



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 02.11.2021	Delivered on: 14.02.2022
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CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.3454 of 2017

and

C.M.P.No.16422 of 2017

1.A.Valiammal

2.A.Sakuntala

3.A.Padmavathy

4.A.Sivasubramaniam

.. Petitioners

Vs.

1.C.Madhuram

2.S.Mayan

3.S.Karan

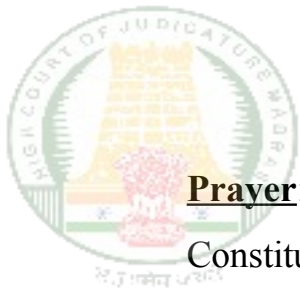
4.S.Veeram

5.U.Vijaya

6.S.Thirumugan

7.Manimegalai

.. Respondents



Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Judgment and decree dated 18.11.2016 made in I.A.No.7 of 2016 in O.S.No.6592 of 2013 on the file of the XV Additional City Civil Court, Chennai.

For Petitioners : Mr.D.Prabhu Mukunth Arunkumar

For Respondents : Mr.S.Subbiah
Senior Counsel
for M/s.Elizabeth Ravi

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the Judgment and decree dated 18.11.2016 made in I.A.No.7 of 2016 in O.S.No.6592 of 2013 on the file of the XV Additional City Civil Court, Chennai.

Facts of the case:

2.The petitioners are defendants 9, 10, 22 & 35 in O.S.No.6592 of 2013 on the file of the XV Additional City Civil Court, Chennai. Originally one Sivananda Gramani and his wife S.Saraswathi Ammal filed the suit in C.S.No.1077 of 1992 on the file of this Court against 34 persons. Due to



increase in pecuniary jurisdiction of City Civil Court the said suit was transferred to the City Civil Court and was re-numbered as O.S.No.6592 of 2013. After the death of said S.Saraswathi Ammal, her legal heirs were brought on record as plaintiffs 3 to 8. S.Palani Ammal, who was impleaded as 3rd plaintiff died and her legal heirs were brought on record as plaintiffs 9 to 11.

3.The said Sivananda Gramani and his wife S.Saraswathi Ammal filed suit for the following reliefs:

(i) declaring that the plaintiffs alone are entitled to the lands situated in T.S.No.31 in Ekkattuthangal, Madras to an extent of 46 cents morefully described in the Schedule “B-2” annexed hereto:

(ii) by way of permanent injunction restraining the defendants from in any way interfering with the plaintiffs peaceful possession and enjoyment of the Schedule – B2 lands and

(iii) directing the defendants to pay the costs of the suit.

4.According to the plaintiffs, they became owners of 2 acre and 32 cents in T.S.No.31 in Ekkattuthangal, Madras City. They purchased the said property by five sale deeds dated (i) 24.10.1945 bearing Document No.1940 of



1945, (ii) 11.06.1948 bearing Document No.1286 of 1948, (iii) 30.03.1948 bearing Document No.626 of 1948, (iv) 14.10.1950 bearing Document No.2221 of 1950 and (v) 14.10.1950 bearing Document No.2227 of 1950.

According to the said plaintiffs, they were in possession and enjoyment of entire 2 acres and 32 cents which is described as 'A' Schedule property. The 1st defendant / Technical Staff Housing Society wanted to purchase the said land. On the Eastern side of the property, a piece of land was developed to be used as cremation and burial ground. In view of the same, the 1st defendant offered to buy only 1 acre and 80 cents. The 1st defendant wanted to purchase the vacant land to develop the same.

5.The property described in Schedule 'A' measuring 2 acres and 32 cents was lying vacant for a long time. A passage happened running from East to West. The 1st defendant accepted to purchase the land lying on southern side of passage, except a strip of land in an irregular shape in the form of triangle on the western side. The plaintiffs also had taken a portion of the land lying on the Eastern side of the suit property being corner portion situated between the passage mentioned above and the road leading to Adayar River. The plaintiffs intended to sell only 1 acre and 80 cents of the land to the 1st defendant and



plaintiffs intended to sell the 52 cents along with corner plot retained by them.

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6.The intention of 1st defendant was to purchase 1 acre and 80 cents of vacant land, convert and allot to its members. In order to avoid cost of purchase from plaintiffs and cost of conveying the plot to its members, the 1st defendant requested the plaintiffs to execute power of attorney appointing its Secretary one P.Ramasamy and President K.Raman, 2nd defendant as power agents of plaintiffs. At request of 1st defendant, the plaintiffs executed four power of attorneys dated 14.06.1982 bearing Document No.187 of 1982, 19.07.1982 bearing Document No.234 of 1982, 06.09.1982 bearing Document No.278 of 1982 and 06.09.1982 bearing Document No.279 of 1982. By these four deeds, plaintiffs appointed P.Ramasamy and K.Raman as their agents to deal with land totally measuring 1 acre and 80 cents only. In the last power of attorney dated 06.09.1982, it has been specifically mentioned that Southern boundary is the remaining land of the plaintiffs.

7.The plaintiffs have executed four power of attorneys in favour of named persons namely, P.Ramasamy and K.Raman, the 2nd defendant. The plaintiffs did not execute any document in favour of 1st defendant and 1st



defendant being an Institution cannot be a power of attorney. The 1st defendant formed a lay out and allotted house sites to its members. The lay out was approved as P.P.D/Lis No.48/88 under a Letter No.D/2/707/85 dated 30.03.1988 from the Member-Secretary, Madras Metropolitan Development Authority. In the approved lay-out, the total extent of land mentioned is 6219.80 sq.meters equivalent to one acre and 55.5 cents. But it is wrongly mentioned as if the entire land owned by the plaintiffs do form of layout.

8.The 2nd defendant along with deceased P.Ramasamy and present Office Bearers obviously might have taken advantage of illiteracy of the plaintiffs in making claim as if plaintiffs do not have any other land, that plaintiffs have conveyed the entire land possessed by them in favour of the 1st defendant. After approval of lay-out, the 1st defendant appears to have executed sale deeds as power of attorney agents of plaintiffs in favour of its members. After death of P.Ramasamy, the defendants 3 & 4 became Office Bearers. They are not power of attorneys of plaintiffs. The defendants 3 & 4 have executed a settlement deed dated 30.12.1987 in favour of Corporation of Madras registered as Document No.4683 of 1987. The defendants 3 & 4 are not power agents of plaintiffs and the settlement deed is not binding on the



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plaintiffs. The 1st defendant and defendants 2 & 4 also executed sale deeds in favour of defendants 3 to 21 described in Schedules 'D' to 'X' and 2nd defendant executed sale deed in his favour. Even though the plaintiffs have agreed to sell only 1 acre and 80 cents and executed four power of attorneys, the deceased P.Ramasamy and the defendants 2 to 4 hatched a programme as if the entire 2 acre and 32 cents was conveyed under four power of attorneys. The plaintiffs retained 52 cents. The plaintiffs sold 1360 sq.feet, 300 sq.feet and 840 sq.feet to the defendants 26, 27 & 28 by registered sale deeds. The 3rd defendant created a document as if he purchased some land from plaintiffs and settled the properties on his daughter, the 22nd defendant. The defendants 26 & 28 filed suit in O.S.No.10966 of 1989 on the file of the II Assistant City Civil Court, Madras. The 22nd defendant also filed C.S.No.659 of 1990 on the file of this Court, against the defendants 26 & 28. The plaintiffs coming to know that the deceased P.Ramasamy and defendants 2 to 4 have created a record even relating to the property retained and belonging to the plaintiffs to resolve the dispute, thought fit to file comprehensive suit impleading all the parties claiming right over it. The plaintiffs are obliged to file suit for declaration, consequential possession and injunction against the defendants for reliefs as detailed in the prayer. The defendants 19 & 20 have mortgaged the property in



favour of 24th defendant. Hence, 24th defendant is impleaded as party. Schedule 'C' property was settled in favour of 29th defendant and lay-out was transferred by 30th defendant and they are necessary and proper parties.

9. Though the plaintiffs are restricting their claim only with respect of Schedule 'B' and 'C' property, the entire matter has to be adjudicated with reference to the extent of land sold by plaintiffs to the 1st defendant by power of attorney documents still at the extent of land is in dispute as it appears that defendants 1 to 23 and 31 to 34 are in possession of more of the land than what was sold under the documents to them and in order to appreciate the stand taken by the plaintiffs, all those sale transactions included in respect of 'A' Schedule are made necessary and proper parties to the suit.

10. On the above averments, the plaintiffs filed suit for declaration that plaintiffs alone are entitled to lands situated in T.S.No.31 in Ekkattuthangal, Madras to an extent of 46 cents morefully described in the Schedule “B-2” and for permanent injunction and costs.

11. The defendants 9, 10, 22 & 35, the petitioners herein filed I.A.No.7



of 2016 under Order VII Rule 11(a) & (d) read with Section 151 of the Code of Civil Procedure to reject the plaint in O.S.No.6592 of 2013, the present suit.

