



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8042 OF 2015

1. M/s. Bhandup Estate, through
Pratap Shoorji Vallabhdas
2. Pratapsinh Shoorji Vallabhdas
3. Dilipsinh Shoorji Vallabhdas
4. Jyotsna Vikramsinh
5. Jayalaxmi Gopalji Ganatra
6. Damayanti Virji
7. Kalyanji Aliaas Arunkumar
Purshottam Bhanji
8. Vasantkumar Purshottam Bhanji
9. Saraswati, wife of Prahladrai Kheraj
10. Damayanti, wife of Liladhar Kanji
11. Raja Babulal Majethia

...Petitioners

V/s.

1. Indubai Rajaram Ohol
2. Anuradha Nandkumar Sirsat
3. Atul Rajaram Ohol
4. Alka Babanrao Gaikwad
5. Aruna Daniel Kamble
6. Ankita Rajaram Ohol
7. Namrata alia Vaijanti Balasaheb
Ohol
8. Preshita Balasaheb Ohol
9. Tejashri Balasaheb Ohol
10. Pranjal Balasaheb Ohol
11. Tanmay Balasaheb Ohol

...Respondents

WITH
CIVIL APPLICATION NO.2332 OF 2015
IN
WRIT PETITION NO.8042 OF 2015

1. M/s. Bhandup Estate, through
Pratap Shoorji Vallabhdas
2. Pratapsinh Shoorji Vallabhdas
3. Dilipsinh Shoorji Vallabhdas

...Applicants

4. Jyotsna Vikramsinh
5. Jayalaxmi Gopalji Ganatra
6. Damayanti Virji
7. Kalyanji Aliaas Arunkumar
Purshottam Bhanji
8. Vasantkumar Purshottam Bhanji
9. Saraswati, wife of Prahladrai Kheraj
10. Damayanti, wife of Liladhar Kanji
11. Raja Babulal Majethia

V/s.

1. Indubai Rajaram Ohol
2. Anuradha Nandkumar Sirsat
3. Atul Rajaram Ohol
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9. Tejashri Balasaheb Ohol
10. Pranjal Balasaheb Ohol
11. Tanmay Balasaheb Ohol

...Respondents

**WITH
INTERIM APPLICATION NO.340 OF 2026
IN
WRIT PETITION NO.8042 OF 2015**

Vasantkumar Purshottam Bhanji

...Applicant

V/s.

1. Municipal Corporation of Greater
Mumbai
2. Sun-N-Shine Entertainers Private
Limited

...Respondents

In the matter between

1. M/s. Bhandup Estate, through
Pratap Shoorji Vallabhdas (since
deceased)
2. Pratapsinh Shoorji Vallabhdas

- (since deceased)
3. Dilipsinh Shoorji Vallabhdas
 4. Jyotsna Vikramsinh (since deceased)
 5. Jayalaxmi Gopalji Ganatra (since deceased)
 6. Damayanti Virji (since deceased)
 7. Kalyanji Alias Arunkumar Purshottam Bhanji (since deceased)
 8. Vasantkumar Purshottam Bhanji
 9. Saraswati, wife of Prahladrai Kheraj
 10. Damayanti, wife of Liladhar Kanji (since deceased)
 11. Raja Babulal Majethia

...Petitioners

V/s.

1. Indubai Rajaram Ohol
2. Anuradha Nandkumar Sirsat
3. Atul Rajaram Ohol
4. Alka Babanrao Gaikwad
5. Arun Daniel Kamble
6. Ankita Rajaram Ohol
7. Namrata alias Vaijanti Balasaheb Ohol
8. Preshita Balasaheb Ohol
9. Tejashri Balasaheb Ohol
10. Pranjal Balasaheb Ohol
11. Tanmay Balasaheb Ohol

...Respondents

Mr. Vineet Naik, Senior Advocate with Mr. Sumanth Anchan & Mr. Prathamesh Ayare i/b. Mr. Vivek P. Kakade for the Petitioners.

Mr. Pravin Samdani, Senior Advocate with Mr. Vishal Kanade i/b. Mr. Drupad Patil for Respondent Nos.2, 5 & 6.

Dr. Birendra Saraf, Senior Advocate with Mr. Aseem Naphade, Ms. Deepanjali Sharma i/b. Mr. Yogesh Adhia for Respondent No.2 in IA/340/2026.

Mr. Santosh Mali with Mr. D.R. Kawale for Respondent-MCGM in IA/340/2026

CORAM: SANDEEP V. MARNE, J.

Judgment reserved on: 28 SEPTEMBER 2026.

Judgment pronounced on: 09 OCTOBER 2026.

JUDGMENT:

1) Petitioners have filed this Petition challenging the order dated 24 September 2014 passed by the learned Judge, City Civil Court, Mumbai dismissing Notice of Motion No.2769 of 2012 taken out by them seeking a direction for setting aside consent decree dated 5 April 1982 passed in S. C. Suit No.4947 of 1981.

2) Petitioner No.1-Bhandup Estate is described to be an Association of Persons (**AoP**) comprising of (i) Pratapsinh Shoorji Vallabhdas, (ii) Dilipsinh Shoorji Vallabhdas (iii) Jyotsna Vikramsinh, (iv) Jayalaxmi Gopalji Ganatra, (v) Damayanti Virji, (vi) Kalyanji alias Arunkumar Purshottam Bhanji, (vii) Vasantkumar Purshottam Bhanji, (viii) Saraswati, wife of Prahladrail Kheraj (ix) Damayanti, wife of Liladhar Kanji, and (x) Raja Babulal Majethia. Petitioner No.1-Bhandup Estate is also commonly known as '*Bhandup Khot*'. It is claimed by the Petitioners that Bhandup Estate owned land admeasuring 1423 acres in villages of Bhandup, Kanjur and Nahur by virtue of grant effected by East India Company through Collector of Salsette and Bombay, initially in the name of Luke Ash Burner on 17 September 1803. It is Petitioners' case that in 1918, the entire estate of land was held by Haji Essa Haji Osman

Poonawalla, who sold the same by Deed dated 10 March 1920 to Javerbai Ramji, Hirji Moolji, Gopaldas Trikamji Jeevandas, Shivji Raghavji, Lalji Moolji and Mathuradas Visanji Khimji. In 1922, Gopaldas Trikamji Jeevandas sold his share in the property to Lalji Moolji, Shivji Raghavji and Mathuradas Visanji Khimji by Deed of 20 July 1922. By further Deed dated 7 February 1930, Lalji Moolji and Khimji Shamji sold their respective shares in the property to Shoorji Vallabhdas.

3) According to the Petitioners, by the year 1930, the ownership of Bhandup Estate was held by three individuals viz., Shivji Raghavji, Sir Mathuradas Visanji Khimji and Shoorji Vallabhdas. The three persons jointly formed the AoP, commonly known as 'Bhandup Estate'. Upon demise of Sir Mathurdas in 1947, Shoorji Vallabhdas in 1951 and Shivji Raghavji shortly thereafter, strength of AoP was increased by induction of their respective legal heirs from 3 to 16. According to the Petitioners, historical administration and/or management of Bhandup Estate was with late Sir Mathuradas Vissanji Khimji, who and his family members were busy running the business of Wallace Group comprising of flour mills and other industries. Since they were not in a position to manage Bhandup Estate, Mr. Mahendra J. Mehta was appointed as a Manager of Bhandup Estate only to collect rent from tenants and to distribute the same amongst various other co-owners. According to the Petitioners, said Mahendra Mehta played fraud on co-owners of Bhandup Estate and indulged in several acts of misappropriation on account of disputes between the family members of Sir Mathuradas Vissanji Khimji, non-availability of legal heirs of Shivji Raghavji, who spent large part of his life at Rangoon and suffering of financial setbacks by family of late

Shoorji Vallabhdas and hence the administration and management of Bhandup Estate fell in a complete disarray.

