



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 76 OF 2024
WITH
CIVIL APPLICATION NO. 3850 OF 2024
IN SA/76/2024

1. Rajindersingh Tarlochansingh Dhingra
Age - 65 years, Occ. Business,
R/o Plot No.20, M.H. No.5-10-3/1,
Hamalwadi, Rajnagar, Railway Station Road,
Chatrapati Sambhajinagar (Aurangabad).
2. Mrs. Parvinder Kaur w/o Rajindersingh Dhingra
Age- 62 years, Occ. Household,
R/o As above.
3. Mr. Karansingh s/o Rajindersingh Dhingra
Age - 32 years, Occ : Business,
R/o As above.

..APPELLANTS

-VERSUS-

1. Ahmed Safwan s/o Ahmed Rizwan
Prop. Palm Hills Developers,
Age - 30 years, Occ : Business,
R/o Row H.No.E-4, situated at
Sethi's Green Valley, Rauza Bagh,
Chatrapati Sambhajinagar (A. bad).
2. Ejaj Khan Jalik Khan Pathan
Age - 34 years, Occ. Business,
R/o H.No.4-19-54/55, Bhoiwada,
Chatrapati Sambhajinagar (A. bad).
3. Prudent Asset Reconstruction Company Limited
R/o Unit No.611, 6th Floor, D Mall,
Plot 1, Netaji Subhash Place
Pitampura, New Delhi 110034
and Mumbai office at
D/213, Kanakia Zillion LBS Marg,
Kurla West, Mumbai 400 070

..RESPONDENTS

- ...
- Sr. Adv. P. R. Katneshwarkar i/b Adv. Shrimant Mundhe, Advocate For Appellants
 - Adv. Shivashish V. Bhopi, Advocate For Respondent No. 1
 - Adv. Naresh B. Tambade, Advocate For Respondent No. 2
 - Adv. S. W. Mundhe, Advocate For Respondent No. 3
- ...

CORAM : ROHIT W. JOSHI, J.

DATE : 21st MARCH, 2025

JUDGMENT :

1. The present appeal arises out of an application for rejection of plaint filed under Order VII Rule 11 of the Code of Civil Procedure, 1908. The appellants are the original plaintiffs. The appellants had filed a suit bearing Regular Civil Suit No. 234 of 2021 in the Court of the Learned Civil Judge Senior Division, Aurangabad. The said suit is filed on 23.06.2021. Perusal of the plaint indicates that according to the plaintiffs, they had sold the suit property which comprises of plot No. 20, CTS 19324 MH 5-10-3/1, Hamalwadi Rajnagar, Railway Station Road, Aurangabad to the defendant No. 1 vide registered sale deed dated 13.01.2017. The contention in the plaint is that the defendant no. 1 – purchaser has not paid the entire sale consideration as mentioned in the sale deed, and therefore, ownership right in the suit property does not pass to the defendant no. 1. It is alleged that payment of part consideration was made and for the balance amount post dated cheques were issued. It is averred that the said post dated cheques were misplaced and the defendant no.1 had issued fresh cheques against the

same as per correction deed dated 13.09.2017. The plaintiff claims to be in actual physical possession of the suit property although the same is sold to the defendant No. 1 as aforesaid. The plaintiff makes reference to subsequent transfer of the suit property by defendant No. 1 to the defendant No. 2 vide sale deed dated 05.10.2018. It is also averred in the plaintiff that the defendant had obtained loan from the defendant No.3 which is a financial institution. The prayers in the plaintiff are for cancellation of sale deed dated 13.01.2017 and correction deed dated 13.09.2017, executed by plaintiff in favour of defendant no. 1 as also cancellation of sale deed dated 05.10.2018 executed by defendant no. 1 in favour of defendant no. 2; with a prayer for declaration of ownership of the plaintiffs over the suit property; and for perpetual injunction restraining the defendants from creating third party interest over the suit property as also from disturbing possession of the plaintiffs over the same.

