

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L.) NO. 9684 OF 2021

IN

SUIT NO. 113 OF 2021

Ajay Kumar Garg

...Applicant

In the matter between :

1. Avyaay Anirudh Garg

2 Ors.

.. Plaintiffs

Versus

1. Mr. Ajay Kumar Garg

& 24 Ors.

... Defendants

WITH

INTERIM APPLICATION NO. 1549 OF 2021

IN

SUIT NO. 113 OF 2021

Budhrani Housing Developers

Pvt. Ltd.

...Applicant/

(Org. Deft. No.18)

In the matter between :

1. Avyaay Anirudh Garg

2 Ors.

.. Plaintiffs

Versus

1. Mr. Ajay Kumar Garg

& 24 Ors.

... Defendants

WITH

INTERIM APPLICATION NO. 1571 OF 2021

IN

SUIT NO. 113 OF 2021

Krishna Organisers & Builders

Pvt. Ltd.

...Applicant/

(Org. Deft. No.24)

In the matter between :

1. Avyaay Anirudh Garg

2 Ors.

.. Plaintiffs

Versus

1. Mr. Ajay Kumar Garg
& 24 Ors.

... Defendants

Dr.Veerendra Tulzapurkar, Senior Advocate a/w. Mr. Chetan Kapadia, Mr. Vishal Kanade, Mr. Jehaan Mehta, Ms. Neha Javeri i/b Maniar Kher Ambalal & Co. for plaintiffs.

Mr.Subhash Jha a/w. Mr. Harshavardhan G. Khambete, Mr. Rajesh Patil and Mr. Tanmay Malusare for defendant Nos. 1, 2, 4, 5 and 6 and for applicant in IAL-9684-2021.

Mr.Shrinivas Bobade i/b Ms. Ankita Pawar for defendant No.3, Mr.Akash Warang for defendant Nos. 7, 8, 10 to 16, 19, 21.

Mr. Akash Warang a/w. Mr. Harekrishna Mishra for defendant Nos. 23 & 25.

Mr. Satyan N. Vaishnav a/w. Ms. Nupur J. Mukherjee i/b M/s. N.N. Vaishnawa and Co. for defendant Nos. 18 and 24 and for applicant in IA-1549-2021 and IA-1571-2021.

CORAM : N. J. JAMADAR, J.

CLOSED FOR ORDER : 21st DECEMBER 2021

PRONOUNCED ON : 21st APRIL 2022

ORDER :

1. These interim applications are taken out by the defendant No.1, defendant No.18 and defendant No.24 for rejection of the Plaint under the provisions of Order VII Rule 11 of the Code of Civil Procedure, 1908 ('the Code').

2. Before advertizing to note the contentions in the applications, and the grounds raised therein for rejection of the Plaint, it may be apposite to have a brief resume of the case set up by the

Plaintiffs as it would equip the Court in appreciating the prayers in the interim applications in a correct perspective :

3. The plaintiff Nos. 1 and 2 are the minor sons of plaintiff No.3 and defendant No.3. The defendant Nos.1 and 2 are the parents of defendant No.3. The defendant No.4 is the brother of defendant No.3. The defendant Nos. 5 and 6 are the wife and son, respectively, of defendant No.4. The plaintiffs assert that the plaintiffs and defendant Nos.1 to 6 are the members of Hindu Undivided Family. The plaintiff Nos.1 and 2, defendant Nos.1, 3, 4 and 6 are the coparceners by birth in the coparcenary of Ajay Kumar Garg (HUF). Defendant No.1 is the Karta of the said HUF coparcenary. Thus, the plaintiffs have instituted the suit for declaration, partition and separate possession of 1/16th undivided share each of plaintiff Nos.1, 2 and 3, respectively in the HUF and/or coparcenary properties mentioned in the Schedule of Properties-Exhibit B annexed to the Plaint, and for consequential and incidental reliefs.

4. The Plaint proceeds on the premise that defendant No.1 is the son of one Shri Phoolchand, the son of Late Narsinghdas Garg from Mathura in Uttar Pradesh. Late Narsinghdas was in the family business of dealing in steel vessels at Mathura. Late

Phoolchand joined this family business and over a period of time, the said joint family business prospered and late Phoolchand acquired wealth, immovable properties and other assets in Mathura, Delhi and other ares in North India through the corpus and/or nucleus and income earned from the said joint family properties. Eventually, the said late Phoolchand migrated to Mumbai alongwith his wife and three sons Shyam Sunder Agarwal, Ajay Kumar Garg (defendant No.1) and Late Rajendra Garg and a married daughter Mrs. Rekha Agarwal. The joint family business continued, prospered and diversified into the real estate and finance market in Mumbai. Over a period of time, multiple assets and businesses were acquired in Mathura, Delhi, Mumbai and other places in North India by the joint family of Late Phoolchand.

5. A partition took place between Late Phoolchand and his sons and thereupon the defendant No.1 became entitled to corpus, assets and funds generated from the aforesaid joint family business and assets of joint family of late Phoolchand. The defendant No.1, in turn, from time to time invested the joint family funds and acquired various immovable and movable properties, assets, income and funds from the said joint family funds. The

properties detailed in Sub-paragraph Nos.VIII to XXI of Paragraph 3 of the Plaint and enumerated in Schedule of properties (Exhibit B) are stated to be joint family/ coparcenary properties owned by Ajay Kumar Garg (HUF) through defendant Nos.1 to 6 and/or their nominee/s or proxies and the plaintiff Nos.1 and 2, being the coparceners, have an undivided interest by birth in the said joint family/coparcenary properties.

6. The plaintiffs further averred that after the birth of plaintiff Nos.1 and 2 on 5th September 2014, the plaintiff No.3 was subjected to unbearable physical and emotional harassment and domestic violence. The marital discord between the plaintiff No.3 and defendant No.3 led to multiple proceedings including a complaint under Protection of Women from Domestic Violence Act, 2005 and a Marriage Petition for dissolution of marriage at the instance of defendant No.3, apart from criminal prosecutions. The defendant Nos.1 to 3 allegedly neglected to maintain the plaintiffs. The defendants are not acting in the interest of the plaintiff Nos.1 and 2. The plaintiffs apprehend that in order to deny their legitimate share in the joint family/coparcenary properties, the defendants are likely to fitter away the joint family assets. The share of the plaintiff Nos.1 and 2 in the joint family

properties is thus in danger of being wasted. Hence, the plaintiffs are constrained to institute the suit for declaration, partition, separate possession and the consequential reliefs.