4) It is claimed by the Petitioners that during 2009-2010, Mr. Rajanya Ravasia, great grandson of late Shoorji Vallabhdas and grandson of Pratapsinh Shoorji Vallabhdas initiated the process of restoration of ownership, management and/or administration for the Bhandup Estate. After conduct of search in the revenue records, they came across 7/12 extracts in respect of property bearing Survey Nos.159, 160 and 161 of Village-Bhandup admeasuring 33 acres and 1 ½ Guntha and upon perusal of the Mutation Entry, it was noticed that name of one Rajaram Sakharam Ohol was entered into the revenue records on the basis of purported consent terms filed in Special Civil Suit No.4947 of 1980. The Petitioners applied for copies of papers and proceedings in S.C. Suit No.4947 of 1980 and upon receipt of the same, they realised that the Suit was not concerning the Bhandup Estate. In the meantime, the Petitioners filed Appeal before the Sub-Divisional Officer, Suburban District in January 2012 challenging the mutation entry. During pendency of the Appeal proceedings, Petitioners acquired knowledge that the correct Suit number was S.C. Suit No.4947 of 1981. Accordingly, the Petitioners applied for certified copy of proceedings of S.C. Suit No.4947 of 1981 and received knowledge that the Suit was filed by Rajaram Sakharam Ohol claiming acquisition of title by adverse possession and that the Suit was compromised on 5 April 1982 by Mr. Mahendra J. Mehta by signing the consent terms as Constituted Attorney of the Defendant. The Petitioners also came to know about decree passed in S.C. Suit No.4947 of 1981 on 5 April 1982.

5) The Petitioners accordingly took out Notice of Motion No.2769 of 2012 under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (**the Code**) for setting aside the consent terms and the consent decree dated 5 April 1982. The Respondents appeared in the Notice of Motion, but apparently could not file affidavit-in-reply. The City Civil Court heard the Notice of Motion and by order dated 24 September 2014, has proceeded to dismiss Petitioners' Motion. Aggrieved by order dated 24 September 2014 the Petitioners have filed the present Petition by invoking the jurisdiction of this Court under Article 227 of the Constitution of India. Though the Petition was lodged in the year 2015, it appears that the same was not moved for a considerable period of time. By order dated 20 September 2025, the Petition came to be dismissed for non-prosecution. The Petition was restored subject to imposition of costs of Rs.15,000/-. On 18 February 2026, a notice for final disposal of the Petition at admission stage was issued. Accordingly, the Petition is taken up for hearing and final disposal.

6) Petitioner No.8 has filed the Interim Application No.340 of 2026 impleading therein the Municipal Corporation for Greater Mumbai (**MCGM**) and Sun-N-Shine Entertainers Private Limited (**Sun-N-Shine**) as Respondents and seeking stay on public notice dated 13 December 2025 issued at the instance of Sun-N-Shine, restraining the MCGM from issuing any development rights certificate and /or Transferrable Development Rights (TDR) in respect of the suit property and for restraining Sun-N-Shine from claiming or transferring or creating any third party rights in the suit property. Sun-N-Shine has appeared in the Application and has filed affidavit-in-reply opposing the Interim Application.

7) Mr. Naik, the learned Senior Advocate appearing for the Petitioners submits that the City Civil Court has grossly erred in dismissing Notice of Motion No.2769 of 2012 filed by the Petitioners for seeking a direction for setting aside consent decree dated 5 April 1982. That the Suit was filed by the Plaintiff in collusion with the Manager-Mr. Mahendra J. Mehta. That the Plaintiff raised a false plea of acquisition of title by adverse possession. That the Suit was listed for hearing on 2 December 1981 and was thereafter adjourned to 21 April 1982. However, at the request of the parties, the Suit was shown to have been taken on board on 5 April 1982 on which date consent terms were shown to have been executed between the Plaintiffs and constituted attorney of the Defendant. That the said attorney did not have any authority to compromise the Suit. That no opportunity was granted to the Defendant to appear in the Suit and appearance made by alleged constituted attorney was taken cognizance of. That the frame of the Suit was itself wrong as Bhandup Estate is an AoP and ought to have been sued by impleading all individuals forming part of AoP. He invites attention of the Court to provisions of Order I Rule 8 of the Code in support of his contention that leave of the Court was required to be obtained for institution of the Suit in the name of one person on behalf of several Defendants. He further submits that under the provisions of Order XXIII Rule 3-B of the Code, it was mandatory for the Court to issue notice to all the constituent members of AoP and it was impermissible for the manager to compromise the Suit. Though the Suit was shown to have been compromised on very first day on the basis of signature put by Mr. Mahendra J. Mehta, he had no authority to execute such compromise.

The Plaintiff was aware of names of all the persons forming part of AoP but failed to implead the same.

8) Mr. Naik further submits that once a Motion was filed highlighting the gross illegalities in the manner in which the Suit was shown to have been compromised, the City Civil Court ought to have taken into consideration the manner of filing of the Suit and how the same was compromised. He takes me through the order passed by the City Civil Court in support of his contention that several findings are recorded by the Court in favour of the Petitioners. He submits that there is a finding of absence of verification and statement on the record of the Court that real representative or competent representative of the Defendant was made aware of consent terms dated 5 April 1982. He further submits that no authority was shown to the Court by Mr. Mahendra J. Mehta for execution of the consent terms. That despite recording several findings in favour of the Petitioners, the City Civil Court has erred in dismissing the Notice of Motion.

9) Mr. Naik relies on judgment of the this Court in *Gorakh Hilal Patil and Another Vs. Parit Samaj Seva Mandal Shirpur and Antoher*¹ in support of his contention that filing of eviction suit by a *Mandal* was held to be non-maintainable and the eviction decree was set aside on that count alone. Mr. Naik further relies on judgment of the Apex Court in *Badami (deceased) by her LR Vs. Bhali*² in support of his contention that consent terms were executed by practicing fraud. That the Court ought to have been mindful of the fact that large tract of land at prominent place in Mumbai at Bhandup is shown to have been given away and offered on

1 2012 (2) Mh.L.J. 177

2 (2012) 11 SCC 574

a platter to the Plaintiff by a person claiming to be manager of Bhandup Estate. That the element of fraud in the entire transaction is more than apparent and the Trial Court has grossly erred in not appreciating this position. That delay in filing of Notice of Motion was sufficiently explained by the Petitioners. That in any case, mere delay in initiation of proceedings for setting aside fraudulent dispute cannot convert decree obtained by fraud into a lawful decree. Mr. Naik accordingly prays for setting aside the impugned order.

10) Mr. Samdani, the learned Senior Advocate appearing for Respondent Nos.2, 5 and 6 opposes the Petition submitting that the Plaintiff was in possession of the suit property in the year 1950 and he used to conduct quarrying activities on the suit land. That Mr. Mahendra J. Mehta had full authority to compromise the Suit on behalf of Bhandup Estate. That there is no allegation by the Petitioners that Power of Attorney (**PoA**) was not executed in favour of Mr. Mahendra J. Mehta. He invites attention of the Court to various documents produced alongwith affidavit-in-reply in support of his contention that an amount of Rs.60,000/- was paid by the Plaintiff to Bhandup Estate for compromising the Suit. That the amount has gone in the bank account of Bhandup Estate even though the receipt is executed by Mr. Mahendra J. Mehta. That compromise is an outcome of payment of amount of Rs.60,000/- by the Plaintiff to the Defendant. He also takes me through the PoA produced by the Petitioners alongwith compilation of documents in support of his contention that there was full authority granted in favour of Mr. Mahendra J. Mehta by virtue of general PoA. That therefore consent terms signed and executed by Mr. Mahendra J.