2. The defendant Nos. 1 and 2 filed two separate applications for rejection of plaintiff under Order VII Rule 11 of the Code of Civil Procedure, 1908 (For short, "CPC"). Both these applications have been decided by a common order dated 11.01.2022. The learned Trial Court was pleased to reject the plaintiff by exercising jurisdiction under Order VII Rule 11 of the CPC Aggrieved by the rejection of the plaintiff as aforesaid,

the appellants preferred an appeal bearing Regular Civil Appeal No. 130 of 2023, which is also dismissed vide judgment and decree dated 16.03.2024. The present second appeal is preferred against the said concurrent decrees of rejection of plaint.

3. The learned senior advocate appearing for the appellants contends that since the entire sale consideration is not paid and the possession is also not delivered to the purchaser, the plaintiffs are entitled to the relief of cancellation of sale deeds sought in the plaint. He further contends that apart from cancellation of sale deed a prayer for restraining the defendants from disturbing possession of the plaintiffs over the suit property without following due process of law is also made in the plaint and in view of a positive statement in the plaint that the plaintiffs are in possession of the suit property, the suit was maintainable for the relief of injunction.

4. The contention of the learned senior advocate is that under Order VII Rule 11 of the CPC, the Court has to confine itself to the plaint averments. The application is required to be decided by reading the plaint averments only and taking them on their face value, assuming the same to be true and correct. The learned senior advocate contends that the learned Trial Court as also the learned First Appellate Court have

failed to adhere to this settled legal principle while rejecting the plaint and upholding the order of rejection of plaint respectively. The learned senior advocate points out that the prayer for perpetual injunction is not considered by the learned First Appellate Court and the learned Trial Court has erroneously held that since the suit was not maintainable for the main prayer of cancellation of sale deed, there was no cause of action for seeking other reliefs including relief of perpetual injunction that possession of plaintiffs should not be disturbed without following due process of law. He contends that the suit was maintainable for the prayer for injunction and plaint cannot be rejected in part.

5. The learned senior advocate urges that to the extent of prayer for injunction at least the suit was maintainable and further that since a plaint cannot be rejected in part, and therefore, the order rejecting the plaint as also the judgment dismissing the appeal arising therefrom is bad in law.

6. Per contra, Shri S. W. Mundhe, learned advocate for respondent No. 3/Bank supports the order of rejection of plaint which is confirmed in appeal stating that the pleadings in the plaint taken on their face value are not sufficient to surpass the statutory bar incorporated under Section 34 of the Securitisation and Reconstruction

of Financial Assets and Enforcement of Security Interest Act, 2002, hereinafter referred to as The SARFAESI Act for the purpose of brevity. He contends that the suit is filed in collusion with defendant nos. 1 and 2 in order to deprive defendant no. 3 of its right to recover the loan amount by enforcing the provisions of the SARFAESI Act, 2002. Learned counsel for defendant nos. 1 and 2 also contends that the plaint averments do not disclose cause of action and the suit is barred by law.

7. The learned advocates for the respondent nos. 2 and 3 also justify the order impugned and contend that it does not warrant interference.

8. During the course of hearing when the questions which arise for consideration were disclosed to the learned advocates representing the parties, they made a statement that they are ready to argue the questions finally and requested that the questions may be framed be decided finally without admitting the appeal.

9. Heard finally with the consent of the parties on the following substantial questions of law:

I) Whether the suit is maintainable against the defendant nos. 1 and 2 with respect to the prayer for perpetual injunction restraining against taking possession without following due process of law ?

II) Whether a plaint can be rejected against one of the defendants in the suit and whether such rejection will be rejection of plaint in part or complete rejection of the plaint qua a particular defendant ?

III) Whether prayers for cancellation of sale deed, declaration of ownership and injunction against creation of third party interests can be summarily rejected on the basis of plaint averments, while permitting the suit to proceed for adjudication of the prayer for perpetual injunction that possession of plaintiffs should not be disturbed without following due process of law ?

10. As regards merits of the matter pertaining to challenge to the sale deed, perusal of the plaint averments demonstrate that the fact of execution of the sale deed and registration thereof is not in dispute. It is rather admitted. Receipt of some part of the sale consideration is also

expressly admitted. It is the case of the plaintiff as per the plaint averments that since the entire sale consideration is not paid by the purchaser/defendant no. 1, the sale transaction in his favour is liable to be cancelled. The plaintiff also contends that possession of the suit property is not delivered by him and therefore the sale transaction is incomplete.