INTERIM APPLICATION (L.) NO.9684 OF 2021

7. The defendant No.1 preferred this application for rejection of the Plaint under Order VII Rule 11 of the Code on the ground, *inter-alia*, that the Plaint does not disclose any cause of action and/or is barred by law. The defendant No.1 contends the suit has been instituted as a counterblast to the matrimonial dispute/proceedings between defendant No.3 and plaintiff No.3. After referring to the multiple proceedings which have been filed at the instance of the plaintiff No.3, defendant No.3 and defendant Nos.1 and 2, the defendant No.1 alleges that the instant suit is a part of the device adopted by plaintiff No.3 to harass the defendants and exert undue pressure upon them.

8. At the outset, the defendant No.1 contends that the properties in respect whereof the plaintiffs are claiming reliefs are defendant No.1's self-acquired properties or belong to Public or Private Companies or LLP or Firms and those properties have not been inherited by the defendant No.1 from his ancestors and/or late Phoolchand. According to defendant No.1, the Plaint is

conspicuously silent about the details with regard to creation and/or existence of HUF and its properties. The plaintiffs have not pleaded whether the HUF came in existence before 1956 or after 1956. Nor specific facts have been mentioned qua existence of HUF and its properties giving rise to a cause of action. It is contended that after Hindu Succession Act, 1956 came into force, it is not sufficient to claim that there is a joint Hindu family and a person is a coparcener therein. There is absolutely no averment in the Plaint that Late Phoolchand Garg inherited properties from his paternal ancestors prior to 1956. Thus, the properties in the hands of late Phoolchand Garg and/or applicant cannot be said to be impressed with the character of HUF properties.

9. It is further contended that there are no pleadings which take the case out of the embargo contained in clauses (a) and (b) of section 2(9)(A) of the Prohibition of Benami Property Transactions Act, 1988. In short, the plaint grossly lacks the necessary averments, required in law, to sustain a cause of action for a suit for partition and separate possession of the joint family properties. Therefore, the plaint deserves to be rejected under Order VII, Rule 11(a) and (d) of the Code.

**INTERIM APPLICATION NO. 1549 OF 2021
WITH**

INTERIM APPLICATION NO. 1571 OF 2021

10. The defendant No.18 (Budhrani Housing Developers Pvt. Ltd.) and defendant No.24 (Krishna Organisers & Builders Pvt. Ltd.) have taken out these interim applications for dismissal of the suit qua defendant Nos.18 and 24 purportedly under Order VII, Rule 11(a) of the Code.

11. The defendant Nos.18 and 24 have been impleaded as party defendants to the suit with the assertions that the joint family funds have also been invested in the name of defendant Nos.1 to 6 and/or their nominees in the real estate project known as “Krishna Business Park” situated at Village Tungwa, Saki Vihar Road, Andheri (West), Mumbai-400 072 developed by defendant No.18 and another real estate project at CBD Belapur developed by defendant No.24, respectively. Those properties are also the joint family properties of Ajay Kumar Garg (HUF) and the plaintiff have undivided interest in the said properties. The plaintiffs, thus, professed to restrict their claim to the undivided interest that falls to the share of Ajay Kumar Garg (HUF).

12. In the backdrop of the aforesaid averments in the plaint, the defendant Nos.18 and 24 contend that the suit against defendant Nos.18 and 24 is not competent. At best, the plaintiffs can sue the

defendant Nos.1 to 6 to the extent of their shares in the defendant Nos.18 and 24-Companies. However, the plaintiffs cannot sue the defendant Nos.18 and 24. Thus, there is no cause of action against the defendant Nos.18 and 24.

13. The defendant Nos.18 and 24 further contend that Ajay Kumar Garg (HUF) is not a shareholder of defendant Nos.18 and 24-Companies. The total shareholding of defendant No.18 is 5000 shares. Out of which, the defendant Nos.1 to 4 hold only 400 shares. The total shareholding of defendant No.24 is 50,000 shares. Out of which, defendant Nos.1 to 4 hold only 3000 shares. In any event, on the own showing of the plaintiffs, their claim is restricted to the alleged undivided share that falls to Ajay Kumar Garg (HUF), the suit against defendant Nos.18 and 24 is sans any cause of action. Consequently, the defendant Nos.18 and 24 cannot be dragged unjustifiably. Hence, these applications for dismissal of the suit.

14. The plaintiffs have contested the defendant Nos.1's application by filing an affidavit in reply. The very tenability of the application under Order VII, Rule 11 of the Code is questioned. It is averred that the defendant No.1 has failed to make out any case for invoking power under Order VII, Rule 11 of the Code.

15. Contesting the assertions of the defendant No.1 that the plaint does not disclose cause of action, the plaintiffs assert that in the factual backdrop, triable issues arise and there is no justifiable reason to interdict the suit by resorting to the provisions contained in Order VII Rule 11 of the Code.

16. The plaintiffs have categorically denied the assertion in the application that the properties described in the Schedule B are self-acquired properties of the defendant No.1 or belong to Public or Private Companies or LLP or the firms. The plaintiffs aver that in view of the contentions of the defendant No.1 that the three of the suit properties namely, described at Sr.No.I (Dariya Mahal) III (1/3rd share of Tahnee Heights and ½ share of garage in Tahnee Heights) and XVII (1/8th share of Aligarh property) are reflected in the Income Tax Returns as HUF properties for tax purpose only runs counter to the claim of defendant No.1 that none of the properties is a joint family property.

17. The claim of the defendant No.1 that suit is “barred by law”, is wholly unsubstantiated and unsustainable. No effort has been made by the defendant No.1 to demonstrate by which law the suit would stand barred. The change in the legal position as regards the character of the property inherited by a Hindu, post

commencement of the Hindu Succession Act, 1956 is contested. Likewise, the claim that the suit is barred by the provisions of the Prohibition of Benami Property Transactions Act, 1988 is also disputed. The plaintiffs contend that in view of the provisions contained in section 2(9)(A)(b)(i), the case of the plaintiffs squarely falls within the exception thereto. At this juncture, according to the plaintiffs, the merits of the claim cannot be delved into. Thus, the application deserves to be rejected.