Mehta, who was clearly authorised by the Defendant was estopped from contending to the contrary after expiry of considerable period of time.

11) Mr. Samdani further submits that the Notice of Motion filed by the Petitioner was totally silent about date of discovery of alleged fraud. He submits that the name of the Plaintiff was mutated to the revenue records in the year 1982 itself. That therefore Petitioners must have discovered the knowledge about decree of the Suit immediately after granting of decree. That Bhandup Estate was correctly sued as its name was mutated to the revenue records. That the name of Bhandup Estate had almost acquired trade name at the relevant time and the Suit was correctly instituted in the name of Bhandup Estate. Mr. Samdani further submits that the consent terms are also signed by the Defendant's Advocate and in the entire affidavit there is no averment that Advocate did not have authority to represent the Defendant in the Suit. He submits that an Advocate appearing on behalf of the party has the authority to compromise a Suit. In support of his contention, he relies on judgment of the Apex Court in *Byram Pestonji Gariwala Vs. Union Bank of India and others*³. That in the present case, compromise is executed both, by the Constituted Attorney as well as Advocate duly appointed by the Bhandup Estate. He submits that information about receipt of amount of Rs.60,000/- is conveniently suppressed by the Petitioners. That otherwise there was gross delay of over 30 years in filing the Notice of Motion.

12) Mr. Samdani further submits that no case is made out under the provisions of Order XXIII Rule 3A of the Code for filing application for setting aside consent decree. That there is no whisper about the

3 (1992) 1 SCC 31

Advocate, who has signed the consent terms. That the Petitioners suppressed the factum of receipt of consideration at the time of execution of the consent terms. He accordingly prays for dismissal of the Petition.

13) Dr. Saraf, the learned Senior Advocate appearing for Respondent No.2 in Interim Application No.340 of 2026 also opposes the Petition. Dr. Saraf represents Sun-N-Shine Entertainers Private Limited, to whom the suit property has been transferred by heirs of original Plaintiff. The Petitioner No.8 has filed Interim Application No.340 of 2026 for restraining Sun-N-Shine from surrendering land to MCGM for securing compensation. Dr. Saraf submits that the land has already been surrendered to the MCGM. That MCGM desired participation in the proceedings before the City Civil Court. The said participation was denied. That even in the present Petition, though the relief is directed mainly against his clients, they are not impleaded as party Respondents. He submits that under Section 17 of the Limitation Act, 1963, when the Suit is based on allegation of fraud, it is necessary that there are necessary pleadings in the Application to demonstrate as to how fraud was not detected even after exercise of due diligence. That there are absolutely no pleadings in the Application as to how due diligence was exercised by the Petitioners, despite which the alleged fraud was not discovered. He submits that even under Section 17 of the Limitation Act, transaction by bonafide purchaser for value is recognised. In support of his contentions concerning Section 17 of the Limitation Act, Dr. Saraf relies on judgment of the Apex Court in *Santosh Devi Vs. Sunder*⁴. He also relies on judgments of this Court in *Lydia Agnes Rodrigues Nee*

*D'Cunha and others Vs. Joseph Anthony D'Cunha*⁵ and *Rohit Enterprises and Ors. Vs. Mr. Babasaheb Ramdas Shirole and Ors.*⁶ Dr. Saraf accordingly prays for dismissal of the Petition.

14) Rival contentions urged on behalf of the parties now fall for my consideration.

15) The Petitioners are aggrieved by dismissal of Notice of Motion No.2769 of 2012 filed by them in a disposed of S.C. Suit No.4947 of 1981 seeking setting aside of the consent decree dated 5 April 1982 passed in the said Suit. The Suit was instituted by Rajaram Sakharam Ohol seeking declaration that he was the owner of land admeasuring 33 Acres and 1 ½ Guntha bearing Survey Nos.159, 160 and 161 of Village-Bhandup, Taluka-Kurla, Mumbai Suburban District. Claim of ownership by the Plaintiff was premised on the claim for exclusive possession of land owned by Bhandup Estate, which was impleaded as Defendant to the Suit. It was pleaded in the Complaint that since the Plaintiff was in use, possession and occupation of the suit land for more than 30 years, he had acquired ownership therein by adverse possession. It appears that the Plaintiff was carrying out quarrying activity in the Suit land since the year 1950. As observed above, the Suit land is part and parcel of large tract of land owned by Bhandup Estate, who is claimed to be AoP comprising of several individuals. The Suit was instituted on 18 August 1981. The Suit came up before the Court on 2 December 1981 and the same was adjourned to 21 April 1982. However, it appears that on 5 April 1982, consent terms were executed between the Plaintiff and by Mr.

⁵ 2014(3)Mh.L.J. 508

⁶ Civil Revision Application No.124 of 2024, decided on 9 April 2025.

Mahendra J. Mehta in his capacity as Constituted Attorney of Defendant on 5 April 1982. The consent terms read thus:

CONSENT TERMS

1. By Consent it is declared that the plaintiff is in use, occupation and exclusive possession of land admeasuring 33 acres 1/½ Gunthas bearing Survey No.159, 160 and 161 of Village Bhandup, Taluka Kurla B.S.D. as per Plan Exh. 'A' to the plaint since last more than 30 years and thereby acquired right of ownership.

2. By consent decree in terms of prayer (a) and (b) of the plaint.

3. No order as to costs.

Bombay dated this 5th day of April, 1982.

Sd/-
Advocate for the Plaintiff.

Sd/-
Plaintiff

Sd/-
Advocate for the Defendants.

Sd/-
C.A. of Defd.
Def Defendants

16) The Suit was requested to be taken on board on 5 April 1982 and on that day, the consent terms were produced before the Court. On 5 April 1982, the Court passed the following order:-

Mr. Pandey for Plaintiff. Mr. C.D. Mehta for Defendant.

The Suit is taken on board at the request of the parties. c/t taken on file. Decree in terms of the c/t. Parties to bear their costs as incurred. I/R returned. Registry to act on the record.

17) This is how the Suit came to be decreed in view of the consent terms dated 5 April 1982, under which the Defendant admitted that the Plaintiff was in use, occupation and exclusive possession of the Suit land for the last 30 years and he had acquired right of ownership. The Suit was accordingly decreed in terms of prayer clauses (a) and (b), which read thus:

a) That it may be declared that the plaintiff is the owner of land admeasuring 33 acres 1½ guntha's bearing S.No.159, 1.60 & 161 of village Bhandup, Tal. Kurla, B.S.D. In the district and sub-district of Bombay and Bombay suburban lying and situated at Bhandup, Bombay-78 as shown by red colour boundary lines on the plan EX 'A' to the plaint.

b) That the defendants their servants and agents be permanently restrained by an order and injunction of this Hon'ble court from entering into and/or disturbing the possession of the plaintiff in any manner whatsoever and/or dispossessing the plaintiff from the land adm. 33 acres 1½ gunthas bearing S.No. 159, 160 & 161 of village Bhandup, Ta. Kurla, B.S.D. in the district and sub-district of Bombay and Bombay suburban lying and situate at Bhandup, Bombay 73 except by due process of law.

18) It appears that after decree of the Suit, the name of the Plaintiff-Rajaram Sakharam Ohol was mutated to revenue records in the year 1982 itself. Thereafter permissions under Urban Land (Ceiling & Regulation) Act, 1976 were issued in the name of the Plaintiff on 16 August 1995, in which there was clear reference to the consent decree in S. C. Suit No.4947 of 1981. No member of Defendant's AoP ever raised any grievance in respect of the consent decree for the next 30 long years. It is only in the year 2012 that the Petitioners were advised to challenge the Mutation Entry No.1232 dated 21 June 1982, by which name of the Plaintiff was mutated to the revenue records. By order dated 30 May 2012, the application filed by the Bhandup Estate was apparently allowed and Mutation Entry No.1232 dated 21 June 1982 was directed to be cancelled. However, subsequently, the said order was reversed and it appears that the names of legal heirs of the Plaintiff were brought on record. It is however not necessary to delve deeper into the details of litigation relating to revenue entries.

