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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 02nd June, 2023

+ **CS (OS) 3277/2014 & I.As. 21220/2014, 5818/2016**

SEAN DUSHYANT MANCHANDA & ANR. Plaintiffs

Through: Ms. Tara Ganju, Mr. Sarad Kumar
Sunny and Mr. Animesh, Advocates.

versus

RABIA MANCHANDA & ORS. Defendants

Through: Mr. Akhil Sibal, Senior Advocate
with Ms. Vidhi Goel and Mr. Krishna
Dev Yadav, Advocates for D-2.

Mr. Meet Malhotra, Senior Advocate
with Mr. Ravi SS Chauhan, Ms. Palak
Singh, Advocates for D-5(a).

Mr. Yogesh Jagia, Mr. Amit Sood &
Mr. Chandan Dutta, Advocates for D-
5(b).

Ms. Jasmine Damkewala, Ms.
Vaishali Sharma, Advocates for D-
5(c) and (d).

Mr. Diwan Singh Chauhan, Advocate
for D5(e).

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CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

J U D G M E N T

I.A. 8348/2015 (application under Order VII Rule 11 of the CPC),

I.A. 16548/2015 (application under Order VII Rule 11 of the CPC),

Signature Not Verified

Digitally Signed By: SHITU

NAGPAL

Signing Date: 03.06.2023

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CS (OS) 3277/2014

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I.A. 3310/2016 (application under Order VII Rule 11 of the CPC) and I.A. 6799/2016 (application under Order VII Rule 11 of the CPC) in CS (OS) 3277/2014

1. This judgment will dispose of four applications for rejection of the plaint filed under Order VII Rule 11 of the Code of Civil Procedure, 1908 [hereinafter, “CPC”], being I.A. 8348/2015 filed by defendant No. 5(b), I.A. 16548/2015 filed by defendant No. 5(e), I.A. 3310/2016 filed by defendant No. 2, and I.A. 6799/2016 filed by defendant No. 5(a).

2. The applicants seek rejection of the plaint, principally on the ground that the suit has been instituted *mala fide*, in abuse of the process of Court, that it is barred by estoppel (the plaintiff No.1 having filed an earlier suit on inconsistent and irreconcilable pleadings), and that the suit is bad for want of adequate Court fees.

A. FACTUAL BACKGROUND

3. There are two plaintiffs in the suit. Plaintiff No.2 is the daughter of plaintiff No.1. They are resident in the United States of America. Plaintiff No.1—Mr. Sean Dushyant Manchanda [hereinafter, “SDM”], is the son of late Mr. A.D. Manchanda [hereinafter, “ADM”] and late Ms. Padmini Manchanda. His parents were divorced in 1975 when he was approximately eleven years of age. ADM thereafter married Ms. Rabia Manchanda [hereinafter, “RM”], who is arrayed as defendant No.1 in the suit. ADM’s sister, Mrs. Devika Singh [hereinafter, “DS”], has been impleaded as defendant No.2.



4. The suit concerns a property [3/10, *Shanti Niketan, New Delhi-110021*] which originally belonged to SDM's paternal grandfather, late Justice S.C. Manchanda [hereinafter, "SCM"] and his wife late Mrs. Usha Manchanda [hereinafter, "UM"] – the parents of ADM and DS. SCM and UM had two other daughters, Ms. Bina Holley and Ms. Monika Ghosh, who are not parties to the suit. Defendant Nos. 3 and 4 in the suit, M/s Saluja Construction Company Limited and Mr. Vinod Saluja, are a construction company and its director respectively [hereinafter, "Saluja", collectively], who were involved in reconstruction of a building on the aforesaid property. Five defendants, who have been arrayed as defendant Nos. 5(a) to 5(e), are subsequent purchasers of various portions of the aforesaid property upon its reconstruction. Defendant Nos. 1, 3 and 4 were proceeded *ex parte, vide* order of the learned Joint Registrar dated 16.12.2016.

5. The plaint, as amended *vide* order dated 02.05.2017, proceeds on the following basis:-

- a. SCM and UM migrated to Delhi from Lahore during the partition of 1947, leaving behind properties owned by a Hindu Undivided Family [hereinafter, "HUF"] of SCM. They were allotted the aforesaid property in lieu of properties left behind in Lahore.
- b. SCM and UM built two houses on the plot – on the front half of 600 sq. yds., a house was constructed from funds of the HUF (which then comprised of SCM, ADM and SDM), and on the rear half of 600 sq. yds., a house was constructed from UM's



personal funds. The present suit concerns the 50% share of the HUF in the property [3/10, *Shanti Niketan, New Delhi-110021*]. This share is henceforth described as “**the suit property**”.

- c. Upon UM’s death in 1981, the rear house and her undivided 50% share in the land were bequeathed to DS and her children.
- d. SDM claims to have acquired a right in the suit property at birth, being a coparcener in SCM’s HUF.
- e. A partial partition of SCM’s HUF took place in 1977, in which the suit property fell to the share of the HUF of which ADM was *karta* and SDM was its only other coparcener.
- f. Ms. Bina Holley and Ms. Monika Ghosh relinquished their respective shares, if any, in the suit property by registered relinquishment deeds executed in the years 1988 and 1993 respectively. SDM asserts that SCM also relinquished his share during his lifetime.
- g. SCM died on 14.11.1999, leaving behind a will dated 22.04.1991 which, according to SDM, entitles him to a share in several movable assets of SCM.
- h. The suit property was HUF property of ADM, and was treated by him as such. He managed the property as *karta* of the HUF on behalf of the other coparceners.
- i. After the divorce between SDM’s parents, ADM purportedly married RM and also adopted a second son with her. SDM assails the validity of the marriage and the adoption. He has filed CS (OS) 2933/2012 [hereinafter, “the 2012 suit”] in which



this contention is taken. In any event, it is contended that RM and the adopted child do not profess Hindu religion and are, therefore, not members of the HUF of ADM. It is stated that ADM, RM and their adopted son relocated to Australia in 1992 and ADM lived in Australia until his demise on 01.04.2012.

- j. Upon ADM's demise, SDM became the *karta* of ADM's HUF and the plaintiffs are the only coparceners of the HUF. It is averred that the plaintiffs are in constructive possession of the suit property.
- k. SDM has lived in the United States of America since 1984, prior to which he lived in the suit property. After 1984, he seldom visited New Delhi. He was informed that the suit property was being reconstructed, but not informed that the redevelopment entailed transfer/collaboration or sale of the HUF share to any third party.
- l. Upon ADM's death, RM informed SDM of a will dated 31.12.2011, in which his estate was left to her. SDM was not made aware of the status of the suit property. He instituted the 2012 suit against RM, her son and others for various reliefs in respect of the assets of ADM. With regard to the suit property, the plaintiffs assert that SDM was then unaware of the Collaboration Agreement with Saluja and instead was informed by DS that the HUF share had been sold and ADM had invested the proceeds in financial assets in banks and mutual funds. In the 2012 suit, therefore, SDM *inter alia* sought recovery of



those proceeds. He was granted interim orders in the said suit in this regard.