18. An affidavit in rejoinder is filed on behalf of defendant No.1 controverting the assertions in the affidavit-in-reply.

19. The plaintiffs have also contested the applications preferred by the defendant Nos.18 and 24 also by filing the affidavit in reply.

20. It is controverted that the plaint does not disclose any cause of action qua the defendant Nos. 18 and 24. Since the fact that the defendant Nos.1 to 4 hold shares in defendant Nos.18 and 24-Companies is not, they cannot contend that the plaint does not disclose a clear right to sue the defendant Nos.18 and 24. The question as to whether Ajay Kumar Garg (HUF) has an interest in the defendant Nos.18 and 24-Companies is a matter for adjudication. Therefore, the prayer of the defendant Nos.18 and 24 to dismiss the suit, at this stage itself, is legally unsustainable. In

any case, at the most, the defendant Nos.18 and 24 could have prayed for rejection of the plaint and not dismissal of the suit. No case is otherwise made out for rejection of the plaint.

21. In the backdrop of the aforesaid facts, the averments in the plaint, the applications for rejection of the plaint, the affidavits in reply thereto and an affidavit in rejoinder, and the material on record, I have heard Mr. Subhash Jha, the learned counsel for the applicants in Interim Application (L.) No.9451 of 2021, Mr. Bobade, the learned counsel for defendant No.3, Mr.Satyan Vaishnav, the learned counsel for defendant Nos. 18 and 24 (applicant in IA-1549-2021 and IA-1571-2021) and Dr.Veerendra Tulzapurkar, the learned Senior Counsel for the plaintiffs, at some length. With the assistance of the learned counsels, I have perused the material on record.

22. Mr. Jha, the learned counsel for the applicant-defendant No.1 mounted a multi-pronged challenge to the tenability of the suit in support of the submission that the plaint is liable to be rejected under Order VII Rule 11 of the Code. First and foremost, the plaint singularly lacks bare necessary facts and requisite pleadings to make out a case of existence of HUF, holding of properties by the HUF and the entitlement of the plaintiffs to

shares therein. Secondly, in view of the change brought about by the Hindu Succession Act, 1956, even if the case of the plaintiffs is taken at par, the properties which devolved upon the defendant No.1 ceased to be the joint family properties and assumed the character of the self-acquired properties. The very premise of the plaintiffs that the properties which devolved upon the defendant No.1 from Phoolchand continued to retain the character of HUF is wholly misconceived. Thirdly, laying emphasis on the necessity and importance of the pleadings, in the light of the provisions contained under Order VI Rule 4 and Order VIII Rule 3 of the Code, Mr.Jha would urge that the averments in the plaint are plainly vague, bald and do not make out a cause of action. It was further submitted that the instant suit is instituted by plaintiff No.3 to wreck vengeance and keep the properties, which are not even remotely joint family properties, entangled in litigation. The suit is neither for the benefit of the plaintiff Nos.1 and 2 nor the plaintiff Nos.1 and 2 can be said to have expressed an unequivocal intention to sever from the joint family. In any event, the plaintiff No.3 is not entitled to seek partition of the joint family property as there is no severance between the defendant No.1 and defendant No.3. Mr.Jha, in support of each of the submissions, placed

reliance on a number of judgments, reference to which would be made at appropriate stage.

23. Mr. Bobade, the learned counsel for defendant No.3, who was permitted to advance the submissions in support of the prayer for rejection of the plaint, urged that the genesis of the dispute cannot be lost sight of. While adopting the submissions of Mr.Jha, Mr.Bobade further urged that the plaintiff No.3 has resorted to this proceeding by using the minor sons of the plaintiff No.3 and defendant No.3 as a tool to wreck vengeance. According to Mr.Bobade, the suit for partition on behalf of minor plaintiff Nos.1 and 2 is fraught with multiple infirmities. One, there is no unequivocal declaration of the will to separate from the joint family. Two, the suit is not for the benefit of the minors. Three, no case of wasting of the property is pleaded, even remotely. Since the plaintiff No.3 cannot sue in her capacity as the wife of defendant No.3, the plaintiff No.3 has adopted this device of suit for partition on behalf of the minor sons to bring about the same result in an indirect manner.

24. Mr. Vaishnava, the learned counsel for the defendant Nos.18 and 24 would urge that the fact that defendant Nos.1 to 6 own certain shares of defendant Nos.18 and 24, even if taken at par,

does not make the suit against the defendant Nos.18 and 24 competent, by any stretch of imagination. At best, the case of the plaintiffs would be that Ajay Kumar Garg (HUF) is the beneficial owner of the shares in those companies. That makes out no cause of action against defendant Nos.18 and 24. In fact, the plaint does not proceed on the premise that Ajay Kumar Garg (HUF) holds shares in defendant Nos.18 and 24. In the circumstances, according to Mr.Vaishnav, there is no justification for unnecessarily dragging the defendant Nos.18 and 24 as the party defendants to the suit. Therefore, the plaint deserves to be rejected and the suit dismissed qua the defendant Nos.18 and 24, in the least.

25. Dr.Tulzapurkar joined the issue by canvassing a submission that in an application under Order VII Rule 11 of the Code, what is to be seen is the averments in the plaint. At this stage, the contentions of the defendants either in the application for rejection of Plaint or the written statement are wholly irrelevant. On this touchstone, according to Dr.Tulzapurkar, the plaint discloses, with sufficient clarity, the existence of joint family nucleus and acquisition of the properties by defendant No.1 as a member of HUF. Dr.Tulzapurkar controverted the main plank of

the submission on behalf of the defendant No.1 that after the enactment of Hindu Succession Act, 1956, in all cases, the property which devolves upon a male Hindu acquires the character of self-acquired property. A distinction was sought to be made by Dr.Tulzapurkar, in the devolution of self-acquired property and joint family property. If the ancestral property was in existence before enactment of Hindu Succession Act, 1956, such property continues to retain the character of joint family property even when the succession opens after 1956. The challenge on behalf of the defendants on the ground that the plaint lacks requisite facts and details was sought to be met by advancing a submission that there is a distinction between the material facts and better particulars. A plaint cannot be rejected, according to Dr.Tulzapurkar, on the ground that it lacks further particulars.