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12. According to petitioners, as per plaint averments and cause of action, the suit is barred by limitation as suit for declaration and permanent injunction, cause of action starts when the right to sue first accrues. As per the plaint averments the foundation of the plaint is based on the four power of attorneys dated 14.06.1982, 19.07.1982, 06.09.1982 and 06.09.1982 for valuable consideration having obtained by the plaintiffs. The cause of action in the plaint is illusory cause of action and not real cause of action and plaint does not disclose a clear right to sue and it is barred by law. The plaintiffs have not stated in the plaint in whose sale deed the so called excess land has been sold. The plaintiffs have indirectly challenged the power of attorneys and sale deeds executed in the year 1982, which is barred by law. The plaintiffs have filed the suit after 10 years of power of attorney and sale deeds and plaint is barred by limitation. The plaintiffs have conveniently not stated when the cause of action first accrued for the suit in the plaint. A reading of the plaint shows that cause of action first accrued in the year 1982, when the plaintiffs executed power of attorney, sale deeds were executed in the year 1988, when lay-out was



approved.

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13.The plaintiffs filed O.S.No.4322 of 1988 on the very same cause of action on which the present suit has been filed and the said suit was dismissed as withdrawn without liberty to file fresh suit and therefore, the present suit is barred under Order II Rule 2 of the Code of Civil Procedure. The cause of action for both the suits is the same namely the four power of attorneys dated 14.06.1982, 19.07.1982, 06.09.1982 and 06.09.1982. The plaintiffs have omitted to sue and have relinquished their present case prayer and plaintiffs cannot file present suit seeking relief. When the plaintiffs filed suit in the year 1988, the sale deeds have already been executed and lay-out also was approved by the Development Authority. This will show that as per plaintiff averments, plaintiffs are abusing the process of Court and Law after receiving valuable consideration. For relief of declaration, there is no document to substantiate the claim and the claim is based on imaginary schedule in the plaint. The suit is indirectly challenging the power of attorneys, sale deeds and lay-out approved by the Development Authority. The suit as per the averments in the plaint shows that the same is collusive one between the plaintiffs and defendants.



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On the above averments, the petitioners prayed for rejection of plaint in the present suit.

14.The respondents filed counter affidavit and denied all the allegations made by the petitioners. The respondents have stated that the application is liable to be dismissed for following reasons:

(I) The plaintiffs filed application belatedly after 24 years of filing of suit and at the time of beginning of trial.

(II) The allegation that cause of action is illusory and not real cause of action, does not disclose a clear right to sue and hence, barred under law is frivolous, created only for the purpose of filing application. The right of parties can be decided only after full fledged trial and not in the application filed under Order VII Rule 11 of the Code of Civil Procedure.

(III) The petitioners are legal representatives of 3rd defendant, who in the written statement did not plead that the suit is not maintainable.

(IV) The present application is counter blast for the application filed by the respondents for appointment of Advocate Commissioner. At the time of order about to be passed, the plaintiffs have come out with the present



application.

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(V) (i). According to petitioners, the dates of four power of attorneys viz., 14.06.1982, 19.07.1982, 06.09.1982 and 06.09.1982 are to be taken into account and suit is barred by Section 58 of the Limitation Act.

(ii) The plaintiffs are indirectly challenging the power of attorneys executed by plaintiffs 1 & 2 and the sale deeds executed in the year 1982.

(iii) The lay-out was approved in the year 1988 and the suit filed after 10 years is barred under law.

(iv) The suit is barred under Order II Rule 2 of the Code of Civil Procedure.

(v) These grounds do not come under the ingredients of Order VII Rule 11(a) & (b) of the Code of Civil Procedure and their plea do not come under the provisions for rejection of plaint.

15(a). The suit is with regard to immovable property and Articles 64 & 65 of the Limitation Act provides for limitation of 12 years for '**possession**' and period commenced from the date of '**dispossession**' and when possession of defendants is adverse to the plaintiffs.

(b). The respondents are in possession of properties described in



Schedule 'B2'. Whether petitioners are in possession or respondents are in possession can be decided only after framing specific issue.

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(c). The question of limitation is mixed question of fact and law and cannot be decided in the summary proceedings.

(d). The petitioners have not raised any plea in respect of Order II Rule 2 of the Code of Civil Procedure in written statement. Without specific pleading, the issue cannot be decided and the said issue cannot be decided even in Order II Rule 2 of the Code of Civil Procedure. The petitioners have not produced copy of the plaint in O.S.No.6224 of 1988 and the said suit relates to five cents of land only, whereas the present suit relates to 46 cents in Schedule B2. The plaintiffs are not challenging the power of attorney and it is not the case of the petitioners that they are in possession and they had acquired title by adverse possession and petitioners do not have case on merits and have not come out with the present application.

For the above reasons, the respondents prayed for dismissal of the application.

16.The 4th petitioner also filed separate affidavit and made averments similar to the averments in the affidavit filed by all the petitioners. The 4th petitioner has stated that respondents have not stated as to when the cause of



action of the suit arose and prayed for rejection of plaint in O.S.No.6592 of 2013 on the file of the XV Additional City Civil Court, Chennai.

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17.The learned Judge considering the materials placed before him and by the order dated 18.11.2016, dismissed the application holding that suit is not barred under Order II Rule 2 of the Code of Civil Procedure, plaintiffs have shown prima facie cause of action for the relief claimed against the defendants and whether plaintiffs can succeed or not can be decided only on examination of all parties.

18.Against the said judgment and decree dated 18.11.2016 made in I.A.No.7 of 2016 in O.S.No.6592 of 2013, the petitioners have come out with the present Civil Revision Petition.

19.The learned counsel appearing for the petitioners submitted that the learned Judge failed to consider that

(i) The plaintiffs have filed the suit for declaration and injunction without being in possession.



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(ii) The learned Judge erred in holding that Articles 64 & 65 of the Limitation Act are applicable as the relief in the suit is only for declaration and injunction.

(iii) The learned Judge erred in holding that Articles 64 & 65 of the Limitation Act would apply, but on the facts of the case only Article 58 is applicable.

(iv) The plaintiffs' claim is based on registered power of attorney and a mistake in the boundary unless the same is specified as per law, a suit cannot be maintained.

(v) Suit is barred by order II Rule 2 of the Code of Civil procedure in view of earlier suit filed by plaintiffs was withdrawn and a comprehensive suit was filed. The findings of the learned Judge is contrary to the law laid down by the Hon'ble Apex Court, wherein it is clearly stated that when the suit is withdrawn without liberty to file a fresh suit, a comprehensive suit cannot be filed as it is barred under Order II Rule 2 of the Code of Civil Procedure.

(vi) The plaint does not disclose cause of action and the cause of action pleaded is only illusory and the learned Judge failed to consider the claim of the petitioners.

(vii) Without considering the contention of the petitioners, the learned



Judge erroneously dismissed the application.

(viii) The plaintiffs are claiming fraudulent transaction, based on power of attorney executed by them and sale deeds have been for more extent than the extent mentioned in the power of attorney. Without seeking declaration that power of attorneys and sale deeds are null and void, the present suit for declaration is not maintainable and cause of action is only illusory. The learned Judge failed to see that in order to over come the limitation, the plaintiffs have filed the suit for declaration and injunction and not for possession, when their specific case is power of attorney executed for larger extent of land and purchasers are put into possession more than what they can derive from the power of attorney. The Schedules mentioned in the plaint are imaginary and not supported by any document. The finding of the learned Judge is contrary to the averments in the plaint. The learned Judge failed to see that respondents failed to claim the foundational relief and consequential relief sought is not permitted. The respondents, without seeking to set aside the power of attorneys and sale deeds already executed by power agents by fraud and for possession, seeking the relief of declaration and injunction is not maintainable. The respondents have not stated in which sale deed the excess land was given to purchasers and when the cause of action for the relief of permanent injunction arose.



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In support of his contention, the learned counsel relied on the following judgments:

(i)(2007) 5 SCC 614 [Hardesh ores (p) Ltd vs Hede and Company with Sociedade de foment Industrial (p) ltd Vs. Hede and Company]:

“25.The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Mr. Nariman did not dispute that "law" within the meaning of Clause (d) of Order VII Rule 11 must include the law of limitation as well. It is well settled that whether a plaint discloses a cause of action is essentially a question of fact, but whether it does or does not must be found out from reading the plaint itself. For the said purpose the averments made in the plaint in their entirety must be held to be correct. The test is whether the averments made in the plaint if taken to be correct in their entirety a decree would be passed. The averments made in the plaint as a whole have to be seen to find out whether Clause (d) of Rule 11 of Order VII is



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applicable. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. As observed earlier, the language of Clause (d) is quite clear but if any authority is required, one may usefully refer to the judgments of this Court in [Liverpool and London S.P. and I Association Ltd. v. M.V. Sea Success I and Anr.](#) and [Popat and Kotecha Property v. State Bank of India Staff Association](#) .