- m. During the period 2013-14, SDM obtained copies of various documents relating to the suit property from the office of Sub Registrar, Delhi, from which he discovered that the property was conveyed by the Delhi Development Authority [hereinafter, “DDA”] to ADM and DS on 20.12.2002, that a Collaboration Agreement in respect of the entire property was signed between ADM (on behalf of the HUF) and DS with Saluja on 24.01.2003 and a Power of Attorney executed in favour of defendant No. 4 on the same date. Saluja was entitled to the sale proceeds in respect of various parts of the suit property upon reconstruction¹ alongwith 2/3rd undivided share in the land. SDM also discovered that ADM had executed a Deed of Release dated 28.01.2003 in respect of the second floor, terrace and right side driveway of the reconstructed building alongwith 1/3rd undivided share in the land in favour of DS. On the strength of the Power of Attorney granted to defendant No. 4, Saluja had executed sale deeds of various parts of the property, which came to its share under the Collaboration Agreement, in favour of subsequent purchasers. Those parts of the property are now held by defendants Nos. 5(a) to 5(e).
- n. The plaintiffs claim that the aforesaid transactions, to the extent that they were executed by ADM or DS to the exclusion of

¹ basement, ground floor with front lawn and rear courtyard, first floor and left side driveway.



SDM and without his consent, constitute fraudulent deprivation of the plaintiffs' rights in HUF property. This challenge extends both to the sale of properties to defendant Nos. 5(a) to 5(e), and to the relinquishment by ADM in favour of DS.

6. On the strength of these averments, the plaintiffs seek cancellation of various instruments, including the Conveyance Deed dated 20.12.2002 executed by DDA in favour of ADM and DS, Collaboration Agreement and Power of Attorney dated 24.01.2003, Deed of Release dated 28.01.2003 executed by ADM in favour of DS, and various sale deeds executed by Saluja in favour of subsequent purchasers. They have also sought a direction upon the concerned Sub Registrar to record the plaintiffs as co-owners of the schedule property, a decree of partition and possession in respect of their share in the schedule property or alternatively a decree for damages equivalent to the market value of the schedule property. The "schedule property" is described as undivided one-half share in the plot of land being 3/10, *Shanti Niketan, New Delhi-110021*.

7. The plaintiffs have been protected by an order of *status quo* dated 05.11.2014 as against RM and DS with respect to title and possession of the suit property.

B. SUBMISSIONS OF COUNSEL

8. I have heard Mr. Akhil Sibal, learned Senior Counsel for defendant No.2, Mr. Meet Malhotra, learned Senior Counsel for defendant No. 5(a), Mr. Diwan Singh Chauhan, learned counsel for defendant No. 5(e) and Ms. Jasmine Damkewala, learned counsel for



defendant Nos. 5(c) and 5(d) in support of these applications. Ms. Tara Ganju, learned counsel, advanced arguments on behalf of the plaintiffs. Their arguments are summarised in following paragraphs. The documents and authorities cited by learned counsel for the parties in support of these submissions will be discussed in the relevant part of this judgment, to the extent relevant for the purposes of the analysis.

9. The arguments advanced by learned counsel for the defendants may be summarised as follows:-

- a. In the present suit, the plaintiffs have sought their alleged share in the suit property on the basis that the property belonged to ADM's HUF in which they had a share. This is inconsistent with the position taken by SDM in the 2012 suit, in which he claims the proceeds of sale of the suit property.
- b. The plaintiffs' explanation, that SDM was not aware of the nature of transactions entered into by ADM and DS which resulted in the deprivation of his rights in HUF property, is insufficient for a separate cause of action to be founded on this basis.
- c. It is clear from the averments in the present suit itself that SDM was aware all along that the HUF had a share in the property, and that the said share had been alienated. He had asserted his alleged right to the sale proceeds in the 2012 suit. Learned counsel referred extensively to the plaints in both the suits (to which I shall refer later in this judgment) to contend that these



foundational facts were known to SDM at the time of institution of the 2012 suit. Having sued for the sale proceeds, a subsequent suit for the reliefs now claimed, is an abuse of process. Even assuming the plaintiffs' assertion that SDM did not know the nature of the transactions or the manner of alienation to be correct (which assumption must be made in the plaintiffs' favour under Order VII Rule 11 of the CPC), the factum of alienation was clearly known to him. The plaintiffs are, therefore, also barred by the principles of estoppel arising out of the pleadings in the 2012 suit from maintaining the present suit.

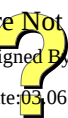
- d. The scope of jurisdiction under Order VII Rule 11 of the CPC extends to rejecting plaints which are filed in abuse of process of Court, including on the ground that the pleadings are inconsistent with prior pleadings of the plaintiffs.
- e. Court fees deposited by the plaintiffs are inadequate, both in respect of the relief of declaration and cancellation of documents, and in respect of relief of possession of the suit property. Learned counsel submitted that the plaint in the present case clearly makes out a case of ouster of the plaintiffs from possession of the allegedly joint property, necessitating payment of *ad valorem* court fees. In respect of declaration and cancellation of documents also, the court fees payable by a non-executant must be on *ad valorem* basis. Learned counsel pointed out that the plaintiffs have made an alternative claim for



damages and Court fees must be paid on the higher of these valuations.

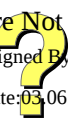
10. Learned counsel for the plaintiffs opposed the applications on the following arguments:-

- a. The grounds asserted by the applicants do not fall within the scope of Order VII Rule 11 of the CPC. The defendants' arguments with regard to the alleged overlap between the 2012 suit and the present suit are akin to arguments under Order II Rule 2 of the CPC, which are to be decided only after evidence. Similarly, the question of appropriate Court fees can only be decided after an evidentiary assessment on the question of whether the plaintiffs are, in fact, in constructive possession of the suit property.
- b. On the comparison of the two suits, a holistic reading of the plaints would show that the suits are, in fact, predicated on different causes of action and for different reliefs. In essence, the 2012 suit is for recovery of ADM's share in the suit property (and is based upon SDM's rights upon the death of his father), whereas the present suit is for recovery of SDM's own share therein (based upon the contents of the will of his grandfather). In the 2012 suit, RM and her son had been proceeded *ex parte* and that SDM had succeeded in recovering the amount, being the proceeds of sale of ADM's share in the suit property.