26. As regards the application of defendant Nos.18 and 24, Dr.Tulzapurkar submitted that in the face of the stand of the defendant Nos.18 and 24 that the defendant Nos.1 to 4 do hold shares in those companies, the case of the plaintiffs that HUF funds were utilized to acquire shares in those companies stand fortified. How much, according to Dr.Tulzapurkar, is a matter for trial and cannot be enquired into, at this stage.

27. I have given my anxious consideration to the aforesaid submissions.

28. To begin with, it may be appropriate to note that there is not much controversy over relationship between the parties, especially, the plaintiff Nos.1 to 3 and defendant Nos.1 to 6. Nor the parties are at issue over the fact that the marital discord between the plaintiff No.3 and defendant No.3 has led to multiple proceedings. Undoubtedly, there are versions and counter-versions, regarding the genesis of and causes for, those proceedings. For the purpose of determination of this application, however, those proceedings do not assume any significance except underscore that the discord has taken a toll on the marital life of plaintiff No.3 and defendant No.3. The pivotal issues are; existence of HUF, properties of HUF and the right of the plaintiffs to enforce partition and separate possession. In this backdrop, the applications for rejection of Plaint are required to be appreciated.

29. The contours of the provisions contained in Order VII Rule 11 of the Code which empower the Court to reject the Plaint for the causes set out in clause (a) to (f) of sub-rule (1) are fairly well recognized. The power under Order VII Rule 11 can be exercised by the Court at any stage of the suit. The stage of the proceeding

does not matter. What is of decisive significance is the averments in the Complaint. To arrive at a decision as to whether a complaint is required to be rejected, for not disclosing a cause of action or being barred by any law, only the averments in the Complaint are germane. The pleas in defence are wholly irrelevant. The Complaint is required to be read as a whole. The averments in the Complaint are required to be read in a meaningful manner. It is not the formal reading of the Complaint but a meaningful reading which would serve as the light-house to find out whether the Complaint discloses a cause of action. These principles are well settled by a catena of decisions.

30. In the case of *T. Arivandandam vs T. V. Satyapal & Another*¹, the Supreme Court delineated the approach in the matter of construction of the Complaint, while considering an application under Order VII, Rule 11 of the Code. The observations in paragraph 5 are instructive, and hence extracted below :

5 *We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now, pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies*

1 (1977) 4 SCC 467

of the law in receiving complaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11 C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. An activist Judge is the answer to irresponsible law suits. The trial court should insist imperatively on examining the party at the first bearing so that bogus litigation can be shot down at the earliest stage."

(emphasis supplied)

31. The aforesaid pronouncement has been followed in a number of cases, including in the case of ***The Church of Christ Charitable Trust & Educational Charitable Society, represented by its Chairman Vs. M/s Ponniyamman Educational Trust represented by its Chairperson/Managing Trustee***², wherein the Supreme Court explicated the nature of the enquiry under Order VII Rule 11, in the following words :

11 This position was explained by this Court in *Saleem Bhai & Ors. vs. State of Maharashtra and Others*, (2003) 1 SCC 557, in which, while considering Order VII Rule 11 of the Code, it was held as under:

"9. A perusal of Order VII Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order VII Rule 11 CPC at

² (2012) 8 SCC 706

any stage of the suit — before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order VII CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order VII Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court.....”

*It is clear that in order to consider Order VII Rule 11, the Court has to look into the averments in the plaint and the same can be exercised by the trial Court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinize the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in *Raptakos Brett & Co. Ltd. vs. Ganesh Property* (1998) 7 SCC 184 and *Mayar (H.K.) Ltd. and Others vs. Owners & Parties, Vessel M.V. Fortune Express and Others* (2006) 3 SCC 100.”*

32. The aforesaid principles have been reiterated in the cases of the *Raghvendra Sharan Singh Vs. Ram Prasanna Singh (Dead) by Legal Representatives* ³ and *K.Akbar Ali Vs. K. Umar*

³ 2019 SCC OnLine SC 372

Khan & Ors. ⁴ on which reliance was placed by Mr.Jha, *Bhau Ram Vs. Janak Singh & Ors.* ⁵ and *Chhotanben and Another Vs. Kiritbhai Jalkrushnabhai Thakkar & Ors.* ⁶, banked upon by Dr.Tulzapurkar.

33. In the case of *Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) (d) Thru L.Rs. & Ors.* ⁷ emphasizing the importance of a meaningful reading of the Complaint, the Supreme Court, *inter alia*, observed as under :

23.3 The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

...

23.13 If on a meaningful reading of the complaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

....

23.15 The provision of Order VII Rule 11 is mandatory in nature. It states that the complaint "shall" be rejected if any of the grounds specified

4 2021 SCC OnLine SC 238

5 (2012) 8 SCC 701

6 (2018) 6 SCC 422

7 (2020) 7 SCC 366

in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.

.....

24.3 Subsequently, in *I.T.C. Ltd. v. Debt Recovery Appellate Tribunal* ⁸, this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

....

24.4 If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Ramachandra Murthy Vs. Sayed Jalal* ⁹ held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

34. In the light of the aforesaid exposition of law, the proper course would be to evaluate the averments in the Plaint to find out the existence or otherwise of a real cause of action and not an illusory one. In the context of the challenge, especially on behalf of defendant Nos.1 and 3, as regards the very right of the plaintiffs to sue for partition, it may, however, be expedient to first deal with the point of law urged on behalf of the defendant Nos.1 to 3

⁸ (1998) 2 SCC 70

⁹ (2017) 13 SCC 174)

that the property which devolved upon the defendant No.1 from late Phoolchand and/or Narsinghdas did not retain the character of the joint family property and, therefore, not susceptible to partition. If upon consideration of the averments in the Plaint, the Court comes to a conclusion that no clear right to sue exists, in the light of the point urged on behalf of the defendants, the Court would be justified in rejecting the Plaint.