36. This Court after examining the pleadings observed that the foundation of the suit was that the registered sale deed dated 5.5.1953 was in fact only a loan transaction executed to secure the amount borrowed from the plaintiffs' predecessor. The amount borrowed was alleged to have been fully paid back on 25.3.1987 and in acknowledgment thereof a formal receipt was obtained. At the same time there was an alleged oral agreement by the defendants to reconvey the property to the plaintiffs by registered deed. This Court held that on the basis of the averments



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contained in the plaint relief of declaring the registered sale deed dated 5.5.1953 to be a loan transaction and second relief of specific performance of oral agreement of reconveyance of property by registered document ought to have been claimed in the suit. A suit merely for declaration that the plaintiffs are absolute owners of the suit lands could not have been claimed without seeking a declaration that the registered sale deed dated 5.5.1953 was a loan transaction and not a real sale. The cause of action for seeking such a declaration and for reconveyance deed according to the plaintiffs own averments arose on 25.3.1987 when the plaintiff is claimed to have obtained the entire loan amount and obtained a promise from the defendants to reconvey the property. The mutation proceedings did not furnish any independent or fresh cause of action to seek a declaration of the sale deed of 5.5.1953 to be merely a loan transaction. The foundation of the suit was clearly the registered sale deed of 1953 which is alleged to be a loan transaction and the alleged oral agreement of reconveyance of the property on return of borrowed amount. This Court went on to observe,



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'14. After examining the pleadings of the plaint as discussed above, we are clearly of the opinion that by clever drafting of the plaint the civil suit which is hopelessly barred for seeking avoidance of registered sale deed of 5.5.1993, has been instituted by taking recourse to orders passed in mutation proceedings by the Revenue Court.

15. Civil Suit No. 557 of 1990 was pending when the present suit was filed. In the present suit, the relief indirectly claimed is of declaring the sale deed of 5.5.1993 to be not really a sale deed but a loan transaction. Relief of reconveyance of property under alleged oral agreement on return of loan has been deliberately omitted from the relief clause. In our view, the present plaint is liable to rejection, if not on the ground that it does not disclose "cause of action", on the ground that from the averments in the plaint, the suit is apparently barred by law within the meaning of Clause (d) of Order 7 Rule 11 of the Code of Civil Procedure.

39. We are of the view that the respondent is right in contending that enforcement of the negative covenants presupposes the existence of a subsisting agreement. As noticed earlier, the law is well settled that the renewal of an agreement or



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lease requires execution of a document in accordance with law evidencing the renewal. The grant of renewal is also a fresh grant. In the instant case, the appellant-plaintiff did exercise their option and claimed renewal. The respondents denied their right to claim renewal in express terms and also unequivocally stated that the agreement did not stand renewed as contended by the appellants. Having regard to these facts it must be held that a cause of action accrued to the appellant- plaintiff when their right of renewal was denied by the respondents. This happened in December, 2001 and, therefore, within three years from that date they ought to have taken appropriate proceedings to get their right of renewal declared and enforced by a court of law and/or to get a declaration that the agreement stood renewed for a further period of 5 years upon the appellants' exercising their option to claim renewal under the original agreement. The appellants-plaintiffs have failed to do so. ...”

(ii) (2011) 9 SCC 126 [Khatri Hotels Private limited and anothers Vs. Union of India and another]:

“30. While enacting [Article 58](#) of the 1963



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Act, the legislature has designedly made a departure from the language of [Article 120](#) of the 1908 Act. The word 'first' has been used between the words 'sue' and 'accrued'. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.

31. In the light of the above, it is to be seen as to when the right to sue first accrued to the appellants. They have not controverted the fact that in the written statement filed on behalf of the DDA in Suit No.2576 of 1990-[Lal Chand v. MCD and another](#), it was clearly averred that the suit land belonged to Gaon Sabha and with the urbanisation of the rural areas of village Kishangarh vide notification dated 28.5.1966 issued under Section 507 of the DMC Act, the same automatically vested in the Central Government and that vide notification dated 20.8.1974 issued under Section 22(1) of the DD Act, the Central Government transferred the suit



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land to the DDA for development and maintaining as Green. This shows that that the right, if any, of the appellants over the suit land stood violated with the issue of notification under Section 507 of the DMC Act and, in any case, with the issue of notification under Section 22(1) of the DD Act. Even if the appellants were to plead ignorance about the two notifications, it is impossible to believe that they did not know about the violation of their so- called right over the suit land despite the receipt of copy of the written statement filed on behalf of the DDA in December, 1990. Therefore, the cause of action will be deemed to have accrued to the appellants in December, 1990 and the suit filed on 14.2.2000 was clearly barred by time.”

(iii)(2012) (4) CTC 308 [The Church of Christ Charitable Trust & Educational Charitable Society Vs. Ponniamman Educational Trust]:

“10.It is clear from the above that where the plaint does not disclose a cause of action, the relief claimed is undervalued and not corrected within the time allowed by the Court, insufficiently stamped and not rectified within the time fixed by the Court, barred by any law, failed to enclose the required copies and the plaintiff fail to comply



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with the provisions of Rule 9, the Court has no other option except to reject the same. A reading of the above provision also makes it clear that power under Order VII Rule 11 of the Code can be exercised at any stage of the suit either before registering the plaint or after the issuance of summons to the defendants or at any time before the conclusion of the trial.”

(iv) (2013) 6 CTC 809 [N.A.Chinnasamy & another Vs. S. Vellingirinathan]:

“37.The catena of decisions rendered by the Hon'ble Supreme Court and this Court referred to above, would categorically make it clear, the scope of Order 7 Rule 11 of the Code of Civil Procedure and [Article 227](#) of the Constitution of India. Under Order 7 Rule 11 of the Code of Civil Procedure, plaint could be rejected, where it does not disclose any cause of action, relating to the relief sought for and the cause of action alleged in the plaint should be relevant and legally sustainable to the relief sought for in the plaint. Where the suit is undervalued or deficit court fee has been paid, without providing opportunity to pay the deficit court fee, such a plaint cannot be



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rejected. In the said circumstances, to pay proper court fee, opportunity must be given, for which, the Court has to fix the time limit for the payment of deficit court fee, as per Rule 11 (c) and if the direction is not complied with, the trial court would be empowered to reject the plaint. However, if the suit is barred by any law, the Court can reject the plaint, under Order 7 Rule 11 (d) CPC.”

(v)(2014) 3 SCC 595 [State Bank Of India Vs Gracure Pharmaceuticals Limited]:

“11.The above-mentioned decisions categorically lay down the law that if a plaintiff is entitled to seek reliefs against the defendant in respect of the same cause of action, the plaintiff cannot split up the claim so as to omit one part to the claim and sue for the other. If the cause of action is same, the plaintiff has to place all his claims before the Court in one suit, as Order 2 Rule 2, CPC is based on the cardinal principle that defendant should not be vexed twice for the same cause.

12.Order 2 Rule 2, CPC, therefore, requires the unity of all claims based on the same cause of action in one suit, it does not contemplate unity of distinct and separate cause of action. On the above- mentioned legal principle, let us examine



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whether the High Court has correctly applied the legal principle in the instant case.

17. When we go through the above quoted paragraph it is clear that the facts on the basis of which subsequent suit was filed, existed on the date on which the earlier suit was filed. The earlier suit was filed on 15.03.2003 and subsequent suit was filed on 21.05.2003. No fresh cause of action arose in between the first suit and the second suit. The closure of account, as already indicated, was intimated on 20.03.2002 due to the alleged fault of the respondent in not regularizing their accounts i.e. after non-receipt of payment of LC, the account became irregular. When the first suit for recovery of dues was filed i.e. on 15.03.2001 for alleged relief, damages sought for in the subsequent suit could have also been sought for. Order 2 Rule 2 provides that every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the same cause of action. Respondent is not entitled to split the cause of action into parts by filing separate suits. We find, as such, that respondent had omitted certain reliefs which were available to it at the time of filing of the first suit and after having relinquished the same, it cannot file a separate suit in view of the provisions of sub-



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rule 2 of Order 2 Rule 2, CPC. The object of Order 2 Rule 2 is to avoid multiplicity of proceedings and not to vex the parties over and again in a litigative process. The object enunciated in Order 2 Rule 2, CPC is laudable and it has a larger public purpose to achieve by not burdening the court with repeated suits.”

(vi)(2020) 7 SCC 366 [Dahiben vs Aravindbhai and others]:

“23.2.The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

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.



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23.4.*In Azhar Hussain v. Rajiv Gandhi* this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words :

“12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”

23.5.*The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.*

23.6.*Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint², read in conjunction with the documents relied upon, or whether the suit is barred by any law.*



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23.8. *Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11 (a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.*

23.9. *In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.*

23.10. *At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.*

23.11. *The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in [Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success I & Anr.](#),⁴ which reads as :*



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“139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed.”

23.13.If on a meaningful reading of the plaint, 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.

*23.14.The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of [Saleem Bhai v. State of Maharashtra](#).⁷ The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar Hussain*.*

23.15.The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds



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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. “Cause of action” means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

24.1. In [Swamy Atmanand v. Sri Ramakrishna Tapovanam](#)⁸ this Court held :

“24. A cause of action, thus, means every fact, which if traversed, it would be necessary for the plaintiff to prove an order to support his right to a judgment of the court. In other words, it is a bundle of facts, which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act, no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded.”