19) The Petitioners claim to be a part of the Bhandup Estate and co-owners in respect of the suit property. In addition to questioning the revenue entry, they also felt the need to challenge the consent decree dated 5 April 1982. Accordingly, they filed Notice of Motion No.2769 of 2012 in Suit No.4947 of 1981 seeking following prayers:

(a) that the delay, if any, in taking out the present Notice of Motion be condoned.

(b) that the Respondents herein be substituted as the Plaintiffs, being the heirs and legal representatives in place and stead of the original Plaintiff (since deceased);

(c) that the amendments as specified in the Schedule annexed hereto be allowed:

(d) that this Hon'ble Court be pleased to recall, quash and/or set aside the Consent Terms/Decree and the order of this Hon'ble Court, both dated 5 April 1982;

(e) that pending the hearing and final disposal of the present Notice of Motion, this Hon'ble Court be pleased to appoint the Court Receiver, as the Receiver of the suit property being land admeasuring 33 acres 1½ gunthas bearing Survey Nos. 159, 160 and 161 of village Bhandup, Taluka Kurla, Bombay Suburban District, Bhandup, Mumbai - 400 078;

(f) that pending the hearing and final disposal of the present Notice of Motion this Hon'ble Court be pleased to stay the effect, implementation and /or operation of the Consent Decree and order dated 5 April 1982.

(g) that pending the hearing and final disposal of the present Notice of Motion this Hon'ble Court be pleased to restrain the Plaintiff/Respondents, its partners, agents, servants, officers, transferees, assignees and/or any other person claiming through or under the Plaintiff/Respondents from in any manner directly or indirectly acting in furtherance of and/or implementing the purported Consent Terms and order dated 5 April 1982 and/or in any manner transferring, alienating, encumbering, parting with possession and/or creating any third party rights in respect of the suit property being land admeasuring 33 acres 1½ gunthas bearing Survey No. 159, 160 and 161 of village Bhandup, Taluka Kurla, Bombay Suburban District, Bhandup, Mumbai - 400 078:

(h) for interim and ad-interim reliefs in terms of prayer clauses (e), (f) and (g) above;

(i) for costs of the present Notice of Motion; and

(j) for such other and further reliefs as this Hon'ble Court may deem fit.

20) In the affidavit in support of Notice of Motion sworn in by Pratapsinh Shoorji Vallabhdas, it was pleaded that Mr. Mahendra J. Mehta was appointed as Manager of Bhandup Estate to collect rent from tenants and to distribute the same amongst various co-owners. It was claimed that Mr. Mahendra J. Mehta was the perpetrator of fraud and conspiracy *qua* the co-owners of Bhandup Estate and has indulged in several acts of misappropriation, dishonesty and impropriety *qua* Bhandup Estate of co-owners. Paragraph 3(d) of the affidavit in support of Notice of Motion reads thus:

3....

(d) Historically, the administration and management of Bhandup Estate was with the late Sir Mathuradas Vissanji, and thereafter his family and/or branch of the co-owners. However, given that that the late Sir Mathuradas Vissanji, and thereafter his family members ran the Wallace Group (comprising of flour mills and other industries), they were not in a position to personally manage and/or administer Bhandup Estate. In such circumstances, one Mr. Mahendra J. Mehta was appointed as the Manager of Bhandup Estate i.e. to collect rent from tenants on the property of Bhandup Estate and distribute the same among various co-owners. However, as was subsequently revealed to these Applicants, Mr. Mehta (who has since expired on 15 December 1996) was the perpetrator of a fraud and conspiracy *qua* the co-owners of the Bhandup Estate, and has indulged in several acts of misappropriation, dishonesty and impropriety *qua* Bhandup Estate and its co-owners.

21) Petitioners thereafter explained the delay in filing the Notice of Motion by pleading in paragraphs 3(e) to 3(g) and paragraphs 4 and 5 of the Affidavit as under:-

3. ...

e. In the interregnum, there were disputes between the family members of the late Sir Mathuradas Vissanji. Further, the late Shivji Raghavji did not have any children, and his legal heirs and representatives were not aware of the entire details of estate of late Shivji Raghavji, including Bhandup Estate, as he had spent a large part of his life in Rangoon. Even the family of the late Shoorji Vallabhdas endured serious financial setbacks, resulting in their business suffering.

f. In such circumstances, the administration and management of the business and/or affairs of the Bhandup Estate fell in to complete anagement of the disarray. This was the position from the 1970's till a few years back i.e.about 2009, when Mr. Rajanya Ravasia, the great grandson of late Shoorji Vallabhdas and my grandson initiated the process of restoring the ownership, management and administration for the Bhandup Estate. However, this process entailed delays and proved time consuming since a large number of the co-owners had expired. Further, the records and documentation of Bhandup Estate was in the custody of Mr. Mahendra Mehta, who was at the relevant time not allowing access thereof to the co-owners. Even presently, the co-owners do not have access to all the records and documentation in relation to Bhandup Estate.

g. As a consequence of the above, the contesting Applicants and the other co-owners of Bhandup Estate were unaware of the proceedings against Bhandup Estate. I say and submit that the office of Bhandup Estate was being illegally controlled by Mr. Mahendra Mehta, who was acting not only contrary to the interests of these Applicants but also without any authority to act in the manner which he purported to do. The Applicants herein are the heirs and legal representatives of Shri Shoorji Vallabhdas and Shri Shivji Raghavji.

4. During the process of taking over the administration of Bhandup Estate recently the contesting Applicants conducted a search in the land and/or revenue records and obtained a copy of the 7/12 extracts in respect of the Survey No. 159, 160 and 161, which includes the suit property in September 2011. On perusal of the mutation entries, it was noticed that in respect of the suit property, (i) the name of the original Plaintiff i.e. Rajaram Sakham Ohol was entered into the 7/12 extract of the suit property based on the purported Consent Terms passed in S.C. Suit No.4947 of 1980 and (ii) The name of the Respondents was added as the heirs and legal representatives of Rajarasm Sakham Ohol in the 7/12 extracts in respect of the suti property.

5. I immediately made an application for certified copy of the proceedings in S.C. Suit No. 4947 of 1980 in or about September 2011. However, when the papers were available on or around 11 October 2011 and upon perusal of the same it was realized that S. C. Suit No. 4947 of 1980 relates to a completely different property and is between different parties i.e. Bhandup Estate including myself are not party to the S. C. Suit No. 4947 of 1980. I crave leave to refer to and rely upon the certified copy of papers in S. C. Suit No. 4947 of 1980 when produced.