11. The term sale is defined under Section 54 to mean transfer of property for consideration paid or consideration promised or consideration partly paid and partly promised. The provision does not contemplate that sale transaction shall be complete only on payment of entire sale consideration. The transfer of property is complete, the moment the sale deed executed is duly registered in accordance with law. The consequence of failure on the part of the purchaser to make payment of entire agreed sale consideration does not ipso facto result in cancellation of sale.

12. In the case of *Dahiben -versus- Arvinbhai Kalyanji Bhanushali (D) thr. L.R.s.*¹. It is held that non-payment of part of sale consideration does not affect validity of the sale. It is further held that once the ownership in the property gets transferred in favour of the purchaser on registration of sale deed, the sale transaction does not

¹(2020) 7 SCC 366

(This order is corrected by order dated 19.06.2025)

stand at naught only because part of agreed sale consideration is not paid. In that view of the matter, it is held that merely because part of consideration is not paid, a sale is not rendered bad and therefore, non-payment of sale consideration is not a ground for setting aside sale. In that view of the matter, it is held that allegations by the plaintiffs that sale consideration is not paid by the defendant to them, will not offer cause of action for filing a suit for cancellation of sale.

13. In the aforesaid matter of *Dahiben* (supra), the plaintiff had sold the suit property to defendant no. 1 on 02.07.2009. The defendant no. 1 had in turn sold the same to defendant nos. 2 and 3 vide sale deed dated 01.04.2013. Thereafter, on 15.12.2014, the suit was filed for cancellation of sale deed on the ground that entire sale consideration was not paid by defendant no. 1 to the plaintiff. In these set of facts an application under Order VII Rule 11 of the CPC was filed seeking rejection of plaint on two counts; (i) that there was no cause of action for seeking cancellation of sale deed and (ii) the suit was barred by limitation.

14. The plaint was rejected and the order of rejection of plaint was confirmed by the High Court in appeal. In this backdrop, the original plaintiff approached the Hon'ble Supreme Court. The Hon'ble Supreme

Court has confirmed the judgment holding that the non-payment of sale consideration does not offer cause of action for seeking relief of cancellation of sale deed. In this context, the term 'cause of action' is explained in paragraph 24 of the judgment as aforesaid. The Hon'ble Supreme Court has also extensively dealt with the scope of Order VII Rule 11 of the CPC which enables a Court to reject a plaint without entertaining it for trial. It is held that the object of the provision is to ensure that a plaintiff does not necessarily protract a suit which is not maintainable in law.

15. As regards judgment in the matter of **Kewal Krishan Vs. Rajesh Kumar and others etc²**, on which reliance is placed by the applicants, perusal of the judgment will demonstrate that in the said matter, one Kewal Kumar had executed power of attorney in favour of one Sudarshan Kumar, who had sold the suit properties to his son and wife. The suit was dismissed by the Trial Court holding that said Sudarshan Kumar was owner of the suit properties. The learned First Appellate Court partly allowed the appeal. As regards the sale deed executed by Sudarshan Kumar in favour of his son and wife, it was held that there was no evidence to demonstrate payment of sale consideration and as such, sale deeds were void being without consideration. However, Second Appeal preferred by defendants was allowed. Thereafter, the

² AIR 2022 SC 564

(This order is corrected by order dated 19.06.2025)

matter went before the Hon'ble Supreme Court. In this context, it is held that a sale has to be for a price, either paid or payable in future and partly paid and partly payable in future. It is held that a sale without price is void. The relevant portion from the judgment of the Hon'ble Supreme Court is reproduced for ready reference :-

"Hence, a sale of an immovable property has to be for a price. The price may be payable in future. It may be partly paid and the remaining part can be made payable in future. The payment of price is an essential part of a sale covered by Section 54 of the TP Act. If a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. It is of no legal effect. Therefore, such a sale will be void. It will not effect the transfer of the immovable property."