24.2. In [T. Arivandandam v. T.V. Satyapal & Anr.](#)⁹ this Court held that while considering an



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application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : -

“5. ...The learned Munsiff 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 O. VII, R. 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 ...”

24.3.Subsequently, in [I.T.C. Ltd. v. Debt Recovery Appellate Tribunal](#),¹⁰ 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 v. Syed Jalal](#) 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



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the litigation is utterly vexatious, and an abuse of the process of the court.

25. *The Limitation Act, 1963 prescribes a time-limit for the institution of all suits, appeals, and applications. Section 2(j) defines the expression “period of limitation” to mean the period of limitation prescribed in the Schedule for suits, appeals or applications. Section 3 lays down that every suit instituted after the prescribed period, shall be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article.*

26. *Articles 58 and 59 of the Schedule to the 1963 Act, prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, which reads as under :*

<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which limitation period begins to run</i>
<i>58. To obtain any other declaration</i>	<i>Three years</i>	<i>When the right to other declaration. sue first accrues.</i>
<i>59. To cancel or set aside an instrument or decree or for the</i>	<i>Three years</i>	<i>When the facts aside an instrument entitling the plaintiff or decree or for</i>



<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which limitation period begins to run</i>
<i>rescission of a contract</i>		<i>the to have the rescission of a instrument or decree contract. cancelled or set aside or the contract rescinded first become known to him.</i>

The period of limitation prescribed under Articles 58 and 59 of the 1963 Act is three years, which commences from the date when the right to sue first accrues.

27. In [Khatri Hotels Pvt. Ltd. & Anr. v. Union of India & Anr.](#),¹² this Court held that the use of the word 'first' between the words 'sue' and 'accrued', would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed, if it is beyond the period of limitation counted from the date when the right to sue first accrued."

(vii) 2021 SCC Online 764, [Rajendra Bajoria and others Vs. Hemant



Kumar Jalan and others;

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“ ... 14. *We may gainfully refer to the observations of this Court in the case of T. Arivandandam v. T.V. Satyapal and Another (supra):*

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently 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 of the law in receiving complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC 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 10, CPC. An activist Judge is the answer to irresponsible law suits. The trial courts would insist imperatively on examining the party at the first hearing



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so that bogus litigation can be shot down at the earliest stage. The [Penal Code](#) is also resourceful enough to meet such men, (Cr. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi:

“It is dangerous to be too good.”
[emphasis supplied]

15. It could thus be seen that this Court has held that reading of the averments made in the plaint should not only be formal but also meaningful. It has been held that if clever drafting has created the illusion of a cause of action, and a meaningful reading thereof would show that the pleadings are manifestly vexatious and meritless, in the sense of not disclosing a clear right to sue, then the court should exercise its power under Order VII Rule 11 of CPC. It has been held that such a suit has to be nipped in the bud at the first hearing itself.

17. It could thus be seen that the court has to find out as to whether in the background of the facts, the relief, as claimed in the plaint, can be granted to the plaintiff. It has been held that if the court finds that none of the reliefs sought in the



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plaint can be granted to the plaintiff under the law, the question then arises is as to whether such a suit is to be allowed to continue and go for trial. This Court answered the said question by holding that such a suit should be thrown out at the threshold.

20. It could thus be seen that this Court has held that the power conferred on the court to terminate a civil action is a drastic one, and the conditions enumerated under Order VII Rule 11 of CPC are required to be strictly adhered to. However, under Order VII Rule 11 of CPC, the duty is cast upon the court to determine whether the plaint discloses a cause of action, by scrutinizing the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law. This Court has held that the underlying object of Order VII Rule 11 of CPC is that when a plaint does not disclose a cause of action, the court would not permit the plaintiff to unnecessarily protract the proceedings. It has been held that in such a case, it will be necessary to put an end to the sham litigation so that further judicial time is not wasted.”

(viii) (2002) 10 SCC 501, [Raj Narain Sarin (dead) Through LRS and



others Vs. Laxmi Devi and others];

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“ ... 3.It is convenient to note at this juncture that in an application for rejection of the plaint under Order 7 Rule 11, law has been rather well settled for quite sometime in a long catena of cases that the plaint should be taken as it is and the application should be considered on the basis of the averments in the plaint itself and no external aid is available to the Court for the purpose. It has also been the well settled principle of law that the Law Court should be rather hesitant to exercise the jurisdiction under Order 7 Rule 11 unless the factual score warrants such exercise and the matter in issue falls within the four corners of the requirement of the statute. It is for this purpose however, the necessary averments in the plaint ought to be considered. Paragraphs 6, 7, 8 & 9 of the plaint being the necessary averments in the plaint ought to be noticed at this juncture and the same be read as below :

"6. That as stated above Sri Ram Sahai the predecessor in interest of Plaintiff was the occupancy tenant in respect of 3 Bigha 13 Biswas and owner of the Bunglow constructed



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built and existing over this area while Smt. Siddo was occupancy tenant of rest of 6 Bighas 13 Biswas and Shri Ram Sahai was owner of house Bungalow built and existing over this area of which Sri Ram Sahai was the sub tenant as 'Zaili' and the nature status of the two holdings were quite separate and distinct though they constituted within one undivided 'Minjumla' plot No.673 old and 460 new.

7. That after the death of Sri Ram Sahai occupancy tenancy of 3 Bigha 13 Biswas and sub-tenancy of rest of 6 Bigha 13 Biswas in plot No.673 was inherited by Smt. Kaushalya his widow and after her death by Munni Lal, adopted son of Sri Ram Sahai and on his death by Plaintiff.

8. That Sri Munni Lal aforesaid in or about the year 1941 transferred under a sale deed to defendant No.1 his tenancy (occupancy holding rights) over 3 Bigha 13 Biswas area of plot No.673 along with bungalow existing thereon. The above Sale Deed had nothing to do with the rest of the area i.e. 6 Bigha 13 Biswas and Bungalow and building thereon which continued to be owned and possessed by the plaintiff and prior to him by Sri Munni Lal, his predecessor in interest and the defendant No.1 or any other defendants have or had no right title or interest thereon nor have they ever



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been in possession.

9. That as stated above that 6 Bigha 13 Biswas area of Plot No.673 old and 460 new was occupancy tenancy land of Smt. Siddo wife of Sri Khumani, of which Sri Ram Sahai, was the sub tenant and in which Sri Munni Lal, had no transferable right is uneffected by the sale by him aforesaid and which during the course of time devolved and inherited by Plaintiff and prior to him his predecessors in title and the contrary recital in the aforesaid sale deed if any is illegal and invalid and not binding on the Plaintiff."

7.As noticed above, the learned Single Judge of the Allahabad High Court though elaborately laid down the requirement of Order 7 Rule 11 and the true effect thereof, but in our view, totally misread and misapplied the provision in the contextual facts. No explanation whatsoever is available on the plaint as to the situation under which the suit was filed after about a long period of 40 years. The knowledge of the deed of sale stands accepted by reason of the averment in the plaint itself (vide paragraph 9 of the plaint).

8.On an analysis of the plaint, apart from there being a mere bald statement that the sale deed has nothing to do with the rest of the area,



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i.e., 6 Bighas 13 Biswas and the Bungalows built thereon which stands to be owned and possessed by the plaintiff and prior to him by Munni Lal, there is no other averment tracing the title for 6 Bighas and 13 Biswas. Admittedly, several portions of the plot stood demarcated as being 3 Bighas 13 Biswas and the other being 6 Bighas 13 Biswas: whereas there is no dispute as regards 3 Bighas 13 Biswas but the conferment of title on to the plaintiff as regards 6 Bighas 13 Biswas is not available in the plaint itself. The plaint is totally silent on that score, though, however, the existence of the deed of sale noticed above stands accepted by the plaintiff. The litigation, in our view, cannot but be termed to be utterly vexatious and abuse of the process of court, more so by reason of the fact that the deed of sale being executed as early as 1941 stands unassailed for a period of over 50 years. The decision of this Court in T. Arivandandam' has its due application and having regard to the decision as noticed above and upon consideration of the relevant provisions as engrafted in the Code itself, we have no hesitation in accepting the order of the learned Additional District Judge. The High Court obviously fell into a manifest error and as such this appeal is



allowed. The order of the High Court stands set aside. The order of the learned Additional District Judge stands restored. No order as to costs.

20.Per contra, the learned Senior Counsel appearing for the respondents submitted that

(i) The present application for rejection of plaint is vexatious, frivolous and is counter blast for the application for appointment of Advocate Commissioner filed by the respondents. At the time of orders to be passed in the said application, the petitioners have come out with the present application to reject the plaint.

(ii) The application has been filed belatedly after 24 years of filing of the suit.

(iii) The petitioners are legal heirs of 3rd defendant, who did not take a stand in the written statement that the suit is not maintainable. Without any pleadings, the present application is not maintainable

(iv) The plaint has to be read as a whole to find out whether there is cause of action for the suit.

(v) The respondents in the cause of action paragraph has stated that cause of action for the suit from the date the plaintiffs purchased the property,



power of attorneys and sale deeds executed, which are contrary to the power granted by the plaintiffs until the date of plaint.