22) Petitioners pleaded in the affidavit in support of motion that a large scale fraud was played upon them by the erstwhile manager of Bhandup Estate, Mr. Mahendra J. Mehta by filing of a collusive Suit, in which fraudulent consent terms were filed. Summary of allegations of fraud pleaded in paragraph 14 of the affidavit are reads thus:

14. The conspiracy, fraud and concert with which the Plaintiffs and the late Mr. M. J. Mehta have acted qua Bhandup Estate, its co-owners and the contesting Applicants, is apparent from the aforesaid facts, the key points of which are summarised hereinbelow:

a. The writ of summons in the present suit were never served upon the Defendant/these Applicants.

b. Despite this, Mr. M. J. Mehta purported to appear on behalf of the Defendant and signed and filed the Consent Terms, which makes it apparent that this was already pre-planned and the Plaintiff in collusion with Mr. Mehta misused the process of this Hon'ble Court

c. Within a short while of filing of the present Suit and despite non-issuance of summons the matter was mentioned on 5 April 1982 without any notice to the Defendant. The undue haste with which the Plaintiff and/or the late Mr. M. J. Mehta have acted also exposes and/or manifests the fraud, conspiracy and dishonesty perpetrated by them upon the Defendant.

d. The said M. J. Mehta appears to have signed the Consent Terms without having any authority from the Defendant to compromise any legal proceedings/Suit filed against Defendant.

e. M. J. Mehta had no authority in law to make any declaration with regard to the suit property, or to enter into any agreement or compromise any suit.

f. In such circumstances, clearly, the Consent Terms has been purportedly executed by Mr. M. J. Mehta without any authority and/or right. The same are therefore, not binding on the Defendant and these Applicants, and do not confer any rights on the Plaintiff. On this count alone the Consent Terms and/or the Consent Decree stands vitiated and are liable to be set aside.

g. It is not only impractical but also illogical to believe that such a vast property i.e. the suit property admeasuring approximately 33 acres 1½ Gunthas was handed over to the Plaintiff without any contest or opposition to his false claim. The aforesaid clearly shows that the Plaintiff must have paid significant sums of money to Mr. M.J. Mehta so as to appropriate the subject property.

h. Admittedly the Applicants are owners of the suit property. The Plaintiff by way of this suit claimed ownership by virtue of adverse possession. No documents were produced by the Plaintiff in support of his claim. No averments as to when the alleged possession of the Plaintiff became adverse are made. It is clear that the consent terms and decree are collusive and fraudulent.

23) On above broad pleadings, the Petitioners sought quashing and setting aside of the consent decree dated 5 April 1982. The Trial Court has proceeded to dismiss the Motion of the Petitioners by order dated 24 September 2014. Correctness of order dated 24 September 2014 is subject matter of dispute in the present Petition.

24) Perusal of the consent terms would indicate that the same are signed by Mr. Mahendra J. Mehta in his capacity as the constituted attorney of the Defendant -Bhandup Estate. The Petitioners did not dispute the factum of PoA being executed in favour of Mr. Mahendra J. Mehta. However, they claim that the PoA was executed only for collecting the rent from the tenants and for distributing the same amongst various co-owners. This assertion on the part of the Petitioners however appears to be incorrect. Petitioners themselves have placed on record copy of Power of Attorney dated 2 December 1964 executed by various co-owners

of Bhandup Estate, by which Mr. Nathalal Thakordas Shroff and Mahendra Jaswantra Mehta were appointed as Secretary and Manager, respectively of Bhandup Estate, appointing them as attorneys jointly as well as severally for the purpose of various acts. Paragraphs 2, 3, 4, 5 and 6 of the PoA read thus:

2. To commence prosecute enforce defend answer oppose or appear or appeal in all actions and other legal proceedings and demands whether civil criminal or revenue touching any of the matters of and concerning the Bhandup Estate in which the Donors are now or may hereafter be interested or concerned and also if thought fit to refer to arbitration abandon submit to judgment proceed to judgment and execution or become non-suited in any such action or proceeding as aforesaid and also to enforce by execution attachment distress suit or otherwise any decree or award in favour of the Donors and to accept any writ of summons and other legal process and to defend or resist any such process issued or used against the Donors in any such action or proceeding as aforesaid and also in connection with any such action or proceeding as aforesaid to retain employ and remunerate advocates; attorneys vakils and pleaders and to sign and give warrants vakalatnamas and other necessary authorities and such retainers and authorities from time to time at pleasure to revoke.

3. To make declare swear affirm sign seal execute and deliver all pleadings affidavits declarations petitions papers deeds assurances instruments agreements documents and writings whatsoever usual necessary or expedient for or in furtherance of all or any of the purposes aforesaid.

4. To appear before any Registrar Sub-Registrar or other Registering Officer of Assurances and present for registration and admit execution by the Donors of and do all things necessary or proper for the purpose of registering under the Indian Registration Act XVI of 1908 or other the Act or Regulation for the time being in force relating to the registration of assurances any deed declaration agreement instrument document or writing whatsoever already executed or signed or hereafter to be executed or signed by them or to which they are a party or with which they are in any manner interested or concerned.

5. AND GENERALLY to do and perform all such acts matters and things in relation to the premises as the said Attorneys or Attorney shall think expedient as fully and effectually in all respects as the Donors themselves could do by law.

6. AND the Donors hereby covenant for themselves their respective heirs legal representatives and assigns to ratify and confirm all and whatsoever the said Attorneys or Attomey shall Lawfully do or cause to be done in or about the premises by virtue of these presents and declare that these presents shall at all times be conclusively binding in favour of third parties until fructification in the form of a notice of revocation but so that the exercise by the Donors themselves or any person on their behalf from time to time of any of the powers and authorities hereby conferred shall not be deemed to be a revocation or limitation and also that these presents shall not revoke limit or affect any subsisting Power or Powers of Attorney by the Donors or any person on their behalf whether to the said Attorneys or Attorney or to any other persons or person in the territory aforesaid. IN WITNESS whereof the Donors have set their respective hands and seals this 2nd day of December 1964.

25) Therefore, contention raised on behalf of the Petitioners that Mr. Mahendra J. Mehta was appointed as attorney only for the purpose of collection and distribution of rent appears to be incorrect. The PoA gave general powers to Mr. Mahendra J. Mehta to do several acts including power to prosecute, enforce, defend, answer, oppose various legal proceedings as well as to abandon the same or to submit to the judgment. He also had authority to appoint Advocate/pleaders. He also had authority to sign and verify the pleadings. He also had an authority to appear before sub-registrar for registration of deeds and instruments. Thus the PoA clearly belies the contention of the Petitioner that Mr. Mahendra J. Mehta had power only to collect rent. It therefore clearly appears that Mr. Mahendra J. Mehta had the power to enter into compromise on behalf of the co-owners of Bhandup Estate.

26) The consent terms also bear signature of Mr. C.D. Mehta, who represented Bhandup Estate as its Advocate. In the entire affidavit in support of Motion, there is no allegation that Mr. C.D. Mehta was never appointed as Advocate by Bhandup Estate. Thus, authority of Mr. C.D.

Mehta to represent Bhandup Estate is not really questioned. Mr. Samdani has relied on judgment of the Apex Court in *Byram Pestonji Gariwala* (supra) in support of his contention that even Advocate appearing on behalf of the party has an authority to compromise a Suit. In case before the Apex Court, the issue for consideration was whether the words 'in writing and signed by the parties' inserted by 1976 amendment to the Code in Order XXIII Rule 3 would include even a counsel representing the parties. It was contended on behalf of the Appellant before the Apex Court that expression 'parties' means only 'parties' and none else. It was contended that a decree based on compromise not signed by parties in person is a nullity and not capable of execution. The submission on behalf of the Appellant are summarised in paragraph 4 of the judgment, which reads thus:

Mr. Arun Jaitley, appearing for the appellant, says that the High Court was wrong in holding that, notwithstanding the amendment of 1976 inserting the words 'in writing and signed by the parties', it was still sufficient if the terms of compromise were reduced to writing and signed by counsel representing the parties, and not necessarily by the parties in person. Any such construction would do violence to the provision as amended in 1976. He says that the object of the amendment was to provide that no agreement or compromise adjusting wholly or in part a pending suit was valid unless such compromise was evidenced in writing and signed by the parties in person. The expression 'parties', he contends, means only parties and none else. To read 'counsel' into that expression, as done by the High Court, is to presume that the legislature failed to say what it intended to say and to attempt to supply the omission by correcting the deficiency. This cannot be done. The legislature, on the other hand, made its intention explicit by providing that an agreement or compromise would form the basis of a decree only if the consensus was reduced to writing and signed by the parties. Neither an agent nor a pleader could act as a substitute for a party to sign the agreement or compromise. A decree based on a compromise not signed by the parties in person is a nullity and is incapable of execution.