16. In view of the aforesaid legal position as summarized by the Hon'ble Supreme court following conclusions are drawn in paragraph no.16 of the judgment :-

"No evidence was adduced by Sudarshan Kumar about the payment of the price mentioned in the sale deeds as well as the earning capacity at the relevant time of his wife and minor sons. Hence, the sale deeds will have to be held as void being executed without consideration. Hence, the sale deeds did not affect in any manner one half share of the Appellant in the suit properties. In fact, such a transaction

made by Sudarshan Kumar of selling the suit properties on the basis of the power of attorney of the Appellant to his own wife and minor sons is a sham transaction. Thus, the sale deeds of 10th April 1981 will not confer any right, title and interest on Sudarshan Kumar's wife and children as the sale deeds will have to be ignored being void. It was not necessary for the Appellant to specifically claim a declaration as regards the sale deeds by way of amendment to the plaint. The reason being that there were specific pleadings in the plaints as originally filed that the sale deeds were void. A document which is void need not be challenged by claiming a declaration as the said plea can be set up and proved even in collateral proceedings."

17. In the present matter, the plaintiffs have clearly admitted in paragraph no.3 of the plaint that the sale deed dated 13.01.2017 executed by them in favour of defendant no.1 was for a consideration and that defendant no.1 had paid some amount to them in terms of the sale deed. It is stated that a part of sale consideration was to be paid after execution of sale deed for which postdated cheques were issued. It is further averred that because postdated cheques issued in terms of the sale deed were misplaced, fresh cheques were issued and a correction deed dated 13.09.2017 was executed mentioning the numbers of cheques issued by defendant no.1 in lieu of cheques issued under the sale deed. It is thereafter stated in paragraph no.4 of the plaint that at

the request of defendant no.1 cheques issued under the correction deed were not deposited for realization. It is averred that defendant no.1 has not paid the entire sale consideration. Thus, the facts of the present case have close resemblance with the facts of the matter of *Dahiben (supra)*. The averment that entire sale consideration is not received by the plaintiffs will not be a ground for cancellation of sale deed as has been held in the matter of *Dahiben (supra)*.

18. In a given case, a sale deed may be made conditional, subject to realization of the entire sale consideration, however, perusal of the sale deed in the case at hand does not indicate any such condition. Perusal of the sale deed does not indicate that the sale is made conditional subject to receipt of the entire sale consideration. The Learned Courts have rightly held that sale transaction shall not stand canceled merely on failure of the purchaser/defendant no. 1 to pay the sale consideration. The only right for available to the plaintiff vendor is to recover the balance sale consideration from the purchaser.

19. Both the learned Courts have correctly appreciated the legal position and have rightly rejected the challenge to the sale deed on account of failure on the part of the purchaser to make payment of the entire sale consideration. It is rightly held that a transaction of sale is complete upon execution and registration of the sale deed. Section 54 of

the Transfer of Property Act does not provide that payment of sale consideration is necessary for completing the transaction of sale.

20. Likewise delivery of demised property is not a condition for completion of sale transaction effected by way of a registered document. Perusal of section 54 of the Transfer of Property Act indicates that sale of immovable property having value of more than Rs.100/- has to be by way of registered instrument. As regards sale of immovable property having value less than Rs.100/- sale can either be by registered instrument or by delivery of the immovable property. Perusal of fourth paragraph of section 54 indicates that delivery of immovable takes place by granting possession. Thus when sale is effected by a registered document delivery of property i.e. placing the purchaser in possession of the property is not necessary to complete the sale transaction.

21. In that view of the matter, the contentions raised by the learned senior advocate for the appellants regarding the prayer for cancellation of sale deed do not give rise to any substantial question of law and are accordingly rejected.

Substantial Question of Law No.(I)

22. Having held that the suit is not maintainable with respect to the prayer for cancellation of sale deed, it needs to be examined as to

whether the suit will be maintainable for the other relief i.e. relief of perpetual injunction against dispossession without following due process of law. Perusal of plaint averments will indicate that according to the plaintiffs, they are in possession of the suit property. It is repeatedly averred that possession of suit property was not delivered and the plaintiffs are in possession of the same. Correctness or otherwise of this assertion cannot be decided at the stage of Order VII Rule 11. An application under Order VII Rule 11 is required to be decided on the basis of plaint averments assuming them to be true. In view of categorical statement in the plaint that the plaintiffs are in possession of the suit property and the defendant nos. 1 and 2 are trying to take possession thereof without following due process of law, it has to be examined as to whether, the suit will be maintainable for the said relief against the said defendant nos. 1 and 2.