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(vi) The petitioners have not substantiated their claim as per Order VII Rule 11 (a) & (b) of the Code of Civil Procedure. The grounds raised by the petitioners are not contemplated under Order VII Rule 11 of the Code of Civil Procedure. The present suit is not hit by provisions of Order II Rule 2 of the Code of Civil Procedure and it is not barred by law. The earlier suit filed by respondents relates to only 5 cents and the present suit is for 46 cents. The cause of action for both the suits are different. In any event, the earlier suit was not decided on merits and that was withdrawn by the plaintiffs.

(vii) The suit is not barred by Limitation and it is not correct to state that Article 58 of the Limitation Act is applicable to the present suit. The present suit relates to declaration of immovable property and injunction and only Articles 65 & 66 of the Limitation Act are applicable. The plaintiffs have filed the suit within 12 years seeking relief with regard to immovable property. In any event, the question of limitation can be decided only after full fledged trial based on the evidence let in by the parties. The learned Senior Counsel extensively referred to the averments in the affidavit, counter affidavit and order of learned Judge and submitted that learned Judge has considered all the



materials placed before him properly and there is no error in the reasons given for dismissing the application. The petitioners have not made out any case for setting aside the order of the learned Judge and for rejection of plaint and prayed for dismissal of Civil Revision Petition.

In support of his contention, the learned Senior Counsel relied on the following judgments:

(i) 2018 (4) CTC 2006 [Chhotanben and another Vs. Kiritbhai Jalkrushnabhai Thakkar and others]:

“11. After having cogitated over the averments in the plaint and the reasons recorded by the Trial Court as well as the High Court, we have no manner of doubt that the High Court committed manifest error in reversing the view taken by the Trial Court that the factum of suit being barred by limitation, was a triable issue in the fact situation of the present case. We say so because the appellants (plaintiffs) have asserted that until 2013 they had no knowledge whatsoever about the execution of the registered sale deed concerning their ancestral property. Further, they have denied the thumb impressions on the registered sale deed as belonging to them and have alleged forgery and impersonation. In the context of totality of averments in the plaint and the reliefs claimed, which of the Articles from



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amongst Articles 56, 58, 59, 65 or 110 or any other Article of the Limitation Act will apply to the facts of the present case, may have to be considered at the appropriate stage.

12. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their



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possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.”

(ii) (2019) 13 SCC 372 [Urvashiben and another Vs. Krishnakant

Manuprasad Trivedi]:

“15. It is fairly well settled that, so far as the issue of limitation is concerned, it is a mixed question of fact and law. It is true that limitation can be the ground for rejection of plaint in exercise of powers under O.VII R.11(d) of the CPC. Equally, it is well settled that for the purpose of deciding application filed under O.VII R.11 only averments stated in the plaint alone can be looked into, merits and demerits of the matter and the allegations by the parties cannot be gone into. [Article 54](#) of the [Limitation Act, 1963](#) prescribes the limitation of three years, for suits for specific



performance. The said Article reads as under:

Description of suit	Period of limitation	Time from which limitation period begins to run
54. For specific performance of a contract.	Three years	The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.

From a reading of the aforesaid Article, it is clear that when the date is fixed for performance, limitation is three years from such date. If no such date is fixed, the period of three years is to be computed from the date when the plaintiff, has notice of refusal. When rejection of plaint is sought in an application filed under O.VII R.11, same is to be considered from the facts of each case, looking at the averments made in the plaint, for the purpose of adjudicating such application.

.....

17.Counsel for the appellants has placed reliance on the judgment in the case of Prabhakar (supra). In the above said case, this Court has held that, even where no limitation period is prescribed by the Statute, courts apply doctrine of delay/laches/acquiescence and non-suit litigants who approach court belatedly without justifiable explanation. Delay and laches are to be examined with reference to facts of each case and the said judgment is not helpful to support the case of the appellant inasmuch as this matter arises out of an application filed under O.VII R.11(d) of the CPC. The



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C.A.@ SLP(C)Nos.23062-63/18 judgment in the case of T. Arivandandam (supra) pertains to eviction from tenanted premises which was contested by the tenant. In the said case where rejection of plaint under O.VII R.11(d) was considered on the ground that plaint does not disclose cause of action but not a case for rejection of plaint on the ground of limitation. In the case of Hardesh Ores (supra) it was the case falling in the first limb of [Article 54](#) of the [Limitation Act](#) 1963 but not a case falling under second limb, where the time is not the essence of the contract. In the judgment in the case of Dilboo (Dead) (supra) this Court has considered relevant principles of applicability of O.VII R.11 of CPC. Equally, the case of I.T.C. Limited (supra) is a case concerning rejection of plaint under O.VII R.11(a) but not case of rejection on the ground of limitation. In the case of Raj Narain Sarin (supra) the suit was filed after 40 years after execution of the Sale Deed and as a fact it was found that Sale Deed was to the knowledge of the plaintiff and he had not taken any steps to declare the Sale Deed invalid. In that context, the order passed under O.VII R.11 was confirmed by this Court. In the case of N.V. Srinivasa (supra) the suit is C.A.@ SLP(C)Nos.23062-63/18 for declaration but not for specific performance and in the said suit having regard to the facts of the case this Court has held that suit for declaration filed by the plaintiff is not maintainable. In the case of Madanuri



Rama (supra) the suit was filed seeking cancellation of Sale Deed on the ground that property in question is a waqf property which cannot be sold to a private party. The aforesaid case is a case not concerning limitation under Article 54 of the Limitation Act 1963. ”

(iii) 2020 (1) CTC 275 [Loom Tex Exports, Chennai and others Vs.

Thanner Panthal Dharma Chathiram and others]:

“15.For the purpose of understanding the expression “cause of action”, the learned Senior Counsel relied on certain Judgments and the same is extracted hereunder:

(a) The Honourable Supreme Court in A.B.C. Laminar Pvt. Ltd. And In other words, it is a bundle of facts which taken with the law applicable to for the Plaintiff to prove in order to support his right to a Judgment of the Court,

“A cause of action means every fact, which, if traverse d, it would be necessary them gives the Plaintiff a fight to relief against the Defendant. It must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the fight sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the Plaintiff to prove to enable him to obtain a Decree. Everything which if not proved would give the Defendant a fight to immediate Judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the Defendant nor does it depend upon the character of the relief prayed for by the Plaintiff.”

(b) The Honourable Supreme Court in Colonel



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*Sharwan Kumar Jaipuriyar@ Sarwan Kumar Jaipuriyar
v. Krishna Nandan Singh and another, 2019 SAR (Civil)
1012, held as follows:*

“This Court in Church of Christ Charitable Trust and Educational Society, rep. by its Chairman v. Ponniamman Educational Trust, rep. by its Chairman Managing Trustee, 2012 (8) SCC 706, has referred to the earlier Judgment of this Court in A.B.C. Laminart Pvt. Ltd. and another v. A.P. Agencies, Salem, 1989 (2) SCC 163, to explain that the cause of action means every fact which, if traversed, would be necessary for the Plaintiff to prove in order to seek a Decree and relief against the Defendant. Cause of action requires infringement of the right or breach of an obligation and comprises of all material facts on which the right and claim for breach is founded, that is, some act done by the Defendant to infringe and violate the right or breach an obligation. In T. Arivandanam v. T.V. Satyapal and another, 1977 (4) SCC 467, this Court has held that if the Plaint is manifestly vexatious, meritless and groundless, in the sense that it does not disclose a clear right to sue, it would be right and proper to exercise power under Order 7, Rule 11 of the Code of Civil Procedure, 1908 (Code, for short). A mere contemplation or possibility that a right may be infringed without any legitimate basis for that right, would not be sufficient to hold that the Plaint discloses a cause of action.”

16. The above Judgments make it clear that a cause of action means every fact which, if traversed, would be necessary for the Plaintiff to prove in order to seek a Decree and relief against the Defendants. There must be some act done by the Defendants which infringes upon a right or violates a right or there is breach of obligation.

*17.It will be relevant to rely upon the Judgment of the Honourable Supreme Court in **Liverpool & London S.P. & I Association Ltd. V. M.V.Sea Success I and***



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another, 2004 (9) SCC 512. The relevant portions of the judgment is extracted hereunder:

'Rejection of Complaint':

139. Whether a Complaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the Complaint Witself. For the said purpose the averments made in the Complaint in their entirety must be held to be correct. The test is as to whether if the averments made in the Complaint are taken to be correct in its entirety, a Decree would be passed.

Cause of action:

140. A cause of action is a bundle of facts, which are required to be pleaded and proved for the purpose of obtaining relief claimed in the Suit. For the aforementioned purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleading relies any misrepresentation, fraud, breach of trust, wilful default, or undue influence.

146. It may be true that Order 7, Rule 11(a) although authorises the Court to reject a complaint on failure on the part of the Plaintiff to disclose a cause of action but the same would not mean that the averments made therein or a document upon which reliance has been placed although discloses a cause of action, the Complaint would be rejected on the ground that such averments are not sufficient to prove the facts stated therein for the purpose of obtaining reliefs claimed in the Suit. The approach adopted by the High Court, in this behalf, in our opinion, is not correct.”