- c. SCM's will, and correspondence between SDM and DS after ADM's death, shows that the factual basis upon which the present suit has been filed had been entirely concealed from SDM. The plaint and documents annexed therewith clearly make out a case of fraudulent suppression/ misrepresentation by ADM and DS *vis à vis* the plaintiffs, and a suit based on such pleadings cannot be dismissed without putting the pleaded facts to the test of evidence.
- d. All the documents relating to the suit property signed by ADM (with the exception of the Conveyance Deed executed by DDA), mention his capacity as *karta* of the HUF, and all transacting parties were therefore on notice of the existence and property rights of the HUF. The actions of ADM in extinguishing the plaintiffs' right in HUF property do not fall within the scope of his authority as *karta*, being neither for the benefit of the estate nor on account of legal necessity. Upon partition of SCM's HUF, the share of the property which came into the hands of ADM's HUF remained coparcenary property and the *karta* could not alienate the share of other coparceners. The alienee was also bound to make enquiry into the question of legal necessity while acquiring title of HUF property without the consent of all the coparceners.
- e. The fact that SDM did not claim his share in the HUF property in the 2012 suit was due to the limited information at his command, as a result of fraud on the part of ADM and DS. In



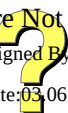


the face of such egregious conduct, no claim of acquiescence by SDM can be made out. The facts of the case do not show SDM's knowledge of the facts and his legal rights at the time the 2012 suit was filed.

- f. The question of identity of causes of action in the two suits is one to be decided on evidence and not at the stage of proceedings under Order VII Rule 11 of the CPC.
 - g. Abuse of process *per se* is not a ground for rejection of a plaint Order VII Rule 11 of the CPC.
 - h. On the question of Court fees, the plaintiffs have claimed constructive possession of the property in the plaint, and there is no clear pleading of ouster from possession by the plaintiffs. In any event, the issue of constructive possession is one for trial.
11. In rejoinder, learned Senior Counsel for defendant Nos.2 and 5(a), made the following arguments:-
- a. The argument advanced on behalf of plaintiffs that the 2012 suit was only based upon inheritance of ADM's share in the HUF property is inconsistent with the pleadings therein. In both cases, SDM has raised claims arising out of ADM's alienation of the suit property. However, no ground of lack of SDM's consent was made out in the 2012 suit, and instead the proceeds of alienation were sought to be recovered. Having succeeded in recovering part of those proceeds by virtue of orders passed in the 2012 suit under Order XII Rule 6 of the CPC, SDM has



- thereafter amended the 2012 suit, and filed the present suit on 28.10.2014, during the pendency of his amendment application.
- b. The averments in the 2012 suit clearly establish SDM's knowledge that the suit property was HUF property, and make no distinction between the shares of ADM and SDM therein. This is also evident from the fact that the plaintiffs seek a 50% share of the property in the present suit also, which was admittedly the entire share of the HUF, and not only SDM's share out of the HUF share. Although the 2012 suit was amended, the amended plaint also makes it clear that the suit related to the entirety of the HUF's share in the property and not just to the part which would fall to ADM's share therein. The clear implication of these averments is that the plaintiffs were aware that SDM's share in the HUF property had also been sold. Having claimed the proceeds thereof, SDM could not seek to reverse the alienation by way of the present suit.
- c. The allegations made in the present suit as to SDM's lack of knowledge about the will of SCM and the facts enumerated therein would make no difference to the cause of action asserted by him because he knew all along that the property was ancestral and belonged to the HUF.
- d. It was submitted that, even on admitted facts, the plaintiffs sought release of the proceeds of sale in the 2012 suit by filing an application under Order XII Rule 6 of the CPC after knowledge of all the transactions.





C. ANALYSIS

a. Judgments regarding rejection of plaint on the ground of abuse of process / estoppel by pleadings.

12. Parties have joined issue as to whether the ground of abuse of process and estoppel, urged by the defendants in the light of the 2012 suit instituted by SDM, furnish a valid basis for rejection of a plaint at the threshold. As several judgments have been cited by learned counsel on this issue itself, those judgments are dealt with at the outset.

13. In connection with the argument based on estoppel, learned counsel for the defendants cited the following judgments:-

- a. In *Bhargavi Constructions vs. Kothakapu Muthyam Reddy*², the Supreme Court held that the scope of Order VII Rule 11(d) of the CPC, to reject a plaint on the ground that it is “barred by law”, is not confined to statutory prohibitions alone, but extends also to bars imposed by judicial decisions.
- b. *Mumbai International Airport (P) Ltd. vs. Golden Chariot Airport*³ holds that the doctrine of election of causes of action and the doctrine of approbate/ reprobate are really species of estoppel. Learned Senior Counsel submitted that this would constitute a legal bar, albeit not statutory, to the plaintiffs’ suit. In the said judgment, the Supreme Court posed the following questions:-

² (2018) 13 SCC 480; paragraphs 26 to 32.

³ (2010) 10 SCC 422.



“43. Now the question is whether the contesting respondent on a complete volte face of its previous stand can urge its case of irrevocable licence before the Estate Officer and now before this Court? The answer has to be firmly in the negative.

44. Is an action at law a game of chess? Can a litigant change and choose its stand to suit its convenience and prolong a civil litigation on such prevaricated pleas?”

The Court relied upon various English and Indian judgments for the proposition that a party having chosen a remedy, and taken the benefit of orders passed thereunder, cannot thereafter take an inconsistent plea⁴.

- c. The Division Bench of this Court, in *Asha Sharma vs. Sanimiya Vanijiya P. Ltd.*⁵ affirmed the judgment of a learned Single Judge, dismissing a suit under Order VII Rule 11(d) of the CPC on the ground of estoppel by pleading and acquiescence. The learned Single Judge expressed the principle in the following terms⁶:-

“18. **A litigant who approaches the court for relief should not be doing so, in derogation of a previously held and articulated position.** It needs hardly be emphasized that inconsistent pleas are not permitted in the same action. **Equally inconsistent pleas are not permitted in two different actions.** This was held to be so in *Cooke v. Rickman* [(1911) 2 KB 1125]. The Court there held that the rule of estoppel could not be restricted to a matter in issue, stating:

“...The rule laid down in *Hawlett v. Tarte* (1) C.B. (N.S.) 813 - was that if the defendant in a second action attempts to put on the record a plea which is

⁴ *Ibid.*; paragraphs 50, 53 and 54.

⁵ 2012 SCC OnLine Del 2749.