The Apex Court has considered the role of counsel in entering into compromise and held that the role has been traditionally understood to be confined to the matters within the scope of the Suit. The Apex Court took note of various judgments consistently recognising traditional role of lawyers and the extent and nature of their implied authority to act on behalf of their clients. After taking stock of various judgments on the issue, the Apex Court held in paragraphs 38 and 39 of the Judgment as under:-

38. Considering the traditionally recognised role of counsel in the common law system, and the evil sought to be remedied by Parliament by the C.P.C. (Amendment) Act, 1976, namely, attainment of certainty and expeditious disposal of cases by reducing the terms of compromise to writing signed by the parties, and allowing the compromise decree to comprehend even matters falling outside the subject-matter of the suit, but relating to the parties, **the legislature cannot, in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a compromise by counsel in their cause or by their duly authorised agents.** Any such presumption would be inconsistent with the legislative object of attaining quick reduction of arrears in Court by elimination of uncertainties and enlargement of the scope of compromise.

39 To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. **It has always been universally understood that a party can always act by his duly authorised representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorisation by vakalatnama, act on behalf of his client.** Not to recognise such capacity is not only to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental change, even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated.

(emphasis added)

27) In the present case, consent terms are not executed only by Advocate Mr. C.D. Mehta appearing for parties, they are also executed by the Constituted Attorney of Defendant in the Suit. Signature of the

Advocate on the consent terms clearly adds force to the authenticity of the same, which is also signed by the Constituted Attorney of the Defendant. Since authority of Advocate to sign the consent terms is not questioned in the Motion and since PoA executed in favour of Mr. Mahendra J. Mehta includes power to compromise the Suit, in my view the Petitioners' contention of consent terms being filed without authority does not appear to be correct.

28) Mr. Samdani has strenuously relied on various documents in support of his contention that the Suit is compromised after accepting valuable consideration from the Plaintiff. He has relied on letter dated 5 April 1982 sent by Advocate for the Plaintiff to Shri Adityabhai Pratapsinh Soorji, Shir Mahendrabhai J. Mehta and M/s. Bhandup Estate, which reads thus:

R.D. Misra
B.A.LL.B.
Advocate, HIGH COURT

Office:
H M, Patel Nivas,
Gamdevi Road, Bhandup,
BOMBAY - 400 078.
5th April 1982.

To
1. Shri Adityabhai Pratapsinh Soorji,
2. Shri Mahendrabhai J. Mehta,
3. M/s. Bhandup Estate,
9 Wallace Street, Fort, Bombay-1.

Dear Sirs,

Sub:- B.C.C..Suit No.4947 of 1981.
Shri Ra.jaram S,Ohol . . Plaintiff.
Vs.
M/s Bhandup B state.. Defendants.

My client the plaintiff abovenamed is hereby agreed to pay the sum of Rs.60,000/- as and by way of compensation in respect of the land bearing Survey No. 156, 160 and 161 of Village Bhandup, Taluka Kurla, B.S.D. admeasuring about 33 acres 1 ½ Gunthas. My client shall pay all the dues taxes and other amounts payable to B.M.C. or

the state of Maharashtra without holding M/s Bhandup Estate liable for the same. My client shall also deal with the claims of third parties in the said land and shall also settle With Premjibhai Shah and Others with the agreement of sale executed in his favour by M/s Bhandup Estate.

Yours faithfully,
Sd/-
Advocate for the Plaintiff

29) Letter dated 5 April 1982 thus records an arrangement between the parties for settling S. C. Suit No.4947 of 1981 upon payment of amount of Rs.60,000/- by the Plaintiff to M/s. Bhandup Estate. The letter dated 5 April 1982 bears acknowledgment of Mr. Mahendra J. Mehta.

30) Respondent Nos.2, 5 and 6 have also relied upon receipt executed in the name of Bhandup Estate on 5 April 1982 acknowledging receipt of amount of Rs.60,000/- by way of Cheque No.120938 drawn on Abhyudaya Cash Account. The receipt is again signed by Mr. Mahendra J. Mehta. However, the same is in the name of Bhandup Estate. Mr. Samdani has drawn my attention to the entries in the passbook of the Plaintiff to demonstrate transmission of amount of Rs.60,000/- from the account of the Plaintiff and transmission thereof to Bhandup Estate. It is thus, clearly established that an amount of Rs.60,000/- is transmitted in the account of Bhandup Estate and receipt dated 5 April 1982 was executed by Mr. Mahendra J. Mehta on 5 April 1982 on behalf of Bhandup Estate. This appears to be the reason why none of the co-owners of AoP Bhandup Estate raised any grievance with regard to compromise of the Suit on 5 April 1982 for a period of 30 long years.

31) Thus, the case does not involve a situation of a person divesting himself of property in entirety in lieu of nothing as was the case before the Apex Court in ***Badami*** (supra). In that case, a rustic and illiterate workman was taken to court on the pretext of creation of lease deed and a decree was passed on the basis of written statement hurriedly prepared. The ratio of the judgment of the Apex Court in ***Badami*** (supra) in the peculiar facts of that case held in paragraphs 35 and 37 of the judgment as under:

35. It would not be an exaggeration but on the contrary an understatement, if it is said that all facets of fraud get attracted to the case at hand. A rustic and illiterate woman is taken to court by a relation on the plea of creation of a lease deed and magically in a hurried manner the plaint is presented, written statement is drafted and filed, statement is recorded and a decree is passed within three days. On a perusal of the decree it is manifest that there is no reference of any kind of family arrangement and there is total non-application of mind. It only mentions there is consent in the written statement and hence, suit has to be decreed. Be it noted, it was a suit for permanent injunction. There was an allegation that the respondent was interfering with the possession of the plaintiff. What could have transpired that the defendant would go with the plaintiff and accede to all the reliefs. It not only gives rise to a doubt but on a first look one can feel that there is some kind of foul play. However, the learned trial Judge who decreed the first suit on 27.11.1973 did not look at these aspects.

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37. It is unimaginable that a person would divest herself of one's own property in entirety in lieu of nothing. No iota of evidence has been brought on record that Bhali, the respondent herein, had given anything to Badami in the arrangement. It is easily perceivable that the rustic woman was also not old. Though the decree was passed in 1973 wherein it was alleged that the defendant was already in possession, she lived up to 1992 and expired after 19 years. It is a matter of record that the possession was not taken over and inference has been drawn that possibly there was an implied agreement that the decree would be given effect to after her death.

32) Facts in the case of ***Badami*** are thus clearly distinguishable. Here Bhandup Estate is claimed to be an Association of Persons, who held

respectable positions in business circles in Mumbai, who had engaged a Secretary and Manager to look after a large tract of land. Bhandup Estate received consideration of Rs.60,000/- for giving up its ownership claim in the land, which was in possession of the Plaintiff for over 30 long years. It appears that Bhandup Estate possibly believed that there were no chances of succeeding in the Suit and getting back the land and accordingly gave up the ownership claim on receipt of consideration of Rs.60,000/-. The person, who acknowledged letter dated 5 April 1982 and executed receipt dated 5 April 1982 also signed the consent terms in his capacity as constituted attorney of co-owners of Bhandup Estate.