(iv) 2019 (4) CTC 856 [N.Mohan Vs. P.Govindasami and others]:

“17. In a recent decision of the Hon'ble Apex Court



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in Chhotanben and another V. Kiritbhai Jalkrushnabhai Thakkar and others reported in 2018 (4) CTC 206, it was held that the ground of limitation would be a mixed question of law and fact, triable, which is an issue and therefore, the plaint cannot be rejected at threshold. The relevant portions of the decision reads as follows:

“12. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers - original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2)



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portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.

13. The High Court on the other hand, has considered the matter on the basis of conjectures and surmises and not even bothered to analyse the averments in the plaint, although it has passed a speaking order running into 19 paragraphs. It has attempted to answer the issue in one paragraph which has been reproduced hitherto (in paragraph 7). The approach of the Trial Court, on the other hand, was consistent with the settled legal position expounded in *Saleem Bhai and Others Vs. State of Maharashtra and Others* [2003 (1) SCC 557], *Mayar (H.K.) Ltd. and Others Vs. Owners & Parties, Vessel M.V. Fortune Express and Others* [2006 (3) SCC 100] and also *T. Arivandandam Vs. T.V. Satyapal and Another* [1977 (4) SCC 467].

16. In the present case, we find that the appellants (plaintiffs) have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original defendant Nos.1 & 2 by keeping them in



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the dark about such execution and within two days from the refusal by the original defendant Nos.1 & 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the Trial Court that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order VII Rule 11(d).”

18. The learned counsel for the petitioner raised a ground stating that the plaint has been cleverly and astutely drafted for the purpose of bringing in a cause of action to over come the limitation. In support of such a submission, the learned counsel for the petitioner relied upon the Hon'ble Apex Court in Hardeh Ores (P) Ltd V. Head and Company reported in 2007 (5) SCC 614 and other decisions on the same ratio.

19. This proposition as well as the ratio laid down therein was a subject matter in a Civil Revision Petition in CRP.(PD) No.2564 of 2018 [Paul Marie Josephine V. Louise Victorine Esperance Lafontaine] and I had an occasion to deal with the same in my order dated 11.04.2019, in the following lines:-

“9. The learned Senior counsel for the petitioner had placed reliance on certain decisions and submitted that the plaint averments do not disclose a cause of action substantiating that the sale deed is liable to be set aside on the ground of fraud and misrepresentation, which also amounts to an abuse of process of law. In the



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decision of the Hon'ble Division Bench of this Court in Cambridge Solutions Limited, Bangalore-560 095 V. Global Software Ltd., Chennai-18 and 4 others reported in 2017 (1) CTC 497, it was held that if the plaint averments on fraud is only illusory, the same can be struck down. For the same proposition, the decisions of this Court reported in 2010 (3) CTC 310 [Punjab National Bank, rep. by its Manager and Art Decors & Laminations & others rep. by Narender, No.168, Sydenhams Road, Periyamet, Chennai-3 V. J.Samsath Beevi & 3 others] and 2017 (13) SCC 174 [Madanuri Sri Rama Chandra Murthy V. Syed Jalal] were also relied upon. The proposition the learned Senior counsel attempted to impress this Court is that the allegation of fraud in the plaint averments have been brought in through clever drafting, only to sustain the ground of fraud, which is only illusory. The ratio laid down in the aforesaid judgments is that, when the plaint averments regarding fraud and collusion are non existence and have been made through clever drafting, only to sustain the suit, such a plea of fraud is deemed to be only illusory and therefore, the plaint is liable to be struck down. It was also held therein that if a clever drafting of the plaint has created an illusion of a cause of action, the plaint requires to be struck off.

10. There is no quarrel on the propositions laid in the aforesaid three decisions. But to adopt such a ratio, would depend on the facts and circumstances of each case. While laying down the ratio in the aforesaid three decisions, the Courts had taken into consideration the facts of the entire case as revealed in the plaint averments and thus came to the conclusion,



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while analysing the scope of Order 7 Rule 11 of CPC. No doubt, such astute drafting is prevalent. But the ratio, as such, is precarious and requires to be exercised with circumspection. For, all averments in the plaint can be discarded as astute and clever drafting, if the entire plaint is not read as a whole. Reading between the lines in the plaint, in order to discard the same, may not be judicious.

11. With the premise in mind and in order to ascertain as to whether such clever averments have been made in the present plaint, only for the purpose of sustaining the suit, the plaint was perused. Therein, it is seen that the respondent herein and her family members are alleged to be in possession and enjoyment of the suit property for more than a century. The plaintiff/respondent herein has claimed that she had looked after the defendant/petitioner herein from the childhood like a daughter. On 04.03.2016, when the respondent herein had claimed right over the suit property, their relationship became hostile. On 23.04.2016, the respondent herein had given a criminal complaint against the petitioner and during the course of investigation in the police station, the execution of the Sale Deed dated 22.07.2005, was revealed to the respondent herein.

12. The plaint averments also goes to say that the execution of the sale deed was through a fraud played upon the respondent herein. According to her, she had brought up the petitioner like her own daughter and on her request, she had signed in all the papers shown by the petitioner before several authorities honestly believing that it was only for the sake of



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conferring power upon the petitioner to look after the suit property. It is her further averment that there was no necessary for her to sell away their ancestral property to the petitioner herein at any point of time and her sister also has no such intention. She had also stated that there was no consensus ad-idem between the parties to the document and that there was no free consent therein. During the year 2005, the petitioner herein had cunningly and secretly prepared all the documents and informed the respondent and her sister that a deed is required to be executed in favour of the petitioner herein, granting powers to look after the maintenance works in the suit property. Reposing full confidence and reliability, the respondent herein and her sister had signed the papers without knowing its contents. The document was also prepared in tamil language, which the plaintiff/respondent herein and her sister were not acquainted with, since they could read and write English and French language only. The respondent herein and her sister had never received any sale consideration towards sale transaction and that the petitioner herein had colluded with a named person for committing the fraud for the purpose of fraudulently having the sale deed registered. In such a detailed manner, the plaint averments have been made with an attempt to establish that the sale deed was executed through fraud and misrepresentation. These averments cannot be termed to be “clever drafting” or “an illusionary cause of action” for the plea of fraud. When the respondent herein had come out with certain facts stating that the parties were in good relationship that there were not conversant with the tamil language and they were made to believe that they were called upon to execute a



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document of power deed and thereby had the same duly executed, the possibility of a fraud having committed, could be made out from such averments.

13. What requires to be kept in mind from reading of these plaint averments is that the petitioner herein now seeks to have the suit proceedings struck off, without the necessary issues being framed or by conduct of a trial. When there is a semblance of indication of the existence of fraud from the plaint pleadings, this Court would not be justified in exercising its power to strike off the suit proceedings. As stated earlier, the manner which the plaint averments indicate the possibility of fraud, such pleadings requires to be tested only through framing of issues and through a proper trial.”

The above discussions are self explanatory. By looking into the averments of the entire plaint and in view of my earlier observations that the plaint, when read as a whole, discloses a cause of action, it cannot be said that the averments therein have been made through clever and astute drafting. Hence, this ground raised by the learned counsel for the petitioner cannot be sustained.”

(v) 2021 4 LW 851 [Velayutham Vs. Sellamuthu]:

“12.A reading of said Section makes it clear that issue in both the suits or persons claiming through party in the earlier suit must be one and the same and earlier suit



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must be finally decided. None of the ingredients mentioned in Section 11 of C.P.C. is present so as to hold that the suit filed by the respondent is barred by principles of res judicata. It is repeatedly held that while considering the application for rejection of plaint under Order VII Rule 11 of C.P.C., only the averments in the plaint and documents filed along with the plaint must be considered to decide or to reject the plaint in the I.A. filed under Order VII Rule 11 of C.P.C. The contention of the defendants in the written statement or in the affidavit filed in support of application under Order VII Rule 11 of C.P.C and documents relied on by the defendants in the application cannot be considered in the application for rejection of plaint. Only when the ingredients of Order VII Rule 11 of C.P.C is substantially complied with by the defendant, the plaint can be rejected, as the Court is passing order in a summary manner, without there being any evidence. The petitioner, in the grounds of revision, raised various grounds, mostly with regard to his title of the suit property. The petitioner raised a ground that the respondent's wife was a party to the suit in O.S.No.140 of 1997 filed by him. At the time of arguments, the learned counsel appearing for the petitioner stated that the said ground has been raised mistakenly. The learned counsel appearing for the petitioner contended that the respondent is re-litigating the issue, suppressed the material fact and has not approached the Court with clean



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hands and therefore, the plaint must be rejected. There is no material to show that the respondent is re-litigating the issue and what are all the materials he has suppressed. The issue whether plaint can be rejected on the ground of res judicata was considered by the Hon'ble Apex Court in paragraph no.20 of the judgment relied on by the learned counsel for the respondent, reported in 2021 SCC Online 565 (cited supra). In sub para (iv) of the said paragraph no.20, the Hon'ble Apex Court categorically has held that "plea of res judicata requires consideration of the pleadings, issues and decision in the 'previous suit' and such a plea is beyond the scope of Order VII Rule 11 (d) of C.P.C., where only the statements in the plaint will have to be perused". In view of these categorical finding of the Hon'ble Apex Court, the contention of the learned counsel for the petitioner that the plaint has to be rejected, in the application filed under Order VII Rule 11 of C.P.C., on the ground of res judicata is without merits and is liable to be rejected. The judgments relied on by the learned counsel for the petitioner do not relate to the issue in the present proceedings and do not advance the case of the petitioner. The learned Judge has considered all the materials in proper perspective, exercised his jurisdiction properly and dismissed the I.A. There is no error in the order of the learned Judge, warranting interference by this Court."