⁶ Judgment dated 20.08.2008 in CS(OS) 1883/2006 [MANU/DE/1199/2008].



inconsistent with any traversable allegation in a former action between the same parties there is an estoppel. ...”

19. The Supreme Court held, in *Jai Narain Parasrampura (Dead) and Others v. Pushpa Devi Saraf and Others* (2006) 7 SCC 756 that:

“While applying the procedural law like principle of estoppel or acquiescence, the court would be concerned with the conduct of a party for determination as to whether he can be permitted to take a different stand in a subsequent proceeding, unless there exists a statutory interdict.”

The court also held:

“The doctrine of estoppel by acquiescence was not restricted to cases where the representor was aware both of what his strict rights were and that the representee was acting on the belief that those rights would not be enforced against him. Instead, the court was required to ascertain whether in the particular circumstances, it would be unconscionable for a party to be permitted to deny that which, knowingly or unknowingly, he had allowed or encouraged another to assume to his detriment. Accordingly, the principle would apply if at the time the expectation was encouraged.”

All these principles were reiterated and applied in Deewan Singh v. Rajendra Prasad Ardevi 2007 (10) SCC 528.

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22. In the decision reported as *N.V. Srinivasa Murthy v. Mariyamma* (2005) 5 SCC 548, while adverting to the *T. Arivandandam v. T.V. Satyapal* 1977 (4) SCC 467 it was held:

*“This is a fit case not only for rejecting the plaint but imposing exemplary costs on the appellant on the observations of this Court in the case of *T. Arivandandam v. T.V. Satyapal*:*

“The trial court 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, it should exercise its power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, the court must 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 so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men (Chapter 11) and must be triggered against them.”

23. The previous pleadings adverted to above, by this Court, clearly estop the plaintiffs from disputing the validity of the documents, impugned in these proceedings. Though the suit alleges fraud, the elements and basis of such fraud are tell tale and vague. The suit is a disguised attempt to attack the title to something which the vendor herself did not dispute in her lifetime; the plaintiffs elected in their pleadings, in the revision, not to challenge these documents. Therefore, the suit is not maintainable on the principle of estoppel by pleading, and acquiescence.”⁷

The Division Bench⁸ affirmed this view, holding as follows:-

“20. The learned Single Judge has correctly applied the law pertaining to estoppel by pleading as also acquiescence by correctly appreciating the decisions reported as (1911) 2 KB 1125 *Cooke v. Rickmen*, (2006) 7 SCC 756 *Jai Narain Parasrampura v. Pushpa Devi Saraf* and (2007) 10 SCC 528 *Deewan Singh v. Rajendra Prasad Ardevi*.

21. Submission urged by learned senior counsel for the appellants that Order VII Rule 11(d) of the Code of Civil Procedure relates to when the suit appears from the statement in the plaint to be barred by law, and that the plea of estoppel by pleading cannot apply for the plaint to

⁷ Emphasis supplied.

⁸ Supra (note 5).



be rejected, is noted and rejected by us for the reason the law pertaining to estoppel by pleading would result in a suit being barred by law. Needless to state, if with reference to previous pleadings in a suit, a party is barred from pleading to the contrary in a subsequent suit, the principle of estoppel by pleading is squarely attracted.

22. Besides, a Court of Record has inherent power which a court of justice must possess to prevent misuse of its procedures in relation to an action initiated which would amount to an abuse of the process of the law. In the decision reported as (2006) 3 SCC 100 Mayar (H.K.) Ltd. v. Owners & Parties, Vessel M.V. Fortune Express, the Supreme Court had held that the power of a Court to reject a plaint which is an abuse of the process of the law is not restricted to Order VII Rule 11 of the Code and if it is warranted, the inherent power of the Court can always be invoked.

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24. Suffice would it be to state that admissions made in documents or made orally can be explained by the maker of the statement and in that context previous admissions contained in documents, cannot attract Order VII Rule 1(d) of the Code, but admissions in pleadings stand on a different footing and if a matter pertaining to a ownership of a property or execution of a sale-deed, though not a matter in issue, but arose properly for consideration or was relevant in the context of a claim made or a claim defended, pleadings would be not only relevant but would also attract the principle of estoppel by pleading.”⁹

- d. A coordinate Bench in *Kailash Newar vs. Satish Newar*¹⁰ relied *inter alia* upon the judgment in *Asha Sharma*¹¹ and held that contrary pleas cannot be taken in successive suits.

⁹ Emphasis supplied.

¹⁰ (2012) 131 DRJ 500.

¹¹ Supra (note 5).



14. Learned Senior Counsel for the defendants also cited the following judgments to argue that a plaint filed in abuse of process can be rejected on that ground alone:-

- a. In *Sopan Sukhdeo Sable vs. Assistant Charity Commissioner*¹², the Supreme Court reiterated that the power under Order VII Rule 11 of the CPC can be exercised at any stage of the suit, based upon a holistic and meaningful reading of the plaint. For this purpose, the pleas taken by defendant in the written statement would, however, not be looked into. Upon consideration of the authorities, the Court held as follows:-

“15. There cannot be any compartmentalisation, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. 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 or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

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17. Keeping in view the aforesaid principles, the reliefs sought for in the suit as quoted supra have to be considered. **The real object of Order 7 Rule 11 of the Code is to keep out of courts irresponsible law suits.** Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by a searching examination of the party, in case the court is prima facie of the view that the

¹² (2004) 3 SCC 137.



suit is an abuse of the process of the court, in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7 Rule 11 of the Code can be exercised.”¹³

- b. In *K. Akbar Ali vs. K. Umar Khan*¹⁴ also the Court reiterated these principles in the following terms:-

“9. Where on the face of the averments in the plaint, the claim in a suit is based on an agreement executed through a power of attorney-holder, the Court is not debarred from looking into the power of attorney. It is open to the Court to read the terms of the power of attorney along with the plaint in the same manner as documents appended to the plaint, which form part of the plaint.

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13. The Division Bench of the High Court has done substantial justice by nipping in the bud, a suit which is ex facie not maintainable for want of cause of action against the defendants or any of them, thereby saving precious judicial time as also inconvenience and expenditure to the parties to the suit.”

- c. In *Dahiben vs. Arvindbhai Kalyanji Bhanusali*¹⁵ the Supreme Court emphasized the duty of the Court to cut short manifestly vexatious and meaningless litigation at the stage of Order VII Rule 11 of the CPC, for which purpose the Court can look not only at the plaint but also at the documents filed with it. The following observations of the Court are relevant for the purposes of the present suit:-

“23.8. Having regard to Order 7 Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order 7 Rule 11(a). When a document referred to in

¹³ Emphasis supplied.