33) The Application/Motion for setting aside consent decree was filed by the Petitioners after lapse of 30 long years. Justification pleaded in the Application, which is quoted above, does not inspire confidence. It is vaguely pleaded in the paragraph 3(d) of the affidavit in support of Notice of Motion that '*However, as was subsequently revealed to these Applicants, Mr. Mehta (who has since expired on 15 December 1996) was the perpetrator of a fraud and conspiracy*'. Beyond pleading the word 'subsequently', no details are pleaded in the affidavit as and when Petitioner discovered the alleged activities of Mr. Mehta. There is no pleading about the exact nature of activities of Mr. Mehta and how fraud and conspiracy was perpetrated and which acts of misappropriation, dishonesty or impropriety *qua* Bhandup Estate were committed by him. Pleadings in paragraph 3(d) of the affidavit are general and vague in nature lacking necessary particulars. In fact, it is brought on record in the affidavit-in-reply filed by Sun-N-Shine that Mr. Mehta had dealt with various other properties of Bhandup Estate in his capacity as Constituted Attorney. Some of the instances of said acts performed by Mr. Mehta are

pleaded in paragraphs 5.2 to 5.5 of the Affidavit in support of the Motion, as under:

5.2. It is a matter of record that the owners claiming to be constituting M/s. Bhandup Estate had executed a Power of Attorney in favour of Mr. M. J. Mehta to represent and act on their behalf and also on behalf of M/s. Bhandup Estate. It is also evident that Mr. M. J. Mehta was the Manager of M/s. Bhandup Estate, authorised to represent and, in fact, represented it for several years. Some of the instances of the said authorization are as under:

5.3. A portion of Survey No.159 (which is not forming part of the Suit Property) admeasuring 8 Acres and 21 Guntha has been acquired for BMC for water purification and water supply plant. Award dated 18th March 1963 was passed by the Special Land Acquisition Officer. Pertinently, the said Mr. M. J. Mehta represented M/s. Bhandup Estate before the Special Land Acquisition Officer, and handed over possession of the said portion admeasuring 8 Acres and 21 Guntha of M/s. Bhandup Estate to BMC for water purification and water supply plant and also signed possession receipt in this behalf. Hereto annexed and marked as Exhibits - "1" to "3" are copies of the following:-

(a) Letter dated 19th March 1963 by the SLAO to the Architect of M/s. Bhandup Estate requiring them to obtain Authority letter from M/s. Bhandup Estate to represent M/s. Bhandup Estate before SLAO;

(b) Letter dated 22nd March 1963 addressed by Mr. M. J. Mehta on behalf of M/s. Bhandup Estate authorizing the Architect to represent M/s. Bhandup Estate before the SLAO; and

(c) Receipt for handing over Possession signed by Mr. M. J. Mehta on behalf of M/s. Bhandup Estate in favour of SLAO.

5.4. The fact of the said Award having been passed in respect of a portion of Survey No.159 has also been reflected in the 7/12 extract of Survey No.159. Hereto annexed and marked as Exhibit - "4" is a copy of the 7/12 extract of Survey No.159 and true translation thereof.

5.5. It appears that pursuant to an Application made by the said Mr. M. J. Mehta (as the General Power of Attorney holder of M/s. Bhandup Estate), the names of heirs and legal representatives were mutated in revenue records vide Mutation Entry No.969 in respect of Survey No.159 and 161 pursuant to Order dated 7th March 1969. Hereto

annexed and marked as Exhibit "5" is a copy of the Mutation Entry No.969, along with office translation thereof.

There is no pleading in the affidavit in support of Motion as to whether any action is initiated by the Petitioners *qua* various other acts of Mr. Mahendra J. Mehta dealing with other properties of Bhandup Estate.

34) The delay in filing the Motion is sought to be justified by pleading that the Petitioners conducted search in the revenue records and after securing copy of 7/12 extracts, they discovered the factum of passing of the consent decree. In paragraph 4 of affidavit in support of Notice of Motion, it is vaguely pleaded that '*During the process of taking over the administration of Bhandup Estate recently the contesting Applicants conducted a search in the land and/or revenue records and obtained a copy of the 7/12 extracts in respect of the Survey No. 159, 160 and 161, which includes the suit property in September 2011.*' What was the occasion for conduct of search in September 2011 has not been explained in any manner by the Petitioners. As observed above, name of the Plaintiff was mutated to the revenue records in the year 1982 itself. Thereafter Urban Land Ceiling permissions were also granted in the name of the Plaintiff concerning the suit land. For 30 long years, the Petitioners lived with this reality and allowed the suit property to be dealt with by the Plaintiff and his heirs as owners thereof. They never felt the need to initiate any action challenging the consent decree, possibly on account of the fact that the consent decree was outcome of receipt of valuable consideration by the co-owners of Bhandup Estate.

35) Ordinarily, when a Suit is filed pleading fraud by the Defendant, period of limitation does not begin to run only after the Plaintiff

discovers the fraud. However, Section 17(1) of the Limitation Act also deals with eventuality of the Plaintiff discovering the fraud with reasonable diligence. The Apex Court in *Santosh Devi* (supra) has held that the Plaintiff must set forth particulars of fraud, which he alleges. The Apex Court has held that mere use of general words such as 'fraud' cannot serve as foundation for the plea of Section 17 of the Limitation Act. The Apex Court held in paragraphs 17, 18, 19 and 20 of the judgment as under:

17. To appreciate the findings arrived at by the Courts below, we must first see on whom the onus of proof lies. The record reveals that the disputed document is a registered sale deed. It is not in dispute that the petitioner has signed the sale deed. We are, therefore, guided by the settled legal principle that a document is presumed to be genuine if the same is registered, as held by this Court in *Prem Singh v. Birbal*, (2006) 5 SCC 353. The relevant portion of the said decision reads as below:

"27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption."

(Emphasis supplied)

In view thereof, in the present case, the initial onus was on the plaintiff, who had challenged the sale deed.

18. When fraud is alleged against the defendant, it is an acknowledged rule of pleading that the plaintiff must set forth the particulars of the fraud which he alleges. In the present case, fraud is alleged as a ground upon which the plaintiff justifies the institution of the suit long after the expiry of the period normally allowed for the institution of the suit. Though no specific reference to the provisions of Section 17 of the Limitation Act, 1963 (for short, 'the Limitation Act') is made in the plaint, it is manifest that the pleading proceeds upon the hypothesis that the plaintiff had also contributed along with the defendant in the purchase of the subject property and at the time of the sale, the plaintiff was entitled to 50% of the sale consideration. In other words, the fraud was played upon the plaintiff to sign the sale deed and thereby transfer the

subject property. The requirement of Order VII Rule 6, Civil Procedure Code, are clear. It is necessary that the plaint should show the ground upon which the exemption from the normal period of limitation is claimed. The question is whether the plaint in this case fulfils the requirements of law. As observed by Lord Selborne in *Walling Ford v. Mutul Society*, [L.R.] 5 App. Cas. 685:

"With regard to fraud, if there be any principle which is perfectly well settled, it is that general allegations however strong be the words in which they are stated, are insufficient even to amount to an averment of fraud of which any Court ought to take notice,"

19. It is not the mere use of general words such as 'fraud' that can Serve as the foundation for the plea. Such expressions are quite ineffective to give the legal basis in the absence of particular statements of fact which alone can furnish the requisite basis for the action.

20. Order VII Rule 6 uses the words "the plaint shall show the ground upon which exemption from such law is claimed". The exemption provided under Sections 4 to 20 of the Limitation Act are based on certain facts and events. Section 17, with which we are concerned, provides for a fresh period of limitation, which is founded on certain facts.