23. Having regard to the plaint averments the plaintiff certainly claims to be in juridical possession of the suit property if not in lawful possession. The difference between the two is explained by the Hon'ble Supreme Court in the matter of **M.C. Chockalingam -versus- V. Manickavasagam**³. If the plaintiff proves that he has not delivered possession of the suit property despite execution of sale deed his suit for perpetual injunction will be maintainable in view of the settled legal

³ (1974) 1 SCC 48

(This order is corrected by order dated 19.06.2025)

principle that a person in settled possession of an immovable property cannot be dispossessed without due process of law. This legal principle is beyond any dispute. Apex Court judgement by the in the matter of **Rame Gowda -versus- M. Varadappa**⁴ can be mentioned for ready reference. It is necessary to reiterate that it is specific case of the plaintiff that although sale deed is executed in order to transfer the suit property physical possession of the same is not delivered.

24. Perusal of the order of rejection of the plaint passed by the learned Trial Court as also the judgment passed by the learned First Appellate Court will demonstrate that this material aspect has skipped the attention of both the learned Courts. The learned Trial Court has recorded that the main relief sought by the plaintiffs i.e. the prayer for cancellation of sale deed was barred and the plaintiffs had failed to make out any cause of action for seeking the said relief and on that basis the plaint is ordered to be rejected. The prayer for perpetual injunction is not considered by the learned First Appellate Court which has while dismissing the appeal not adverted to the said prayer and therefore has not dealt with it.

25. The learned Courts have erred in law in ignoring the settled legal principle that a person in settled possession of an immovable property cannot be dispossessed without following the due process of

⁴ (2004) 1 SCC 769

law by any person, including the true and lawful owner. The learned Courts ought to have held that in view of the plaint averments wherein the plaintiff claims to be in possession of the suit property, the suit filed by the plaintiff with respect to the prayer for perpetual injunction restraining dispossession without following the due process of law is maintainable against the defendant nos. 1 and 2.

26. It needs to be noted that there are another line of cases which hold that a trespasser cannot maintain a suit for perpetual injunction against the true owner of immovable property. However as per the plaint averments, the plaintiff has not forcibly entered or intruded upon the suit property. The pleadings indicate that because entire sale consideration is not received the plaintiff has not parted with possession and is still occupying the same. Having regard to the said pleadings it needs to be held that the plaintiffs suit for the prayer for perpetual injunction against dispossession without following due process of law is maintainable.

Substantial Question of Law No.(II)

27. As regards the defendant no.3, both the learned Courts have held that the suit is not maintainable against it. It is held that there is no cause of action against the defendant no.3 and the suit is also barred against it in view of SARFAESI Act, 2002. The findings are not

challenged on merits during the course of arguments before this Court. It is however contended that rejection of plaint against the defendant no.3 alone will not be permissible since it will amount to partial rejection.

28. It is well settled that a plaint cannot be rejected in part. However, in case whether a suit is filed against more than one defendant and the plaint does not disclose cause of action against one of the defendants and/or the suit is barred by law against one of the defendants, the plaint can be rejected against such defendant. Such rejection of plaint against one or more of the defendant while allowing the suit to be continued against other defendants cannot be said to be partial rejection of the plaint. The rejection is complete rejection of the plaint qua the defendant/s against whom the plaint is ordered to be rejected. Legal position in this regard is settled by a Division Bench judgment of this Court in the matter of *Sheela Ram Vidhani Vs. S. K. Trading Co.*⁵ The Division Bench has taken into consideration divergent views of the Hon'ble Supreme Court on this point. It has noticed the case of *the Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust*⁶ and *Madhav Prasad Aggarwal and Ors. Vs. Axis Bank Ltd. And Ors.*⁷ and *Sejal Glass Ltd. Vs.*

5 2021 5 BCR 409

6 (2012) 8 SCC 706

7 (2019) 7 SCC 158

(This order is corrected by order dated 19.06.2025)

*Navilan Merchants Pvt. Ltd.*⁸ and held that the earlier view in the matter of **Church of Christ** (supra) where the Hon'ble Supreme Court has held that in case where a plaint is to be rejected against some of the defendants, while allowing the suit to proceed against other defendants, the order of rejection of plaint cannot be termed to be an order of partial rejection of plaint. It is held that such order of rejection of plaint is an order of complete rejection of plaint although only against some of the defendants. With respect to the contrary view in the matters of *Sejal Glass Ltd. & Madhav Prasad Aggarwal* (supra) that the order of rejection of plaint against some of the defendants is an order of partial rejection of plaint which is not permitted under Civil Procedure Code, the Division Bench has held that the earlier view in the matter of *the Church of Christ Charitable Trust and Educational Charitable Society* (supra) will have to be followed. Accordingly, it is laid down that rejection of plaint against some of the defendants only while allowing the suit to proceed against other defendants is not an order of partial rejection of plaint.