35. Mr.Jha, the learned counsel for defendant No.1 urged with a degree of vehemence that the edifice of the suit is based on a clear misconception of law. The absence of relevant pleadings further derails the case of the plaintiffs. The endeavour of the plaintiffs to simply allege that there was a joint family and the properties have been acquired out of joint family funds to sustain a suit for partition, according to Mr. Jha, does not merit countenance, after the enactment of section 8 of the Hindu Succession Act, 1956, in the absence of a clear and categorical pleading about the existence of joint family property before the enactment of Hindu Succession Act, 1956.

36. Section 8 of the Hindu Succession Act, 1956 has brought a significant change in law as regards the character of the property

which a male Hindu inherits, after 1956. The position under the Old Hindu Law of the son having a share in the property of the father by birth is affected by section 8 and when the son inherited the property in the situation contemplated by section 8, he does not take it as Karta of a HUF but takes it as his individual property.

37. A strong reliance was placed by Mr. Jha on the judgment of the Supreme Court in the case of ***Commissioner of Wealth Tax, Kanpur and Ors. Vs. Chander Sen & Ors.***¹⁰, wherein the Supreme Court elucidated the impact of section 8 on the character of the property which devolves upon a Hindu male, as under :

22 In view of the preamble to the Act, i.e., that to modify where necessary and to codify the law, in our opinion it is not possible when Schedule indicates heirs in class I and only includes son and does not include son's son but does include son of a predeceased son, to say that when son inherits the property in the situation contemplated by section 8 he takes it as karta of his own undivided family. The Gujarat High Court's view noted above, if accepted, would mean that though the son of a predeceased son and not the son of a son who is intended to be excluded under section 8 to inherit, the latter would by applying the old Hindu law get a right by birth of the said property contrary to the scheme outlined in section 8. Furthermore as noted by the Andhra Pradesh High Court that the Act makes it clear by section 4 that one should look to the Act in case of doubt and not to the pre-existing Hindu law. It would be difficult to hold today the property which devolved

¹⁰ (1986) 3 SCC 567

on a Hindu under section 8 of the Hindu Succession would be HUF in his hand vis-a-vis his own son; that would amount to creating two classes among the heirs mentioned in class I, the male heirs in whose hands it will be joint Hindu family property and vis-a-vis son and female heirs with respect to whom no such concept could be applied or contemplated. It may be mentioned that heirs in class I of Schedule under section 8 of the Act included widow, mother, daughter of predeceased son etc.

38. The aforesaid pronouncement was followed by the Supreme court in the case of ***Yudhishter Vs. Ashok Kumar***¹¹ to exposit the law as under :

¹¹ This question has been considered by this Court in *Commissioner of Wealth Tax, Kanpur and Others v. Chander Sen and Others*, [1986] 3 SCC 567 where one of us (Sabyasachi Mukharji, J) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him. This Court observed that this position has been affected by section 8 of the Hindu Succession Act, 1956 and, therefore, after the Act, when the son inherited the property in the situation contemplated by section 8, he does not take it as Kar of his own undivided family but takes it in his individual capacity. At pages 577 to 578 of the report, this Court dealt with the effect of section 6 of the Hindu Succession Act, 1956 and the commentary made by Mulla, 15th Edn. pages 924-926 as well as Mayne's on Hindu Law 12th Edition pages 918-919. Shri Banerji relied on the said observations of Mayne on 'Hindu Law', 12th Edn. at pages 918-919. This Court observed in the aforesaid decision that the views expressed by the Allahabad High Court, the

¹¹ (1987) 1 SCC 204

Madras High Court, the Madhya Pradesh High Court and the Andhra Pradesh High Court appeared to be correct and was unable to accept the views of the Gujarat High Court. To the similar effect is the observation of learned author of Mayne's Hindu Law, 12th Edn. page 919. In that view of the matter, it would be difficult to hold that property which developed on a Hindu under section 8 of the Hindu Succession Act, 1956 would be HUF in his hand vis-a- vis his own sons. If that be the position then the property which developed upon the father of the respondent in the instant case on the demise of his grandfather could not be said to be HUF property. If that is so, then the appellate authority was right in holding that the respondent was a licensee of his father in respect of the ancestral house.

39. Mr. Jha placed a strong reliance on a judgment of a learned Single Judge of Delhi High Court in the case of **Sagar Gambhir Vs. Shri Sukhdev Singh Gambhir & Anr.**¹², wherein the learned Single Judge referred to a previous judgment in the case of **Sunny (Minor) & Anr. vs. Sh. Raj Singh & Ors.**¹³, and enunciated the legal position which emerged post Hindu Succession Act, 1956 :

7 *On the legal position which emerges pre 1956 i.e before passing of the Hindu Succession Act, 1956 and post 1956 i.e after passing of the Hindu Succession Act, 1956, the same has been considered by me recently in the judgment in the case of Sunny (Minor) & Anr. vs. Sh. Raj Singh & Ors., CS(OS) No.431/2006 decided on 17.11.2015. In this judgment, I have referred to and relied upon the ratio of the judgment of the Supreme Court in the case of Yudhishter (supra) and have essentially arrived at the following conclusions:-*

(i) If a person dies after passing of the Hindu Succession Act, 1956 and there is no HUF existing at the time of the death of such a person, inheritance of an immovable property of such a person by his successors-in-interest is no doubt inheritance of an "ancestral" property but the

12 2016 SCC OnLine Del. 2748

13 CS(OS) No.431/2006 decided on 17.11.2015

inheritance is as a self-acquired property in the hands of the successor and not as an HUF property although the successor(s) indeed inherits "ancestral" property i.e a property belonging to his paternal ancestor.

(ii) The only way in which a Hindu Undivided Family/joint Hindu family can come into existence after 1956 (and when a joint Hindu family did not exist prior to 1956) is if an individual's property is thrown into a common hotchpotch. Also, once a property is thrown into a common hotchpotch, it is necessary that the exact details of the specific date/month/year etc of creation of an HUF for the first time by throwing a property into a common hotchpotch have to be clearly pleaded and mentioned and which requirement is a legal requirement because of Order VI Rule 4 CPC which provides that all necessary factual details of the cause of action must be clearly stated. Thus, if an HUF property exists because of its such creation by throwing of self-acquired property by a person in the common hotchpotch, consequently there is entitlement in coparcener etc to a share in such HUF property.