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21. Heard the learned counsel appearing for the petitioners as well as the learned Senior Counsel appearing for the respondents and perused the entire materials available on record.

22. The petitioners who are the defendants 9, 10, 22 and 35 have filed I.A.No.7 of 2016 in O.S.No.6592 of 2013, to reject the plaint under Order VII Rule 11 (a) and (d) of Code of Civil Procedure. According to the petitioners, the suit does not disclose any cause of action, barred by law as per provisions of Order II Rule 2 of Code of Civil Procedure and suit is barred by limitation. Order VII Rule 11 of Code of Civil Procedure is extracted herein for easy reference:

“11. Rejection of plaint— The plaint shall be rejected in the following cases:—

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply



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the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law :

[Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper , as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.]”

Order VII Rule 11 of Code of Civil Procedure empowers a Court to reject the plaint to keep out of Court irresponsible suit, when prima facie the Court comes to the conclusion that suit is an abuse of process of Court. The right conferred on a defendant under this provision is an independent remedy to challenge the maintainability of the suit itself, irrespective of its rights to contest the suit on merits. The Court can exercise the power under Order VII Rule 11 of Code of Civil Procedure at any stage of the suit, before conclusion of the trial. The procedure contemplated is summary in nature. The averments in the plaint and documents filed along with the plaint alone can be taken into



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consideration while deciding the application filed under this provision. The contentions of defendants in their affidavit or written statement and documents relied by them cannot be taken into consideration. The plaint as a whole has to be taken into consideration. The plaint has to be read in a meaningful manner. The procedure contemplated being summary in nature, the defendants have to strictly substantiate their contention based on any one of the conditions contemplated in the provisions of Order VII Rule 11 of Code of Civil Procedure. The scope of Order VII Rule 11 of Code of Civil Procedure and power of the Court and how to exercise the said power has been considered and decided by this Court, various High Courts and Hon'ble Apex Court in number of cases, including in the judgments relied on by the learned counsel appearing for the petitioners as well as the learned Senior Counsel appearing for the respondents and principles referred to above have been enumerated in the judgments.

23.The petitioners were seeking rejection of plaint on three grounds, viz., the plaint does not disclose cause of action, cause of action mentioned is only illusory, suit is barred by law under Order II Rule 2 of Code of Civil Procedure and suit is barred by limitation. The claims of the petitioners have to



be considered as per provisions of Order VII Rule 11, Order II Rule 2 of Code of Civil Procedure and provisions of the Limitation Act and the well settled judicial pronouncements enumerating the principles, based on which a plaint can be rejected or not.

(I) The plaint does not reveal cause of action -

The plaintiffs 1 and 2 claimed that they were absolute owners of 2 acres 32 cents of vacant land in T.S.No.31 in Ekkattuthangal, Madras City, as they have purchased the same by four Registered sale deeds. According to the plaintiffs 1 and 2, they were in possession of the land from the date of purchase. In a corner of the said land, a cremation and burial ground had been developed. The 1st defendant approached the plaintiffs to purchase the land from them to form a layout of house site and allot the same to its members. The 1st defendant offered to purchase only 1 acre 80 cents, in view of the existence of the cremation and burial ground. The plaintiffs agreed to sell 1 acre 80 cents, as requested by the 1st defendant.

(Ia) The 1st defendant, in order to reduce the cost of house site to be



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allotted to its members, requested the plaintiffs to execute Power of Attorney, appointing its President and Secretary, the 2nd defendant herein as their agents to deal with the property, including conveying the property. Accepting the said request, the plaintiffs executed two Power of Attorneys dated 14.06.1982, 19.07.1982 and two Power of Attorneys both dated 06.09.1982, mentioned as item nos.5 to 8 in the list of documents in the plaint. It is the specific case of the plaintiffs that they executed four Power of Attorneys in respect of 1 acre 80 cents and retained the balance land with them to be sold to third parties later. It is also the case of the plaintiffs that they appointed named persons i.e., President P.Ramasamy and Secretary K.Raman, the 2nd defendant herein as their agents. According to plaintiffs, the Power Agent dealt with more lands than empowered to deal with. The plaintiffs also pleaded that after death of P.Ramasamy, the then President, the subsequent Office Bearers who were not the agents of plaintiffs executed various sale deeds and gift deeds in favour of Corporation of Madras. The plaintiffs have mentioned 33 sale deeds executed in favour of defendants, mentioned as document numbers 9 to 41 in the list of documents in the plaint.

(Ib) From a reading of the plaint as a whole, it is seen that even though



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the plaintiffs agreed to sell only 1 acre 80 cents and executed four Power of Attorneys to that effect, the 1st defendant and his Office Bearers have dealt with the entire 2 acres 32 cents and lay out approval granted on 30.03.1988 includes the entire 2 acres 32 cents, instead of 1 acre 80 cents. The averments in the plaint show that some of the purchasers were put in possession of more land than that is mentioned in the sale deed. The plaintiffs have not mentioned in which sale deeds the purchasers have put in more extent of land than mentioned in the sale deed. The plaintiffs have filed the suit for declaration of title in respect of 46 cents of land now compromised in T.S.No.31, Ekkattuthangal, Madras City. The plaintiffs also sought for permanent injunction, restraining the defendants in any way interfering with the plaintiffs' peaceful possession and enjoyment of the said land.

(Ic) The averments in the plaint, the stand taken by the respondents in the counter affidavit filed in I.A.No.7 of 2015, filed for rejection of plaint and submissions of learned Senior Counsel appearing for the respondents are extensively extracted above. A reading of the plaint as a whole shows that the plaint does not contain a cause of action either for the relief of declaration or for permanent injunction. The entire averments in the plaint relates as to how



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the plaintiffs acquired title, the Power of Attorney executed by them with regard to 1 acre 80 cents, the sale deeds executed by the Power of Attorney, by the subsequent Office Bearers of the 1st defendant without authority as well as gift deed executed by the 1st defendant. The plaintiffs have stated that the 1st defendant, the Power of Attorney executed sale deed for more than 1 acre 80 cents and that purchasers were put in possession of more land than mentioned in sale deed, but have not mentioned any details. Even though the plaintiffs 1 and 2 have stated in the plaint that entire 2 acres 32 cents were dealt with and conveyed to members of 1st respondent, plaintiffs 1 and 2 have not stated that their title with regard to 46 cents mentioned in Schedule B2 is being challenged by any of the purchasers or they are trying to interfere with their possession. No particulars with dates as to when the title or possession of the plaintiffs is interfered with has been mentioned in the plaint. Therefore, it is clear that from the averments in the plaint, especially in the cause of action paragraph, the plaintiffs 1 and 2 have not pleaded the cause of action for the relief of declaration of title as well as for permanent injunction. The plaint as a whole does not disclose cause of action for the suit.

(II) Whether suit is barred by law under Order II Rule 2 of Code of Civil Procedure -



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The Order II Rule 2 of Code of Civil Procedure reads as follows:

“2. Suit to include the whole claim—

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action; but a plaintiff may relinquish any portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) Relinquishment of part of claim—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) Omission to sue for one of several reliefs—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.”

As per Order II Rule 2 of Code of Civil Procedure, a person must claim all the relief he is entitled to in the same suit. Every suit must include whole claim to which plaintiff is entitled. It is open to the plaintiff to relinquish any portion of



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his claim in order to bring the suit within the jurisdiction of any Court. As per Order II Rule 2 of Code of Civil Procedure, when plaintiff intentionally relinquishes or abandon any portion of his claim, he shall not subsequently sue in respect of portion so abandoned or relinquished. But the plaintiff has an option under Order II Rule 2 (3) of C.P.C., to seek permission of the Court to file a suit later to claim the relief not claimed in the first suit. The object of this rule is to ensure that no defendant is sued and vexed twice with regard to same cause of action and to prevent a plaintiff from seeking relief and remedies based on same cause of action. When foundation for both the suits are one and the same, the second suit claiming the relief not claimed in the earlier suit is barred by law. In O.S.No.6324 of 1988 filed by plaintiffs 1 and 2, they have stated that the defendant therein who is the 2nd defendant in the present suit has sold several plots to several persons, exceeding 1 acre and 80 cents. The fraud was found out by the plaintiffs 1 and 2 when the said defendant threatened to evict the plaintiffs. They have also stated that power is not given for entire land and it was only to an extent of 1 acre 80 cents, excluding the portion under their occupation. These averments clearly show that 2nd defendant herein has dealt with portion of the land retained by plaintiffs 1 and 2 viz., 52 cents, which includes 46 cents described in Schedule B-2 in the present suit. The plaintiffs 1