29. Same view is taken in another Single Bench judgment of this Court in the matter of **Chetana Shankar Manapure -versus- Bandu Tanaji Barapatre**⁹. This judgement also takes into consideration the aforesaid three decisions of the Hon'ble Supreme Court.

⁸ (2018) 11 SCC 780

⁹ 2020 (4) MhLJ 481

(This order is corrected by order dated 19.06.2025)

30. In view of the aforesaid rejection of plaint against the defendant no.3 alone will not amount to partial rejection of plaint, but complete rejection against defendant no. 3. The decrees impugned in the appeal do not warrant any interference to the extent of rejection of plaint against the defendant no.3.

Substantial Question of Law No.(III)

31. On one hand the plaint does not demonstrate cause of action as regards right to claim relief with respect to prayers for cancellation of sale deed, declaration of ownership and injunction against creation of third party interest and on the other hand if the plaintiff proves that he is in possession of the suit property as alleged in the plaint then, decree for perpetual injunction against forcible dispossession may follow in view of the settled legal position that a person in settled/juridical possession over immovable property cannot be disturbed without following due process of law by any person including the true owner.

32. Now, it needs to be decided as to whether the suit can be allowed to be continued against defendant nos. 1 and 2 with respect to the prayer for cancellation of sale deed declaration of ownership and injunction against creation of third party interest as well although it is

absolutely clear that the plaintiff does not have any right to seek the said reliefs.

33. It is also settled that when it comes to authority of Civil Court to pass orders that are necessary to meet the ends of justice, it is well settled that a Civil Court should not look for any enabling provision to pass order, rather unless there is an express bar, the Civil Court can always pass such order as is deemed fit and proper to meet the exigencies of a particular situation.

34. The Hon'ble Supreme Court has held in the matter of ***Ram Sukh Vs. Dinesh Aggarwal***¹⁰ that it is duty of every Court to weed out meaningless litigation, which is otherwise bound to prove abortive and that such cases should not be permitted to occupy judicial time of Courts. The relevant observations in paragraph 18 are quoted for ready reference.

“ Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order VI Rule 16 and Order VII Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is

¹⁰ (2009) 10 SCC 541

(This order is corrected by order dated 19.06.2025)

likely to inhibit the elected representative of the people in the discharge of his public duties for which the Electorate have reposed confidence in him. The submission, therefore, must fail"

Although, the observations are made in a matter under Representation of the People Act, nonetheless it is categorically held that this principle is applicable to civil suits as well.

35. In the matter of ***K. Akbar Ali Vs. K. Umar Khan and Ors.***¹¹, the Hon'ble Supreme Court has held that Order VII Rule 11 of the Civil Procedure Code is not exhaustive of the situations in which plaints can be rejected. It is observed that every Civil Court has inherent power to ensure that frivolous and vexatious litigation are not allowed to consume time of Court.

36. The Hon'ble Supreme Court has in matter of ***Shipping Corporation of India Ltd. vs. Machado Brothers and Ors.***¹² held that when due to subsequent events a suit which was maintainable while it was filed becomes infructuous, it is duty of the Court to dispose off the suit as such. Relevant observations in paragraph no.25 are reproduced for ready reference :-

"25. Thus it is clear that by the subsequent event if the original proceeding has become infructuous, ex debito justitiae, it will be the duty of the court to take such action

¹¹ (2021) 14 SCC 51

¹² 2004(11) SCC 168

(This order is corrected by order dated 19.06.2025)

as is necessary in the interest of justice which includes disposing of infructuous litigation. For the said purpose it will be open to the parties concerned to make an application under Section 151 of CPC to bring to the notice of the court the facts and circumstances which have made the pending litigation infructuous. Of course, when such an application is made, the court will enquire into the alleged facts and circumstances to find out whether the pending litigation has in fact become infructuous or not."

