties have to be preserved forever as these properties belong to erstwhile Jaipur State, which is now merged in Union of India and after the merger, these properties of erstwhile rulers cannot be considered as a



property which can be sold or disposed of at whims and fancies of any individual even by agreement between the parties. The restriction placed in Covenant has to apply as it is and there is no room for deviation from Covenant or conditions mentioned in Covenant. The provision makes abundantly clear that **Jaipur Account Offices and Jaipur Treasury, Jaleb Chowk, Town Hall and Rajendra Hazari Guard Buildings** will be used by State Government for official purposes and they are required to be maintained by the Government. It means the State Government has no right or authority to convert these properties for commercial purpose or semi commercial purpose even in joint venture with family of His Highness or any other private developer.

39. Herein, all four suits were filed against the State Government which is occupying these buildings on the ground that the State has abandoned the use as new buildings were constructed. The State Government which was given the right of use without prescribing any condition has a right to continue to occupy these properties forever and to use same only for official purposes. The official purpose includes running of offices, Courts, Tribunals, Schools, Hospitals or any other activities defined in official purpose to serve the public at large but obviously an official purpose does not include establishment of a shopping mall or a gallery or any other commercial venture.
40. The importance of the matter can only be considered from the aspect that a Co-ordinate Bench has dismissed civil misc.





appeal Nos. 2109/2023 and 2110/2023 on 15.09.2023 wherein the T.I. Order dated 20.07.2023 in civil misc. application No. 10/2023 and 03.06.2023 in civil misc. application No. 13/2023 was upheld. A Co-ordinate Bench of this Court has observed that the Trial Court in its order mentioned that the official use should be considered in wider terms and not in narrow sense. The said property was given on a license or not and whether the purpose of giving the State property has been extinguished or not are triable issues which would be decided after evidence. A Coordinate Bench has not considered the provision of Article 363 of Constitution of India rather it has dealt the civil misc. appeals filed under Order XLIII Rule 1 of CPC.

41. In view of averment made in plaint, supported with Covenant it is apparent that these suits are clearly barred Article 363 of Constitution of India as the suits were filed against the State Government and the plaintiff(s) have no right or authority to file any civil suit or any other proceeding in any court of law against Union of India or State Government to demand possession or mesne profit of the properties mentioned in Covenant as these properties are neither on lease nor on licence.
42. Before parting the order, it is necessary to mention that when the matter was taken up on 11.03.2024 no one was present to plead the case of the State. This Court after considering the interest of citizens of Rajasthan has directed the Chief Secretary of Rajasthan to appear through Video



Conferencing. On 13.03.2024, Mr. Sudhanshu Pant, Chief Secretary of Rajasthan appeared through Video Conferencing with Mr. Gyan Prakash Gupta, the Principal Secretary (Department of Law and Legal Affairs). An affidavit was filed on 22.03.2024 by Mr. Gyan Praksh Gupta.

43. The facts brought on record indicate that the attempts were made to convert the property to a commercial use but certainly same is not for official purpose. No public servant whether he is member of top executive or subordinate executive can act contrary to law of the land. The duties of public servant was considered by Hon'ble Supreme Court on multiple occasions and at all point of time Hon'ble Supreme Court has reminded that an official act has to be performed in accordance with law. The definition of offence is also very wide and it includes act or omission not only, under the B.N.S. but under the Prevention of Corruption Act. The offence committed by public servant are mentioned in BNS or IPC and they are liable by the prosecution in accordance with law.

44. In case of **Kesavananda Bharti Vs. State of Kerala AIR 1973 SC 1461**, Hon'ble Supreme Court has held that the public servants are bound to act within the limits prescribed by the Constitution and respect its basic structure of the Constitution. In case of **Manoj Narula Vs. Union of India (2014) 9 SCC 1**, Hon'ble Supreme Court emphasized the importance of maintaining the purity of administration and public servant, thus the integrity in public life is fundamental



and no public servant can misuse their position for personal gains.

45. In landmark case of **Vineet Narain Vs. Union of India (1998) 1 SCC 226**, Hon'ble Supreme Court stressed need of independence of investigating agencies in probing the matters of corruption. Hon'ble Supreme Court has laid down that public servants are answerable for their decisions and actions and they are required to be transparent in dealings and accountable to the public. In case of **State of Punjab Vs. Gurdial Singh (1980) 2 SCC 471**, it was held that a power must be exercised in just and fair manner and no decision should be arbitrary. It is also the duty of public servant to maintain impartiality and fairness.
46. The Official Secrets Act, 1923, the Rights to Information Act, 2005 and the Lokpal and Lokayuktas Act, 2013 also cast a duty upon the public servant to act in accordance with law and to serve the public at large in bona fide manner. It also indicates that the public servants are custodians of public trust and they have to act accordingly in order to maintain sanctity and confidence of people.
47. Having considered the legal position, it is expected from Top Executive and Subordinate Executive to remain vigilant to the needs of the society and pay attention to protect the interest of public at large as custodian of public trust. It is always expected from a public servant to remain transparent and accountable for their action but in case he fails in his





duty then certainly he is liable for action(s), may be initiated at behest of any of public spirited citizen.

48. In these revision petitions the Trial Court without considering the fact that the parties to the proceedings are either the successors or beneficiary under the Covenant or the State Government specifically mentioned in Covenant and if there is a dispute between them the provision of Article 363 of Constitution of India will come into play.

49. The erstwhile rulers prior to independence of India have developed their State from the Public Exchequer, collected from Lagaan and tax from public and now after independence, in place of erstwhile ruler, it is democratically elected Government, chosen by the public, thus the Monarchy converted into a Republic. In such circumstances the properties mentioned in Covenant is meant for forever use by the Government for official purposes and with right of ownership to legal heirs of erstwhile ruler of Jaipur. The legal heirs or successors of erstwhile ruler neither demand possession nor can they demand mesne profit or occupation charges from State Government or Union of India. The civil suit(s) filed by the plaintiff(s) are not maintainable as same are barred by law and the order(s) passed by the Trial Court(s) are illegal, perverse and contrary to the provision of law.

50. In view of aforesaid, S.B. Civil Revision Petition Nos. 70/2020, 152/2023, 159/2023, 160/2023 are hereby allowed and order(s) dated 27.02.2020 in civil suit No.





66/2019, 09.05.2023 in civil suit No. 06/2023, 03.06.2023 in civil suit No. 14/2023 and 20.05.2023 in civil suit No. 09/2023, are set aside. As a result, the applications under Order VII Rule 11 read with Section 151 CPC in aforementioned civil suits filed by petitioner(s)-defendant(s), are hereby allowed and civil suit(s) filed by respondent(s)-plaintiff(s), are hereby rejected.

51. No order as to costs.

52. A copy of this order be sent to the Chief Secretary of the State of Rajasthan.

(ASHOK KUMAR JAIN),J

MONU KAMRA /99-102