¹⁴ (2021) 14 SCC 51.

¹⁵ (2020) 7 SCC 366.



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.*

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23.12. *In Hardesh Ores (P) Ltd. v. Hede & Co. [(2007) 5 SCC 614] the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. **It is the substance, and not merely the form, which has to be looked into.** The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. *D. Ramachandran v. R.V. Janakiraman [(1999) 3 SCC 267; See also Vijay Pratap Singh v. Dukh Haran Nath Singh, AIR 1962 SC 941].**

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 7 Rule 11 CPC.**

23.14. *The power under Order 7 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 [(2003) 1 SCC 557]. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case [1986 Supp SCC 315].*

23.15. *The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint.”¹⁶*

¹⁶ Emphasis supplied.



15. Learned counsel for the plaintiffs, on the other hand, submitted that a plea based on Order II Rule 2 of the CPC and acquiescence ought not to be decided under Order VII Rule 11 of the CPC but at the final hearing of the suit. Learned counsel submitted that, until the pleadings in both suits are read in evidence, the Court cannot determine the question of identity of causes of action. For this purpose, she cited the following judgments:-

- a. In *Soumitra Kumar Sen vs. Shyamal Kumar Sen*¹⁷, the Supreme Court affirmed a judgment of the Trial Court and the High Court dismissing an application under Order VII Rule 11 of the CPC on the grounds of *res judicata*. The order of the Trial Court, extracted in paragraph 6 of the judgment of the Supreme Court, shows that a conclusion on this aspect required reference to the defences taken in the written statement and did not emanate from a reading of the plaint. The Supreme Court affirmed this view¹⁸. Learned counsel emphasised that the Court has approved the dictum of the High Court to the effect that the principle of *res judicata* raises a mixed question of fact and law for which rejection of a plaint is inappropriate.
- b. Reliance was placed upon *Anwari Bibi vs. Khairatan Bibi & Ors.*¹⁹, wherein the Patna High Court found that the question of acquiescence, waiver, etc., upon which the defendants sought

¹⁷ (2018) 5 SCC 644.

¹⁸ *Ibid.*; paragraph 8.

¹⁹ Order dated 14.09.2016 in Civil Revision No. 121 of 2016 [MANU/BH/1432/2016].



rejection of a plaint, required examination of the defence and held that the matter required trial on evidence.

- c. The judgment in *Gurbux Singh vs. Bhooralal*²⁰ was cited in support of the contention that the bar under Order II Rule 2 of the CPC can be examined only after the pleadings in the two suits in question are placed in evidence. The Court found that in that case, the pleadings in the earlier suit were not placed in evidence in the subsequent suit and, therefore, held that Order II Rule 2 of the CPC could not be applied. To the same effect are the judgment of the Supreme Court in *Kunjan Nair Sivaraman Nair vs. Narayanan Nair*²¹ and two judgments of this Court – *Suresh Kakkar vs. Mahender Nath Kakkar*²² and *Maya Devi vs. Rajeshwar*²³.
- d. In *R.S. Muthuswamy Gounder vs. A. Annamalai*²⁴, the Madras High Court held that the question of acquiescence would arise only if an act is done by a party with full knowledge of his rights. Learned counsel submitted that, in the present case, the 2012 suit was filed when the plaintiff was ignorant of his rights and could not constitute acquiescence.
- e. It was submitted that in *Canara Bank vs. Canara Sales Corpn.*²⁵ also, the Supreme Court held that a plea of acquiescence would

²⁰ AIR 1964 SC 1810.

²¹ (2004) 3 SCC 277.

²² (2008) 105 DRJ 211.

²³ 2018 SCC OnLine Del 12007.

²⁴ AIR 1981 Madras 220.

²⁵ AIR 1987 SC 1603.



arise only if a party remained silent about a matter after knowing the truth of the matter.

- f. On the question of estoppel, the judgment of the Nagpur High Court in *Govindsa Marotisa vs. Ismail*²⁶ was referred to, to the following effect:-

“33. As is well-known Section 115 of the Evidence Act, is a concise statement of the law of estoppel founded on the rule laid down in Picard v. Sears, (1837) 6 A. & E. 469 : (45 R.R. 538). The section runs:

“When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.”

What is enacted in the section is a rule of evidence by which a person is not allowed to plead the contrary of a fact or state of things which he has formerly asserted as existing. The rule, which is also at times viewed as a substantive rule of law, comes into play whenever a person causes another to believe a thing to be true and act upon such belief and alter his position. The foundation of the rule is the equitable doctrine that it would be unjust if a person, who by his representation has induced another to act as he otherwise would not have done, is permitted to deny the truth of his former representation to the detriment of the person who acted on it. For the purpose of the rule, conduct by act or omission amounting to representation is on the same footing as an express representation.”

Learned counsel emphasised that pleas of acquiescence and estoppel require a finding that a person has assented to violation of rights of which he/she is aware. She also submitted, relying upon *Moolji Sicca*

²⁶ AIR 1950 Nagpur 22.



& Co. vs. *Ramjan Ali*²⁷, that a plea of fraud, such as taken by the plaintiffs in the present case, negates a claim of estoppel by the party against whom fraud is alleged. She relied upon *Abdul Kader Chaudhury vs. Upendra Lal Barua*²⁸ to submit that the question of acquiescence cannot arise by mere silence unless the person concerned is under a duty to speak.

16. For the purpose of the present case, the following principles laid down in these judgments are of relevance:-

- A. The power under Order VII Rule 11 of the CPC can be exercised at any stage of a suit.
- B. The determination of such an application requires a holistic and meaningful reading of the plaint in its entirety. The plaint and the documents annexed thereto can be looked at, but not the written statement of the defendants or any defences raised by them.
- C. Order VII Rule 11(d) does not apply only in the case of statutory prohibitions, but also to causes of action that are barred on account of judicial decisions.
- D. The provisions of Order VII Rule 11 of the CPC are not exhaustive and the power to stem frivolous or vexatious litigation is inherent in the Court.
- E. The doctrine of estoppel is an equitable doctrine which bars a litigant from making assertions inconsistent with earlier statements upon which the other party has placed reliance. The

²⁷ AIR 1930 Calcutta 678.

²⁸ AIR 1936 Calcutta 711.



rules of approbate/ reprobate, doctrine of election of causes of action and doctrine of acquiescence are all species of the larger doctrine of estoppel.

- F. A plea can be rejected on account of estoppel by pleading and acquiescence if it is in derogation of an inconsistent plea taken in earlier proceedings.
- G. To examine questions of this nature which are akin to a plea under Order II Rule 2 of the CPC, it is necessary that the pleadings in the earlier suit be placed in evidence so that the identity of the causes of action can be demonstrated.
- H. The plea of acquiescence requires a party to give up rights of which he/she has full knowledge. Such a plea is not available in the face of fraud committed by the other party.

b. Application of these principles to the facts of the present case:

i. Can the questions raised by the defendants be considered at this stage?