37. The Hon'ble Supreme Court in the matter of ***Dnyandeo Sabaji Naik and Ors. Vs. Pradnya Prakash Khadekar and Ors.***¹³ has in paragraph 14 held as under :-

"14. Courts across the legal system-this Court not being an exception - are choked with litigation. Frivolous and groundless filings constitute a serious menace to the administration of justice. They consume time and clog the infrastructure. Productive resources which should be deployed in the handling of genuine causes are dissipated in attending to cases filed only to benefit from delay, by prolonging dead issues and pursuing worthless causes."

"..... Otherwise, the doors would be shut to legitimate causes simply by the weight of undeserving cases which flood the system. Such a situation cannot be allowed to come to pass. Hence it is not merely a matter of discretion but a duty and obligation cast upon all courts to ensure that the legal system is not exploited by those who use the forms

¹³ (2017) 5 SCC 496

(This order is corrected by order dated 19.06.2025)

of the law to defeat or delay justice. We commend all courts to deal with frivolous filings in the same manner."

38. It will be appropriate to refer to the judgment in the matter of ***Ashok Kumar Kalra vs. Surendra Agnihotri and Ors.***¹⁴, wherein the Hon'ble Supreme Court has held that provisions of procedural law should not be interpreted in a manner that will leave the Court helpless in dealing with a particular situation. It is held that a Civil Court is vested with vast discretion while dealing with procedural elements of a civil suit. The Hon'ble Supreme Court has observed that law of procedure should function as a servant for the cause of justice and not as a tyrant to create obstructions in administration of justice.

39. Although, plaint cannot be rejected in part, having regard to the judgments above, it is also duty of the Court to keep meritless litigation at bay. In view of the peculiar situation that has arisen, it will be apposite to refer to Order XII Rule 6 of the Code of Civil Procedure, which reads as under :-

*"Order XII Rule 6 : **Judgment on admissions.** (1) Where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties,*

¹⁴ (2020) 2 SCC 394

(This order is corrected by order dated 19.06.2025)

make such order or give such judgment as it may think fit, having regard to such admissions.

(2) Whenever a judgment is pronounced under sub-rule (1), a decree shall be drawn up in accordance with the judgment and the decree shall bear the date on which the judgment was pronounced."

40. Perusal of the provision will indicate that based on admission of a party either in pleading or otherwise, the Court can at any stage of suit, either on a application by any party, or on its own motion make appropriate order or pass such judgment as may be deemed appropriate in the light of admission/s. Perusal of the provision will further indicate that either the entire suit can be disposed of based on admissions or even if part of it can be decided based on the admissions, the remaining to be decided by following prescribed procedure for trial of suit. The power can be exercised either to decree the suit or dismiss the same. The decree passed in favour of plaintiffs or dismissal of suit, need not be in its entirety. Some claims can be decreed or dismissed based on admissions whereas for the remaining part of claim, the suit can be adjudicated by following the procedure prescribed for trial. It, however, must be noted that in order to deliver a judgment or pass an order under the said provision, the admission should be clear, unequivocal and explicit.

41. The scheme of Order XII rule 6 is that a case in its entirety or a part of it can be decided on the basis of admission. The Court can invoke the provision either on an application by a party or on its own motion. The power can be exercised either in favour of plaintiff or in favour of defendant. On the basis of admission, the Court may pass a judgment followed by decree or even an order. The provision contemplates passing of judgment and order both. Likewise, order or judgment on admission can be passed with respect to the entire case or a part of it.

42. In relations to the said provision, the Hon'ble Supreme Court in the matter of ***Uttam Singh Duggal & Co. Ltd. V. United Bank of India***¹⁵ has observed as under :-

"As to the object of the Order XII Rule 6, we need not say anything more than what the Legislature itself has said when the said provision came to be amended. In the objects and reasons set out while amending the said rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled." We should not unduly narrow down the meaning of this Rule as the

¹⁵ 2000(7) SCC 120

(This order is corrected by order dated 19.06.2025)

object is to enable a party to obtain speedy judgment." Where other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which, it is impossible for the party making such admission to succeed."