40. The aforesaid line of reasoning was approved by the Division Bench of Delhi High Court in the case of ***Sagar Gambhir Vs. Sukhdev Singh Gambhir (Since Deceased) Thr His Legal Heirs & Anr.***¹⁴

41. Mr.Jha, the learned counsel for defendant No.1 would urge that the aforesaid pronouncements apply with equal force to the facts of the case at hand as there is next to no pleading as regards the formation of HUF, prior to 1956, existence of HUF properties and opening of succession before or after 1956. Bald allegations

¹⁴ 2017 Scc OnLine Del. 7305

that the plaintiff Nos.1 to 3 and defendant Nos.1 to 6 constituted a HUF and properties were acquired out of the joint family funds which are of self-serving nature, do not furnish a sufficient foundation for a cause of action for partition, urged Mr. Jha.

42. Dr. Tulzapurkar, per contra, submitted that the aforesaid pronouncements are of no assistance to the defendants. Section 8 of the Act comes into play only when the property devolves upon a male Hindu in a situation contemplated thereunder and not in all the cases. However, where a coparcener obtains upon partition, ancestral property, it retains the character of ancestral property,, urged Dr.Tulzapurkar.

43. To bolster up this submission, Dr. Tulzapurkar placed reliance on a judgment of the Supreme Court in the case of ***Shyam Narayan Prasad vs. Krishna Prasad & Others*** ¹⁵. In the said case, after advertng to the previous pronouncements, the Supreme Court enunciated the legal position as under :

12 It is settled that the property inherited by a male Hindu from his father, father's father or father's father's father is an ancestral property. The essential feature of ancestral property, according to Mitakshara Law, is that the sons, grandsons, and great grandsons of the person who inherits it, acquire an interest and the rights attached to such

15 (2018) 7 SCC 646

property at the moment of their birth. The share which a coparcener obtains on partition of ancestral property is ancestral property as regards his male issue. After partition, the property in the hands of the son will continue to be the ancestral property and the natural or adopted son of that son will take interest in it and is entitled to it by survivorship.

.....

16 Therefore, the properties acquired by defendant No.2 in the partition dated 31.07.1987 although are separate property qua other relations but it is a coparcenary property insofar as his sons and grandsons are concerned. In the instant case, there is a clear finding by the trial court that the properties are ancestral properties which have been divided as per the deed of partition dated 31.07.1987. The property which had fallen to the share of defendant No.2 retained the character of a coparcenary property and the plaintiffs being his sons and grandson have a right in the said property. Hence, it cannot be said that the suit filed by the plaintiffs was not maintainable.

44. In the case of *Ashnoor Singh Vs. Harpal Kaur & Others*¹⁶, the Supreme Court had an occasion to deal with the submission based on the change brought about by section 8 of the Hindu Succession Act, 1956. The Supreme Court adverted to the judgment in the case of *Yudhishter* (Supra), and thereafter, postulated as under :

7.5. After the Hindu Succession Act, 1956 came into force, this position has undergone a change. Post – 1956, if a person inherits a self-acquired property from his paternal ancestors, the said property becomes his self-acquired property, and does not remain coparcenary property.

¹⁶ (2020) 14 SCC 436

7.6. If succession opened under the old Hindu law, i.e. prior to the commencement of the Hindu Succession Act, 1956, the parties would be governed by Mitakshara law. The property inherited by a male Hindu from his paternal male ancestor shall be coparcenary property in his hands vis-à-vis his male descendants upto three degrees below him. The nature of property will remain as coparcenary property even after the commencement of the Hindu Succession Act, 1956.

(emphasis supplied)

45. The aforesaid decisions in the cases of **Shyam Narayan Prasad** (Supra) and **Ashnoor Singh** (Supra) make it clear that the nature of the property which devolves upon a male Hindu in a situation contemplated by section 8 of the Act, 1956 turns upon two factors. First, the character of the property which devolves upon a male Hindu. Second, whether the succession had opened prior to the commencement of the Hindu Succession Act, 1956. If that is a case, the character of the property would remain a coparcenary property even after the commencement of the Hindu Succession Act, 1956. A broad proposition that whatever be the source of property which devolves upon a male Hindu, the property assumes the character of separate property may not be sustainable.

46. On the aforesaid touchstone, reverting to the facts of the case, what has to be considered is the averments in the Plaint,

read as a whole. As indicated above, the plaintiffs have approached the Court with a case that Phoolchand, the father of defendant No.1 by utilizing the joint family corpus and nucleus, generated through joint family business, acquired a number of properties. Partition took place between Phoolchand and his sons, including defendant No.1. The defendant No.1, in turn, invested the joint family funds and assets and from the said nucleus, acquired various movable and immovable properties, assets and funds. In sub-para Nos. VIII to XXI of paragraph No.3, the plaintiffs have endeavoured to demonstrate as to how the suit properties are impressed with the character of joint family properties.

47. These assertions are required to be considered in conjunction with the foundational facts pleaded by the plaintiff in paragraph No.2 of the Plaint that the plaintiff and defendant Nos.1 to 6 are the members of Hindu Undivided Family (HUF) and plaintiff Nos.1 and 2 and defendant Nos.1, 3, 4 and 6 are the coparceners by birth in the coparcenary of Ajay Kumar Garg (HUF) of which the defendant No.1 is Karta.

48. The thrust of the submission on behalf of the defendants was that the pleadings are incomplete and vague. There are no averments in the Plaint as to when the HUF was formed, when the Late Narsinhgdas Garg passed away, when the HUF of Phoolchand was formed, when partition amongst Phoolchand and his sons took place? In the absence of such pleadings, which are essential for determining the character of the properties devolved upon the defendant No.1, it cannot be said that the Plaint discloses a real cause of action.

49. To buttress the aforesaid submission, Mr.Jha placed reliance on the case of ***Sagar Gambhir vs. Shri Sukhdev Singh Gambhir & Anr.*** (Supra), wherein a learned Single Judge of Delhi High Court had adverted to the change brought about by section 8 of the Hindu Succession Act, 1955 and, in that context, emphasized the importance of the pleadings. The learned Single Judge had relied upon the decisions rendered in the cases of ***Sunny (Minor) Vs. Shri Raj Singh & Ors.***¹⁷ and ***Surinder Kumar Vs. Dhani Ram & Ors.***¹⁸. In the case of ***Surinder Kumar*** (Supra) the requirement of pleading was underscored as under :-

“11. I may note that the requirement of pleading in a

17 225 (2015) DLT 211

18 277 2016 DLT 217

clear cut manner as to how the HUF and its properties exist i.e whether because of pre 1956 position or because of the post 1956 position on account of throwing of properties into a common hotchpotch, needs to be now mentioned especially after passing of the Benami Transaction (Prohibition) Act, 1988.....”