17. The first submission which requires consideration is whether the pleas raised by the defendants, which are admittedly based on a comparison of the plaintiffs' case in the 2012 suit and in the present suit, can at all be considered at this stage. The judgments cited on behalf of the plaintiffs — *Gurbux Singh*²⁹, *Kunjan Nair Sivaraman Nair*³⁰ and *Soumitra Kumar Sen*³¹ of the Supreme Court, and *Suresh*

²⁹ Supra (note 20).

³⁰ Supra (note 21).

³¹ Supra (note 17).



*Kakkar*³² and *Maya Devi*³³ of this Court — all suggest that a plaint cannot be rejected on such a ground without the pleadings in the earlier suit being placed in evidence. For this reason, the course suggested in *Soumitra Kumar Sen*³⁴ is that, instead of rejecting a plaint under Order VII Rule 11 of the CPC on grounds of *res judicata* or Order II Rule 2 of the CPC, it would be appropriate to frame a preliminary issue to be tried on evidence.

18. However, there is a crucial distinction between this line of decisions and the present case, which is that *the plaint in the 2012 suit has been placed in evidence by the plaintiffs themselves*. In *Gurbux Singh*³⁵, the Court has categorically recorded that the pleadings in the earlier suit in question were not placed in evidence. It is for this reason that the Court found that the identity of causes of action in the two suits had not been proved. The judgment in *Kunjan Nair Sivaraman Nair*³⁶ follows paragraph 6 of *Gurbux Singh*³⁷. In *Soumitra Kumar Sen*³⁸ also, it is clear that the pleadings in the earlier proceedings were not placed before the Court. *Suresh Kakkar*³⁹, which has been followed in *Maya Devi*⁴⁰, establishes the same factual position in that case.

³² Supra (note 22).

³³ Supra (note 23).

³⁴ Supra (note 17).

³⁵ Supra (note 20); paragraph 6.

³⁶ Supra (note 21).

³⁷ Supra (note 20).

³⁸ Supra (note 17); paragraph 12.

³⁹ Supra (note 22); paragraph 8.

⁴⁰ Supra (note 23).



19. These judgments must be seen in the light of the settled legal position that the Court is not entitled to look into the written statement and defendants' documents at the stage of an application under Order VII Rule 11 of the CPC. In *Gurbux Singh*⁴¹ and *Kunjan Nair Sivaraman Nair*⁴² the issue was not of the stage at which such a decision could be taken because those cases had concluded on trial. Be that as it may, they establish that these legal bars can be considered only if the pleadings in the prior suit are in evidence. Where the plaintiffs have themselves placed the requisite pleadings on record, the documents come within the scope of consideration, even under Order VII Rule 11 of the CPC. I am, therefore, of the view that the defendants' contentions can be examined at this stage, while adhering to the fundamental principle that only the plaint and documents filed by the plaintiff can be looked at.

ii. Analysis of pleadings in both suits.

20. In this light, the next task is to analyse the case of the plaintiff in the two suits, so as to determine whether they are inconsistent, as suggested by the defendants.

21. It is SDM's case that, as a child, he lived in the front portion of the suit property with his parents. His parents divorced when he was about eleven years old and he has lived in the United States since 1984. Although he has not visited India very frequently since moving

⁴¹ Supra (note 20).

⁴² Supra (note 21).

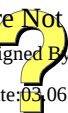


to the United States, he continued to share a good relationship with his father who, in fact, also set up an education fund for SDM's daughter (plaintiff No. 2 herein). In both suits, SDM asserts that the suit property was at all times HUF property and was managed by ADM as *karta* for the benefit of all the coparceners. To this extent, the narrative in both suits is on the same lines.

22. In the 2012 suit, SDM challenged ADM's marriage to RM and adoption of a child as well as his will. He asserted a claim to the HUF property which he knew had been sold and proceeds whereof were partially lying in the banks and financial institutions which were made party to the suit. Significantly, the plaint of the 2012 suit demonstrates SDM's knowledge that the property had been redeveloped and that third parties were living there.

23. It may also be noted that the reliefs claimed in the 2012 suit were in respect of the proceeds of sale and not in respect of the property itself. In fact, although SDM claims to have known of the existence of tenants in the property, even during ADM's lifetime, no attempt was made to assert any right to the property or any income derived therefrom prior to 2012.

24. The present suit was filed after SDM was granted partial relief in the 2012 suit, to the extent of release of some of the alleged HUF assets. At this stage, he also applied for amendment of the 2012 suit.





25. In the present suit, the case now run is of a fraudulent disposal of HUF property by ADM in favour of DS and in favour of third parties – defendant Nos. 5(a) to 5(e) (through Saluja). In this suit, the plaintiffs continue to assert that the suit property was always HUF property, and do not suggest that this was not known to SDM at any stage. The plea of a fraudulent alienation of property, contrary to ADM's responsibility as *karta* of the HUF, and without SDM's consent, is a new plea purportedly based upon documents unearthed by SDM after the filing of the 2012 suit. The plea regarding discovery of these documents during the period January to March, 2014 is that SDM then became aware of the nature of the transactions entered into by ADM i.e. that he had entered into a Collaboration Agreement with Saluja and relinquished some of his rights in favour of DS.

26. A reading of paragraphs 8, 11 and 12 of the present suit (as amended) makes it clear that the cause of action now pleaded is based upon this change in circumstances:-

"8. The Plaintiff No. 1 who is ordinarily residing in United States of America since 1984, seldom visited New Delhi, although prior thereto he was residing in the property at 3/10, Shanti Niketan, New Delhi alongwith his father and other family members including Defendant No.2. Prior to July/ August, 2012, there was a long gap between his visits to Delhi. He was however, regularly in touch with his late father/ Defendant No. 1 and he was told that the property at 3/10, Shanti Niketan, New Delhi was being re-constructed, since the building was quite old. However, the Plaintiff No.1 was not made aware of the fact that this redevelopment actually entailed transfer/ collaboration of the HUF property with third parties and the sale of part of the HUF share in the said Property. Late A.D. Manchanda was then inflicted with cancer in the end of 2012 and he died within a period of 3-4



months of the diagnosis. The Plaintiff No.1 visited his father in Australia shortly before his death, however, even then he was not made aware of the exact nature of the transaction pertaining to 3/10, Shanti Niketan, New Delhi. Upon the death of his father on April 1, 2012, the Plaintiff No.1 became the Karta of the HUF and the HUF Property.