43. In the present case, the plaintiffs have admitted in the pleadings itself that he has executed the sale deed in favour of defendant no.1. The plaintiffs challenged the sale deed only on the ground that the entire consideration is not received and possession of the suit property is not delivered to defendant no.1 - purchaser. Both these grounds as noted above are not valid grounds to dislodge a sale transaction. Apart from this, no other ground is raised in order to assail the impugned sale deed. In view of clear and explicit admission in the pleadings itself regarding receipt of part sale consideration, coupled with the fact that the sale is sought to be impugned only on ground that entire sale consideration is not received and possession is not delivered, which are held to be not valid grounds to challenge the sale, no triable issue arises for consideration taking the plaint averments on their face value. The prayers regarding cancellation of sale deed and declaration of ownership are liable to be rejected in view of admissions regarding valid execution and registration of sale deed and receipt of part sale consideration as per Order XII Rule 6 of the C.P.C.

44. It must be mentioned that although, the application was filed under Order VII Rule 11, it is well settled that even if order is passed by placing reliance on a particular provision, which is not attracted and the authority to pass an order can be traced to some other provision, mentioning of incorrect provision in the order by itself will not affect the validity of the order. In the present case, the learned Courts have passed order rejecting the plaint placing reliance on Order VII Rule 11 of the C.P.C. As noted above, the plaint could not have been rejected with respect to prayer for perpetual injunction relating to possession. However, it is rightly held that plaintiff is not entitled to other prayers in the plaint. Having regard to the purport of Order XII Rule 6, in the facts of the present case, the said provision can be invoked to sustain the order with respect to prayers for cancellation of sale deed, declaration of ownership and injunction against creation of third party interest. Adopting such a course will subserve the needs of justice.

45. It must also be mentioned that order for rejection of plaint is required to be passed taking the plaint averments on their face value. Defence of defendants cannot be looked into while dealing with an application under Order VII Rule 11. Order XII Rule 6 is a wider provision under which apart from admissions in pleadings, other

admissions can also be taken into consideration. However, in the present case, the Court is placing reliance solely upon the plaint averments to invoke Order XII Rule 6, which has been done by both the learned Courts. In that view of the matter, no prejudice will be caused to either parties only because reference is made to another provision than the one on which the reliance was placed before the learned Courts below.

46. As regards the nature of admission, the admission is in the plaint. It is well settled that admissions made in the pleadings are completely binding on the parties and that they stand on a higher pedestal as compared to evidentiary admission. Evidentiary admissions can be explained. However, admissions in pleadings are completely binding on the parties since they are foundation of the claim. Reference in support of the above can be have to judgment of the Hon'ble Supreme Court in the matter of *Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and others*¹⁶.

47. Therefore, no prejudice is caused to the applicants only because part of the order impugned is maintained placing reliance on a provision which was not invoked before the learned Courts.

¹⁶ AIR 1974 SC 471

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48. Thus, it is duty of every Court to ensure that litigation without cause of action is nipped in the bud. Such litigation should not be allowed to consume judicial time of the Court. In the present case, the plaintiffs have failed to make out any cause of action qua prayers for cancellation of sale deed and declaration of ownership. At the same time, cause of action is established with respect to relief of injunction against forcible dispossession. It is apparent that in the event the plaintiffs are allowed to prosecute the entire suit, unnecessarily time would be wasted in recording evidence and hearing arguments of respective parties on the point of payment of balance sale consideration, non-payment of which is a ground for challenging the sale deed. Even if, the plaintiffs succeed in proving that entire sale consideration was not paid, they will not be entitled to relief of cancellation of sale deed in the light of several judgments of the Hon'ble Supreme Court on the point. It will be therefore expedient to allow the suit to proceed only with respect to prayer for injunction while maintaining the order with respect to other prayers.

49. In that view of the matter, the Second Appeal is partly allowed in the following terms:-

ORDER

i) The order of rejection of plaint is maintained against defendant no.3.

ii) The suit shall proceed against defendant nos. 1 and 2 only with respect to the prayer for perpetual injunction restraining forcible dispossession and not with respect to the prayer for cancellation of sale deed, declaration of ownership and prayer for injunction restraining defendant from creation of third party interest over suit property.

iii) Parties to bear own costs.

50. The civil application, if any, stands disposed of.

[ROHIT W. JOSHI]
JUDGE

komal kamble/