(emphasis supplied)

50. Mr.Jha also placed reliance on the Division Bench judgment of the Delhi High Court in the case of ***Sagar Gambhir*** (Supra) which on appeal affirmed the aforesaid decision of the learned Single Judge in the case of ***Sagar Gambhir*** (Supra) and held that the positive statements required by law to be pleaded in the Plaint regarding constitution of HUF were missing, as had been rightly held by the learned Single Judge. Reliance was also placed by Mr.Jha on the judgments of the Delhi High Court in the cases of ***Surender Kumar Khurana Vs. Tilak Raj Khurana and Ors.*** ¹⁹, ***Aarshiya Gulati and Ors. Vs. Kuldeep Singh Gulati and Ors.*** ²⁰ and ***Master Ansh Kapoor & Anr. Vs. K.B. Kapur & Ors.*** ²¹ in which an identical view has been recorded.

51. The requirement of pleadings cannot be over-emphasized. Indeed, in the Plaint, the particulars, viz., the date of death of Narsinghdas and Phoolchand, partition between Phoolchand and his sons are not pleaded. The Plaint proceeds on the premise that

¹⁹ (2016) 1 HCC (Del.) 49

²⁰ 2019 SCC OnLine Del. 6867

²¹ 2021 SCC onLine Del. 510

The plaintiff Nos.1 to 3 and the defendant Nos.1 to 6 constitute a HUF. The absence of pleadings on these aspects, however, does not imply that no case of HUF is pleaded by the plaintiff. It is averred in the Plaint that the properties acquired by Phoolchand were from the joint family funds and after partition, the defendant No.1 acquired further properties out of the joint family nucleus and properties which devolved upon him.

52. The plaintiffs have categorically asserted that there is a HUF consisting of plaintiffs and defendant Nos.1 to 6 and a coparcenery comprising plaintiff Nos.1 and 2 and defendant Nos.1, 3, 4 and 6. The plaintiffs assert that the suit properties are the joint family properties of the said HUF.

53. The existence of such HUF, is, in a sense, admitted by the defendant No.1, though it is sought to be explained away. In paragraph No.26 of the application, defendant No.1 contends as under :

26 The Applicant states that just two days after his marriage in the month of February, 1982, he set up his own HUF comprising of himself and his wife under the name and style of Ajay Kumar Garg HUF. The three properties at Serial No.I (Dariya Mahal Property), III (1/3rd of Tahnee Heights and ½ share of Garage), and IVII (1/8th share of Aligarh Property) are the properties though have been reflected in the Income Tax Return of HUF of which he is the Karta, these

properties are his self-acquired properties and they have been shown as HUF Properties in the IT returns for the purpose of income tax and out of sheer love and affection for his wife and two minor children at that point of time, therefore, there was no question of throwing property into the common hotchpotch.

(emphasis supplied)

54. The aforesaid stand of the defendant No.1, at this juncture, leads *prima-facie* support to the claim of the plaintiffs about the existence of HUF. The necessary corollary of the aforesaid inference is that the character of at least three of the properties, namely Dariya Mahal (Sr.No.1), 1/3rd share of Tahnee Heights (Sr.No.2) and 1/8th share of Aligarh property (Sr.No.17), as the joint family properties cannot be called in question. Undoubtedly, the defendant No.1 attempted to wriggle out of the situation by asserting that the constitution of the said HUF and showing the aforesaid properties as HUF properties, though they were defendant No.1's self acquired properties, was for tax purpose only.

55. Mr.Jha, the learned counsel for defendant No.1 attempted to salvage the position by canvassing a submission that no case of throwing the separate property into the common hotch-potch has been pleaded. Nor there is any other material to show that there were coparcenary properties with which the self acquired

properties of the defendant No.1 got blended. Mere showing of the separate properties as the HUF properties in the Income Tax returns, is of no significance, urged Mr.Jha.

56. To lend support to this submission, Mr. Jha placed reliance on the judgment of the Supreme Court in the cases of *Mallesappa Bandeppa Desai & Anr. Vs. Desai Mallappa Alias Mallesappa & Anr.*²² and *Lakkireddi Chinna Venkata Reddi and Ors. Vs. Lakkireddi Lakshmama* ²³. There can be no qualm over the propositions of law. However, the question as to whether there was a blending of separate properties with self-acquired property and defendant No.1 had voluntarily thrown his separate property into the common hotch-potch, with intent to divest himself of the separate ownership over the said properties are matters for trial. At this juncture, the said contention of the defendant No.1 does not merit countenance.

57. The situation which, thus, obtains is that on the own showing of the defendant No.1, a HUF was formed in 1982 and three of the suit properties were shown as the HUF properties.

22 AIR 1961 SC 1268

23 AIR 1963 SC 1601

The issue as to whether these properties still retain the character of the separate properties of defendant No.1 is a matter for trial.

58. This brings to the fore, the pivotal question as to whether a plaint can be rejected in part? It was urged on behalf of the plaintiffs that under Order VII, Rule 11 of the Code, the Plaint is required to be rejected as a whole, provided a case is made out. However, it is impermissible to reject the Plaint qua a particular suit property or one of the defendants.

59. Reliance was placed on a judgment of the Supreme Court in the case of *Sejal Glass Vs. Navilan Merchant Private Limited*²⁴. In the said case, the Plaint was ordered to be rejected by the High Court qua the defendant Nos.2 to 4, the Directors of the Company as it disclosed no cause of action, whilst the suit was ordered to be continued against defendant No.1-company. The Supreme Court held that the judgment of the High Court was wrong on principle. The Supreme Court, after adverting to the provisions contained in Order VII, Rule 11 held that the provision refers to the “plaint” which necessarily means the Plaint as a whole. It is only where the Plaint as a whole does not disclose a cause of action that Order VII Rule 11 springs into being and interdicts a

24 (2018) 11 SCC 780

suit from proceeding. The Supreme Court referred to a number of judgments of the various High Court and enunciated law as under :

“8 We are afraid that this is a misreading of the Madras High Court judgment. It was only on the peculiar facts of that case that want of Section 80 CPC against one defendant led to the rejection of the plaint as a whole, as no cause of action would remain against the other defendants. This cannot elevate itself into a rule of law, that once a part of a plaint cannot proceed, the other part also cannot proceed, and the plaint as a whole must be rejected under Order VII Rule 11. In all such cases, if the plaint survives against certain defendants and/or properties, Order VII Rule 11 will have no application at all, and the suit as a whole must then proceed to trial.”