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11. The Plaintiff No. 1 was thus compelled to file a suit bearing CS (OS) No. 2933 of 2012 before this Hon'ble Court for injunction, declaration, cancellation, rendition of accounts, recovery of monies etc. due to the wrongful acts of Defendant No.1 and Shaad, her adopted son and their attempt to deprive the Plaintiffs of their share in the money, assets etc. of late A.D. Manchanda, part of which were lying in Citi Bank, New Delhi and several Mutual Fund entities in New Delhi. At the time of filing the said suit, the Plaintiff No.1 was not aware that late A.D. Manchanda acting as the Karta of A.D. Manchanda HUF had wrongly, illegally and without the consent of the Plaintiff No. 1 entered into a Collaboration Agreement with the Defendant No. 3 for property at 3/10, Shanti Niketan, New Delhi. In fact, the Plaintiff No. 1 was falsely informed by Defendant No. 2 in July/ August, 2012 that his grandfather late S.C. Manchanda died intestate and Shanti Niketan property was sold in 2003 and that all sale proceeds which were shared between late A.D. Manchanda and Defendant No. 2 under a family arrangement went to late A.D. Manchanda. Believing these averments to be correct, the Plaintiff No. 1 initially inter-alia sued for HUF monies available in Banks and Mutual Funds being CS (OS) 2933 of 2012, which pending adjudication before the Hon'ble Court (hereinafter referred to as the "said Suit").

12. Although several attempts were made by the Plaintiff No.1 to get discovery of the documents in relation to the HUF Property at 3/10, Shanti Niketan, the Defendants in the said Suit did not cooperate. Meanwhile, certain interim orders were passed by the Hon'ble Court in the said Suit thereby protecting the monies which were lying in the Bank Account HUF of late A.D. Manchanda. The Plaintiff No.1 seeks to refer to and rely upon the said Suit as well as the proceedings, order sheets, and documents of the said Suit for the purposes of the present suit as well. It is important to point out that the stand which the Plaintiff No.1 took as the basis of his earlier Suit being CS (OS) No. 2933 of 2012 was due to the deception exercised by Defendant No. 2 and late A.D. Manchanda. Both persons did not inform the Plaintiff No. 1 of the Collaboration

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Agreement with Defendant No. 3. The information provided by these persons was accepted by the Plaintiff No. 1 in good faith. It is only after his father's death and when the Plaintiff No. 1 attempted to settle his father's affairs that he was informed by Defendant No. 2, that his father had sold off the Shanti Niketan Property and some part of the Sale proceeds were deposited with Citi Bank. That the Plaintiff No.1 had no occasion and reason to disbelieve his father's sister, Defendant No.2. Thus the Plaintiff No.1 proceeded on this basis and sought orders pertaining to the bank accounts and movable properties. The Defendant No. 2 however refused to share the particulars of the sale, i.e. when the property was sold, the manner of the sale, to whom the property was sold, the consideration for the sale, the documents executed, etc. The Plaintiff No.1 thereafter kept asking his aunt i.e. Defendant No. 2 to produce the documents to enable him to verify the particulars of the so called sale without success."

27. I am of the view that the assertions now sought to be made in the present suit are indeed inconsistent with the 2012 suit. Even in the 2012 suit, SDM asserts rights on the basis that the suit property is HUF property and that the property has been alienated by ADM. However, he does not claim the property, but only the proceeds thereof. There is no suggestion in the unamended 2012 suit that the alienation was without SDM's knowledge or consent. These revelations, even taken to be correct, cannot, in my view, justify a wholesale reimagination of the plaintiffs' claims. Having sued for the proceeds of sale, and indeed obtained partial relief a few months prior to the filing of the present suit, the plaintiffs cannot now seek to reverse the series of transactions which resulted in those proceeds becoming available for them to claim.



28. The plaintiffs' submission that the 2012 suit was for ADM's share of the HUF property and the present suit is for SDM's share therein is untenable for the following reasons:-

A. This argument is based upon a reading of paragraphs 13 and 15 of the unamended plaint of the 2012 suit, wherein SDM asserted that ADM had sold "his right, title and interest in the ancestral property". A reading of the entire paragraph and paragraph 15, however, belies this understanding:-

*"13. Around that time a HUF Bank Account maintained by the HUF, was opened by late Mr. A.D. Manchanda with the Defendant No. 3 being Saving Bank Account, titled "Amar Dip Manchanda (HUF)", bearing Account No. 5106620228, NRO with Citi Bank N.A., 3rd Floor, Jeevan Bharti Building, 124, Connaught Circus, New Delhi-110001, (Defendant No. 3) (hereinafter referred to as the "said HUF Bank Account"). **The plaintiff maintains that with his birth in the year 1964, the Plaintiff acquired an undivided share in the ancestral properties, as a coparcener. In the year 2003, the deceased father of the Plaintiff, late Mr. A.D. Manchanda, sold his right, title and interest in the ancestral property** bearing No. 3/10, Shanti Niketan, New Delhi for an approx. between Rs. 4,50,00,000/- to Rs. 5,00,00,000/- (Rupees Four Crores Fifty Lacs to Rupees Five Crores) based on an initial valuation performed by the property major M/s C.B. Richard Ellis. Part of the proceeds from the sale of the ancestral property was deposited in the said HUF Bank Account with the defendant No. 3 Bank in New Delhi. **The Plaintiff estimates that of the approx. between Rs. 4,50,00,000/- to Rs. 5,00,00,000/- (Rupees Four Crores Fifty lacs to Rupees Five Crores) received a small percent remained in India, while the balance was repatriated to Australia by late Mr. A.D. Manchanda. Hence, the proceeds from the sale of the Shanti Niketan Property of the HUF that the Plaintiff is entitled to in India, and not counting Australian assets, is at around Rs. 5,00,00,000/-***



(Rupees Five Crores). *The Plaintiff has recently also had the entire Shanti Niketan Property valued. As per the valuation report, received by the Plaintiff, the value of the property in the year 2003 has been assessed at Rs. 70,000 to 80,000 per square yard plus the cost of the building existed on the said land, which is to be valued separately. The land comprised within the said Shanti Niketan Property at Rs. 80,000/- per square yard works out Rs. 4.80 crores.*

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15. That the Shanti Niketan Property was the HUF property and late Mr. A.D. Manchanda always treated it as such and acted in respect thereof as Karta of the HUF and as a trustee for his lineal descendants. This is undoubtedly and categorically established and reaffirmed by late Mr. A.D. Manchanda by his depositing the sale proceeds of the Shanti Niketan Property in the said HUF Bank Account in the year 2003.”⁴³

It is clear that SDM assessed the sale proceeds of the HUF property in entirety to be in the region of Rs. 4.5 to Rs. 5 crores, and he claimed the entire proceeds of sale of the HUF property which were invested in India. In paragraph 15 also, the assertion is that the sale proceeds of the HUF property — not just ADM’s share — were deposited in the concerned bank.