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and 2 were entitled to seek relief of declaration and permanent injunction in respect of portion of land retained by them. But plaintiffs sought declaration that sale deed executed by the 2nd defendant herein dated 10.11.1982 is illegal, null and void and for consequential injunction. The plaintiffs 1 and 2 have abandoned and relinquished the reliefs in respect of other sale deeds and the reliefs now claimed in the present suit. Similar issue was considered by the Hon'ble Apex Court in the judgment reported in **2005 10 SCC 2018 [Union of India Vs. H.K.Dhruv]**, wherein the Hon'ble Apex Court held that when cause of action on which subsequent claim arose, when a prior claim was made before any Court, the subsequent suit is hit by bar under Order II Rule 2 of Code of Civil Procedure. In paragraph no.4 of the judgment of the Hon'ble Apex Court, it has been held as follows:

“4. Having heard the learned Senior Counsel for the appellant as also the respondent appearing in person, we are satisfied that no fault can be found with the view taken by the High Court. In order to attract applicability of the bar enacted by Order 2 Rule 2 CPC, it is necessary that the cause of action on which the subsequent claim is founded should have arisen to the



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claimant when he sought for enforcement of the first claim before any court. On the facts found and as recorded in the judgment of the High Court and with which we find no reason to differ, the second demand raised by the respondent was not available to be made a part of the claim raised in the first application. The bar enacted by Order 2 Rule 2 CPC is clearly not attracted.”

The plaintiffs 1 and 2 failed to claim the present relief in the earlier suit and they have not obtained any permission to file suit subsequently for the relief now sought for. In view of Order II Rule 2 of Code of Civil Procedure and the ratio in the judgment of the Hon'ble Apex Court reported in **2005 10 SCC 2018** referred to above and judgments relied on by the learned counsel for the petitioners, the present suit is barred by law.

(III)Whether suit is barred by limitation-

The plaintiffs 1 and 2 have filed suit praying for a declaration that plaintiffs alone are entitled to the land situated in T.S.No.31 in Ekkattuthangal, to the extent of 46 cents morefully described in Schedule B-2 and for



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permanent injunction. The petitioners have contended that suit is barred by limitation as plaintiffs 1 and 2 failed to file the suit within three years from the date when the cause of action first accrued. According to the petitioners, for relief of declaration as per Article 58, time fixed is three years, when the right to sue first accrues. The plaintiffs are claiming the relief based on two Power of Attorneys dated 14.06.1982 and 19.07.1982 and two Power of Attorneys both dated 06.09.1982, sale deeds starting from 21.08.1982 and approval of lay out by 30th defendant on 30.03.1988 but present suit is filed only in February, 1992 and hence, the suit is barred by limitation. On the other hand, it is the case of the respondents that suit relates to immovable property and only Articles 64 and 65 of the Limitation Act are applicable. The declaration mentioned in Article 58 of the Limitation Act does not apply to a suit for immovable property. The respondents also contend that limitation is mixed question of law and fact which can be decided only after considering the evidence let in by the parties during trial. To decide the issue whether suit is barred by limitation or not, Articles 58, 64 and 65 of the Limitation Act are extracted herein for easy reference:



<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which limitation period begins to run</i>
58. To obtain any other declaration.	Three years	When the right to sue first accrues.
64. For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed.	Twelve years	The date of dispossession.
65. For possession of immovable property or any interest therein based on title.	Twelve years	When the possession of the defendant becomes adverse to the plaintiff.

24. Article 58 is under Part III - “Suits relating to declarations”. There are three Articles in Part III viz., 56, 57 and 58. Articles 56 and 57 render to declare the forgery of an instrument issued or registered and to obtain a declaration that an alleged adoption is invalid or never, in fact, took place respectively. Article 58 is to obtain any other declaration. Article 58 is a residue Article of declaratory suit and all suits for declaration other than those provided in Articles 56 and 57. Article 58 has not excluded the declaration of title to immovable property with consequential relief of permanent injunction. A suit for declaration of title, without seeking consequential relief of possession, is covered by this Article 58 only. The limitation prescribed under this Article is three years, when the right to sue first accrues. In the present



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case, according to the plaintiffs, they agreed to sell only 1 acre 80 cents out of 2 acres 32 cents and 1st defendant also offered to purchase only 1 acre 80 cents. The plaintiffs, in the year 1982, executed four Power of Attorneys, authorizing one P.Ramsamy, President of 1st defendant's Society and 2nd defendant as their Agents, to sell only 1 acre 80 cents, whereas 1st defendant and Office Bearers dealt with entire 2 acres 32 cents and lay out was approved by 30th defendant, covering entire 2 acres 32 cents on 30.03.1988. Various sale deeds were executed from 21.08.1982. The averments made in the plaint clearly show that cause of action for the present declaration of title accrued in the year 1982 itself and in any event, on 30.03.1988, when 30th defendant approved the lay out. The plaintiffs, as per Article 58 of the Limitation Act, ought to have filed a suit within 3 years, when the cause of action first accrued. The suit filed on February, 1992, for declaration of title and consequential permanent injunction on the face of averments made in the plaint is clearly barred by limitation.

25.The contention of the learned Senior Counsel appearing for the respondents that Article 58 is not applicable to the reliefs sought for in the suit and only Articles 64 and 65 are applicable as reliefs relate to immovable



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property and period of limitation is 12 years from the date when cause of action accrued, is without merits. Both the Articles 64 and 65 relate to suits for possession of immovable property. As per Article 64, when the plaintiff is dispossessed from the immovable property, he can maintain a suit within 12 years from the date of dispossession, whether he has title to the said property or not. Article 65 relates to suit for possession of immovable property or any interest thereon based on title. The limitation is 12 years, when possession of the defendant becomes adverse to the plaintiffs. In the present suit, the plaintiffs 1 and 2 have not claimed the relief of possession even though in paragraph 111 of the plaint they have stated that “plaintiffs are obliged to file a suit for declaration and for consequential possession and injunction against the defendants for the relief as detailed in the prayer”. The plaintiffs 1 and 2 have filed the suit only for declaration of title and permanent injunction. Therefore, Article 58 of the Limitation Act applies and plaintiffs ought to have filed the suit within three years from the date when the cause of action first accrued. The present suit filed in February, 1992, on the face of it, is barred by limitation.

26. The learned Senior Counsel appearing for the respondents contended that question of limitation is a mixed question of fact and law and the same can



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be decided only based on the evidence let in by the parties during trial. This proposition of law is not applicable to each and every case. When the statement, as made in the plaint, without any doubt or dispute shows that suit is barred by law, then provision of Order VII Rule 11 of Code of Civil Procedure applies. The procedure contemplated under Order VII Rule 11 of Code of Civil Procedure is summary proceedings. In the said Rule, sub-rule (d) is incorporated for rejection of plaint, while the suit appears from the statement in the plaint is barred by any law. When such a right is granted to the defendant to seek for rejection of plaint when the suit is barred by any law in a summary proceedings, defendant cannot be directed to undergo full fledged trial. If question of limitation can be determined only after trial in all cases, then sub-rule 11 (d) in Order VII of Code of Civil Procedure is redundant. It is to be taken note of that when a plaint is presented in a Court, the said Court has to consider whether suit is in order and maintainable. If Court comes to the conclusion based on the averments in the plaint that suit is barred by limitation, then the Court can reject the plaint without numbering the suit. At that stage, without recording any evidence, the plaint can be rejected at the threshold itself based on the averments in the plaint. Except the averments in the plaint and documents filed along with the plaintiffs, no other materials can be considered.



But under Order VII Rule 11 of Code of Civil Procedure, a defendant must show that as per the averments in the plaint itself the suit is barred by any law.

The term “any law” in Order VII Rule 11 of Code of Civil Procedure includes limitation also and when, from the reading of the plaint it appears that suit is barred by limitation, the Court is bound to reject the plaint. In the present case, as stated above, a reading of the plaint as a whole, there is no doubt that suit is barred by limitation.

27.The judgments relied on by the learned Senior Counsel appearing for the respondents do not advance the case of the respondents. In the said judgments also, it has been held that Courts can decide the issue by considering the averments in the plaint. The judgments relied on by the learned counsel appearing for the petitioners are squarely applicable to the facts of the present case.

28.The learned Judge, without properly considering the averments in the plaint, scope of Order VII Rule 11 (a) and (b) of Code of Civil Procedure and law applicable to consider the application under this Rule, on erroneous reasoning, dismissed the application. The learned Judge by erroneous



reasoning, committed an error and illegality by dismissing the application. For the reasons stated, the impugned order of the learned Judge is liable to be set aside and is hereby set aside. I.A.No.7 of 2016 in O.S.No.6324 of 1988 is allowed and plaint in O.S.No.6324 of 1988 is rejected.

In the result, the Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

14.02.2022

Index : Yes / No
Internet : Yes / No

gsa/krk

To

The learned XV Additional Judge,
City Civil Court, Chennai.



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C.R.P. (PD) .No.3454 of 20

V.M.VELUMANI, J.
gsa/krk

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