36) In *Lydia Agnes* (supra) the issue before the co-ordinate Bench of this Court was whether the Petitioner therein could have, without reasonable diligence, discovered alleged fraud played by the executor in respect of the Will of the deceased during thirty-three years. The Petitioners therein were fully aware of the Will of the said deceased. It is held that if the Petitioners therein were to take reasonable steps and were to act with reasonable and due diligence, they would have come to know about filing of the probate petition by the executor. This Court held in paragraph 28 of the judgment as under:

28. On perusal of paragraph 47 of the Judgment of Supreme Court in case of *Pallav Sheth v. Custodian & Ors.* (supra), it is clear that under Section 7(1)(d) of the Limitation Act, the period of limitation shall not begin to run until the plaintiff or applicant had discovered the

fraud or the mistake or due diligence had discovered it. Question that arises for consideration is whether petitioner in this case could have without reasonable diligence discovered alleged fraud played by the executor in respect of the Will of the said deceased in last thirty three years. It is not in dispute that petitioners were fully aware of the Will of the said deceased. All parties to this proceedings including the executor and the said deceased were residing at Bandra at the relevant time. It is not the case of the petitioners that in spite of reasonable/due diligence, petitioners could not ascertain about the proceedings if any filed by the executor for obtaining probate or for administration of the estate of the said deceased. Petitioners never bothered to make any inquiry by addressing any single letter to the executor to ascertain about the proceedings if any filed by him in respect of the said Will. It is not the case of the petitioners that any inquiry was made by the petitioners in this Court to ascertain the status of any proceedings till recently. In my view, if the petitioners would have taken reasonable steps and would have acted with reasonable and due diligence in last thirty three years, petitioners could have come to know about filing of the probate petition by the executor and issuance of grant in his favour by this Court as far back as in the year 1980.

37) In ***Rohit Enterprises*** (supra) a co-ordinate Bench of this Court, after referring to the judgment of the Apex Court in ***Saranpal Kaur Anand Vs. Praduman Singh Chandhok***⁷ (highlighting the importance of pleadings in relation to fraud for application of provisions of Section 17 of the Limitation Act), has held that the pleadings in the plaint as to cause of action was nothing but clever drafting by using the word fraud and an attempt to bring suit within limitation by invoking Section 17 of the Limitation Act. It is held in paragraphs 18 and 19 of the judgment as under:

18. At this juncture, reference to observations of Supreme Court in case of *Saranpal Kaur Anand vs. Praduman Singh Chandhok* reported in (2022) 8 SCC 401. Pertinently, para Nos. 11,14 and 16 read thus :-

“11. The general principle, which also manifests itself in Section 17 of the Limitation Act, is that every person is presumed to know his own legal right and title in the property, and if he does not take care of his own right and

⁷ (2022) 8 SCC 401

title to the property, the time for filing of the suit based on such a right or title to the property is not prevented from running against him. The provisions of Section 17(1) embody fundamental principles of justice and equity, viz. that a party should not be penalised for failing to adopt legal proceedings when the facts or the documents have been wilfully concealed from him and also that a party who had acted fraudulently should not be given the benefit of limitation running in its favour by virtue of such frauds.^{9 9} Pallav Sheth v. Custodian and Others, (2001) 7 SCC 549 However it is important to remember that Section 17 does not defer the starting point of limitation merely because the defendant has committed a fraud. Section 17 does not encompass all kinds of frauds, but specific situations covered by clauses (a) to (d) to Section 17(1) of the Limitation Act. Section 17(1)(b) and (d) encompass only those fraudulent documents or acts of concealment of documents which have the effect of suppressing knowledge entitling the party to pursue his legal remedy. Once a party becomes aware of antecedent facts necessary to pursue legal proceedings, the period of limitation commences.

14. The word 'diligence' read with the word 'reasonable' in the context of Section 17(1) of the Limitation Act is subjective and relative, and would depend upon circumstances of which the actor called upon to act reasonably, knows or ought to know. Vague clues or hints may not matter. Whether the plaintiff/applicant had the means to know the fraud is a relevant consideration. It is manifest that Section 17(1) of the Limitation Act does not protect a party at fault for failure to exercise reasonable diligence when the circumstances demand such exercise and on exercise of which the plaintiff/applicant could have discovered the fraud. When the time starts ticking subsequent events will not stop the limitation. The time starts running from the date of knowledge of the fraud/mistake; or the plaintiff/applicant when required to exercise reasonable diligence could have first known or discovered the fraud or mistake. In case of a concealed document, the period of limitation will begin to run when the plaintiff/applicant had the means of producing the concealed document or compelling its production.

16. Rules of pleadings relating to fraud and exemption from law of limitation are set out in Order 6 Rule 4 and Order 7 Rule 6 of the Code. Order 6 Rule 4 lays down that in all cases where a party pleading relies upon fraud, particulars with respect to the date and item, if necessary, shall be stated in the pleadings. The fraud as alleged in the plaint must state

those facts which together taken as a whole, if proved, would show and establish fraud. **Pleading of fraud should be conspicuous and palpable, and should not be predicated on mere suspicion and conjecture.** Of course, the court, at the initial stage when deciding an application under clause (d) to Order 7 Rule 11 has to proceed under demurrer, and therefore, should accept the facts as alleged in the plaint, but can in a given case draw irrefutable inferences from the facts stated....”

19. Apparently, pleading in the plaint as to cause of action is nothing but clever drafting by using the word fraud and an attempt to bring suit within limitation by invoking Section 17 of the Limitation Act.

(emphasis added)

38) In the present case, beyond use of the word ‘fraud’, there are absolutely no pleadings to demonstrate as to how Mr. Mehta committed fraud. On the other hand, Petitioners suppressed the PoA. They also suppressed the factum of Bhandup Estate receiving consideration of Rs. 60,000/- at the time of execution of the consent terms. Therefore, the Petitioners are not entitled to benefit under Section 17 of the Limitation Act. It is also a matter of fact that majority of the Suit land (admeasuring about 40,000 sq. mtrs) is transferred by the legal heirs of the Plaintiff (Rs. 12.5 crores) in favour of Sun-N-Shine, who has bonafide acquired title for valuable consideration. Therefore, the case is governed by Proviso to Section 17 of the Limitation Act and Petitioners are not entitled to exclusion of any period by even pleading fraud. Therefore the Petitioners are not entitled to the benefit of Section 17 of the Limitation Act.

39) I am therefore, not inclined to accept the contention raised on behalf of the Petitioners that there was undue haste shown in compromising the Suit or that manner of execution of compromise raises doubts about its authenticity. Suit was instituted on 18 August 1981 and

the same was compromised on 5 April 1982. The compromise effected between the parties appears to be a lawful compromise within the meaning of order XXIII Rule 3 of the Code. The Petitioners have failed to prove that the compromise on which decree is based is not lawful within the meaning of Rule 3-A of Order XXIII.

40) Reliance by Mr. Naik on provisions of Rule 3-B of Order XXIII is inapposite. Rule 3-B applies in a case where representative Suit is filed under Order I Rule 8 of the Code. In the present case, what was filed by the Plaintiff was not a representative Suit against the Defendant. Bhandup Estate was not sued in representative capacity. According to Petitioners themselves, Bhandup Estate is an AoP. While mutating the name, Bhandup Estate's name was mutated and not of its associate persons, who were co-owners. Therefore, provisions of Order I Rule 8 of the Code have no application to the facts of the present case.

41) The case involves grant of authority to compromise the Suit by the co-owners in favour of Mr. Mahendra J. Mehta, who has executed a lawful compromise in favour of the Plaintiffs. The Trial Court has referred to the provisions of Order XXX of the Code, which may not have any application to the facts of the present case since the Defendant-Bhandup Estate is not a partnership firm. At the same time, I am unable to accept the contention that the Defendant was impleaded in the Suit under the provisions of Order I Rule 8 of the Code. Therefore, the provisions of Order XXIII Rule 3-B of the Code are not applicable to the facts of the present case.

42) Considering the overall conspectus of the case, I am unable to trace any patent error on the part of the Trial Court in passing the

impugned order dated 24 September 2014 warranting interference by this Court in exercise of jurisdiction under Article 227 of the Constitution of India. The impugned order appears to my mind to be unexceptionable.

43) Writ Petition is devoid of merits. It is accordingly **dismissed**. However, considering the facts and circumstances of the case, there shall be no order as to costs.

44) In view of dismissal of the Writ Petition, pending Applications stand disposed of.

[SANDEEP V. MARNE, J.]