- B. The 2012 suit was amended pursuant to an order dated 17.11.2014 passed on an amendment application filed by SDM. The amended plaint (which was amended on the basis of an application filed after SDM was in the knowledge of all the facts pleaded in the present suit) clearly asserts that the 2012 suit was based on the proceeds of the sale of the entire share of the HUF in the property. Reference in this connection may be made to paragraph 14 of the amended plaint:-

⁴³ Emphasis supplied.



“14. The plaintiff’s aunt, Ms. Devika Singh led the Plaintiff to believe that in the year 2003, the deceased father of the Plaintiff, late Mr. A.D. Manchanda, sold the entire share of the A.D. Manchanda HUF’s right, title and interest in the coparcenary property bearing No. 3/10, Shanti Niketan, New Delhi. Based on an initial valuation performed by the property major M/s C.B. Richard Ellis, the Plaintiff estimates that of the approx. between Rs. 4,50,00,000/- to Rs. 5,00,00,000/- (Rupees Four Crores Fifty lacs to Five Crores) was received from the sale. The Plaintiff is filing a separate suit challenging the so called alienation of Suit Property as the same is illegal. The Plaintiff has recently also had the entire Shanti Niketan Property valued. As per the valuation report, received by the Plaintiff, the value of the property in the year 2003 has been assessed at Rs. 70,000 to 80,000 per square yard plus the cost of the building existed on the said land, which is to be valued separately.”

The claims in the 2012 suit, particularly prayer (iv), also show that it was for all HUF assets and not just the share of ADM:-

“iv) Pass an Decree declaring that the Plaintiff and Defendant No. 8 are the only coparceners of the A.D. Manchanda (HUF) and entitled to all the assets of A.D. Manchanda (HUF) as set forth in the Scheduled Property;”

- C. The same position emerges from an analysis of the quantum of claims in both suits. The plaint of the 2012 suit reveals that the entire property — 3/10 Shanti Niketan, New Delhi — was of 1200 sq.yds. out of which the HUF had a 50% share. A reading of paragraph 13 of the 2012 plaint (extracted above) shows that 600 sq.yds. have been valued at the rate of Rs.80,000/- per sq.yd. amounting to Rs.4.8 crores. This entire amount is the subject matter of the claim in the 2012 suit, and not a part thereof, which may have been ADM’s share in the HUF. Similarly, in the present suit, the scheduled property is



described as “*undivided one half share*” in the plot of 1200 sq.yds. which is the entirety of the share of the HUF. The aforesaid schedule is reproduced below:-

“*SCHEDULE PROPERTY*”

All that undivided one half share in plot of land being the residential Plot No. 10 in Block No./Street No.3 in the layout plan of Government Servants C.H.B.S. Ltd., and measuring 1200 Sq. Yds. or thereabouts bounded as follow:

<i>NORTH</i>	<i>60' wide Road</i>
<i>EAST</i>	<i>Plot No.9 (Nine)</i>
<i>SOUTH</i>	<i>20' wide Service Road</i>
<i>WEST</i>	<i>Plot No.11 (Eleven). ”⁴⁴</i>

- D. A reading of the plaint of the 2012 suit does not indicate that SDM proceeded on the basis that there was any distinction between his share and ADM’s share. The plaintiffs’ submissions were founded on this distinction, for which I find no basis in the pleadings, and indeed contrary indications as enumerated above. For the aforesaid reasons, I am of the view that a reading of the present plaint, and documents annexed therewith, shows that the claims of the plaintiffs are entirely inconsistent with the pleas in the 2012 suit.

iii. Effect on the present suit.

29. What is the consequence of this analysis upon the fate of the present suit? The remedy sought by the defendants of rejection of plaint without trial is no doubt a drastic one. However, the judgments

⁴⁴ Emphasis supplied.



of the Supreme Court, *inter alia* in *Sopan Sukhdeo Sable*⁴⁵, *K. Akbar Ali*⁴⁶ and *Dahiben*⁴⁷, emphasise the responsibility of the Court to thwart vexatious litigants. The judgment in *Mumbai International Airport (P) Ltd.*⁴⁸, makes it clear that inconsistent pleas cannot be permitted. In *Asha Sharma*⁴⁹, the Division Bench has held that such a plea — of “estoppel by pleadings” — can indeed be used to reject a plaint under Order VII Rule 11 of the CPC. The said judgment was sought to be distinguished on the basis that the case there was one of an admission in a pleading which was inconsistent with the case pleaded in a subsequent suit. I do not see any distinction on principle between the two situations. In the present case also, one has only to look at the pleading of the plaintiff in the 2012 suit to come to the conclusion that the plaintiff has elected to claim the proceeds of sale of the suit property, a position entirely at odds with the present claim for reversal of the very same sale.

30. The plaintiffs’ submissions on the applicability of the doctrine of acquiescence are also unmerited. SDM was clearly aware, even while filing the 2012 suit, that the suit property was HUF property, and that he had a share therein, which had been alienated. The precise manner of alienation or the modalities of the transactions into which his father entered were not material to his knowledge that he had legal rights and thus to his claim arising therefrom. The judgments cited by

⁴⁵ Supra (note 12).

⁴⁶ Supra (note 14).

⁴⁷ Supra (note 15).

⁴⁸ Supra (note 3).

⁴⁹ Supra (note 5).



learned counsel for the plaintiffs hold that acquiescence can only apply if the party knows the facts and the legal basis upon which his claims arise. SDM clearly did.

31. Having regard to the above, I am of the view that the present case falls within the category of cases where the plaint ought to be rejected at the threshold on the grounds stipulated in Order VII Rule 11 of the CPC.

32. Having come to this conclusion on the basis aforesaid, I do not consider it necessary to adjudicate any other point raised by learned counsel for the parties.

D. CONCLUSION

33. For the aforesaid reasons, the applications are allowed and the plaint in CS(OS) 3277/2014 is rejected.

CS(OS) 3277/2014

In view of the judgment in I.A. No. 8348/2015, I.A. No. 16548/2015, I.A. No. 3310/2016 and I.A. No. 6799/2016, the suit stands dismissed. All interim orders stand vacated. All pending applications are disposed of.

PRATEEK JALAN, J

JUNE 02, 2023

'vp/Bhupi/udit'

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