(emphasis supplied)

60. The aforesaid pronouncement was followed by the Supreme Court in the case of ***Madhav Prasad Aggarwal Vs. Axis Bank Ltd.***

²⁵. In the said case, this Court had allowed the Notice of Motion filed by Axis Bank Limited, one of the defendant, and dismissed the the suit against the Axis Bank Limited, by invoking the provisions of Order VII Rule 11(d) of the Code. The Supreme Court did not approve the said course of action. Following the judgment in the case of ***Sejal Glass Limited*** (Supra), it was reiterated that it is not permissible to reject the Plaint qua any particular portion of the Plaint including against the some of the defendants and

25 (2019) 7 SCC 158

continue the same against others. The observations in paragraph Nos. 10 and 12 are material and, hence, extracted below :

10 We do not deem it necessary to elaborate on all other arguments as we are inclined to accept the objection of the appellant(s) that the relief of rejection of plaint in exercise of powers under Order 7 Rule 11(d) of CPC cannot be pursued only in respect of one of the defendant(s). In other words, the plaint has to be rejected as a whole or not at all, in exercise of power Order 7 Rule 11 (d) of CPC. Indeed, the learned Single Judge rejected this objection raised by the appellant(s) by relying on the decision of the Division Bench of the same High Court. However, we find that the decision of this Court in the case of Sejal Glass Limited (supra) is directly on the point. In that case, an application was filed by the defendant(s) under Order 7 Rule 11(d) of CPC stating that the plaint disclosed no cause of action. The civil court held that the plaint is to be bifurcated as it did not disclose any cause of action against the director's defendant(s) 2 to 4 therein. On that basis, the High Court had opined that the suit can continue against defendant No.1- company alone. The question considered by this Court was whether such a course is open to the civil court in exercise of powers under Order 7 Rule 11(d) of CPC. The Court answered the said question in the negative by adverting to several decisions on the point which had consistently held that the plaint can either be rejected as a whole or not at all. The Court held that it is not permissible to reject plaint qua any particular portion of a plaint including against some of the defendant(s) and continue the same against the others. In no uncertain terms the Court has held that if the plaint survives against certain defendant(s) and/or properties, Order 7 Rule 11(d) of CPC will have no application at all, and the suit as a whole must then proceed to trial.

....

12 Indubitably, the plaint can and must be rejected in exercise of powers under Order 7 Rule 11(d) of CPC on account of non-compliance of mandatory requirements or being replete with any institutional deficiency at the time of presentation of the plaint, ascribable to clauses (a) to (f) of Rule 11 of Order 7 of CPC. In other words, the plaint as presented must proceed as a whole or can be rejected as a whole but not in part. In that sense, the relief claimed by respondent No.1 in the notice of motion(s) which commended to the High Court, is clearly a

jurisdictional error. The fact that one or some of the reliefs claimed against respondent No.1 in the concerned suit is barred by Section 34 of 2002 Act or otherwise, such objection can be raised by invoking other remedies including under Order 6 Rule 16 of CPC at the appropriate stage. That can be considered by the Court on its own merits and in accordance with law. Although, the High Court has examined those matters in the impugned judgment the same, in our opinion, should stand effaced and we order accordingly.

61. In view of the clear and explicit enunciation of law, that a plaint cannot be rejected in part qua a particular property or one or some of the defendants, the applications preferred by defendant Nos.1 and defendant Nos.18 and 24 for rejection of the Plaint become untenable once the Court comes to the conclusion that the Plaint survives, in the least, in respect of the properties (item Nos.1, 3, 18) as indicated above.

62. Mr.Vaishnav, the learned counsel for defendant Nos.18 and 24 endeavoured to show that the proposition that the Plaint cannot be rejected in part is not an immutable rule of law to be applied in all situations. Mr.Vaishnav placed reliance on a three Judge Bench judgment of the Supreme Court in the case of *Chhotanben and Anr. Vs.Kiritbhai Jalkrushnabhai Thakkar*²⁶ wherein, the Supreme Court had noted its judgment in the case of *The Church of Christ Charitable Trust & Educational Charitable*

26 (2018) 6 SCC 422

Society (Supra), in which, the order upholding the rejection of the Plaint against one of the defendants was upheld. In paragraph No.18 of the judgment in the case of ***Chhotanben*** (Supra), the three Judge Bench had indeed referred to the judgment of the Supreme Court in the case of ***The Church of Christ Charitable Trust & Educational Charitable Society*** (Supra) to note that the High Court had adverted to the said judgment.

63. I am afraid to agree with the submissions sought to be canvassed by Mr.Vaishnav that the binding efficacy of the judgments in the case of ***Sejal Glass*** (Supra), ***Madhav Prasad Aggarwal*** (Supra) gets diluted. In the case of ***Chhotanben*** (Supra), the question as to whether the Plaint could be rejected in part did not arise for consideration before the Supreme Court, as the question that primarily arose for consideration was whether the Plaint could have been rejected on the ground of the suit being barred by limitation.

64. The upshot of the aforesaid consideration is that a meaningful reading of the Plaint makes out a cause of action, atleast in respect of few of the suit properties. I hasten to add that this observation is confined to determination of application of

rejection of the Plaint and does not reflect upon the merits of the claim of the plaintiffs. Resultantly, the applications for rejection of the Plaint are required to be rejected.

65. Hence, the following order :

O R D E R

(i) Interim Application (L.) No.9684 of 2021, Interim Application No. 1549 of 2021 and 1571 of 2021 stand rejected.

(ii) Ad-interim relief, granted earlier, shall continue to operate till 29th April 2022.

No costs.

(N. J. JAMADAR, J.)