

Swapnil

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 6435 OF 2025
IN
COMMERCIAL SUIT NO. 117 OF 2021**

Ganesh Lakhaji Chudasama ...Applicant
(Org. defendant no.7)

IN THE MATTER BETWEEN

Geekay Enterprises

A registered partnership firm, registered
under the provisions of the Indian
Partnership Act, 1932 under Registration
No. MU000017811, having its registered
address at B-110, Shreyas Industrial Estate,
Off. Western Express Highway, Goregaon
(East) Mumbai-400 063..

...Plaintiff

VERSUS

1. Ganesh Builders

A partnership firm, having its
address at shop nos. 2/3, Supriya
Heights, Opp. Municipal School,
P. K. Road, Mulund (West)
Mumbai – 400 80.

2. Jiten Shantilal Motta

Aged : Not Known, Occ : Business
Partner of M/s. Ganesh Builders

Having its address at shop nos. 2/3,
Supriya Heights, Opp. Municipal
School, P. K. Road, Mulund (West)
Mumbai – 400 80.

3. Dhanlaxmi Shantilal Motta
Aged : Not Known, Occ : Business
Partner of M/s. Ganesh Builders
Having its address at shop nos. 2/3,
Supriya Heights, Opp. Municipal
School, P. K. Road, Mulund (West)
Mumbai – 400 80.

4. Shantilal Shivaji Motta (HUF)
Aged : Not Known, Occ : Business
Partner of M/s. Ganesh Builders
Having its address at shop nos. 2/3,
Supriya Heights, Opp. Municipal
School, P. K. Road, Mulund (West)
Mumbai – 400 80.

5. Girish Shantilal Motta
Aged : Not Known, Occ : Business
Partner of M/s. Ganesh Builders
Having its address at shop nos. 2/3,
Supriya Heights, Opp. Municipal
School, P. K. Road, Mulund (West)
Mumbai – 400 080.

6. Jigar Premchand Motta
Aged : Not Known, Occ : Business
Partner of M/s. Ganesh Builders
Having its address at shop nos. 2/3,
Supriya Heights, Opp. Municipal
School, P. K. Road, Mulund (West)
Mumbai – 400 080.
7. Ganesh Lakhaji Chudasama
Aged : Not Known, Occ : Business
Partner of M/s. Ganesh Builders
Having its address Laxman Baug,
Darga Road, Mulund (West)
Mumbai – 400 082.
8. Bhagwandas Lakhaji Chudasama
Aged : Not Known, Occ : Not Known
having address at Sai Ganesh Hotel,
Near Railway Station, Nashik Highway,
Aatgaon-421 601.
9. Prabhavati Harikishan Bamania
Aged : Not Known, Occ : Not Known
having address at Sai Ganesh Hotel,
Near Railway Station, Nashik Highway,
Aatgaon-421 601.
10. Maganlal Laxman Chudasama
Aged : Not Known, Occ : Business

having address at Laxman Baug,
Darga Road, Mulund (West),
Mumbai – 400 082

11. Ratanbai Maganlal Chudasama
Aged : Not Known, Occ : Not Known
having address at Laxman Baug,
Darga Road, Mulund (West),
Mumbai – 400 082.

12. Jagdish Maganlal Chudasama
Aged : Not Known, Occ : Not Known
having address at Laxman Baug,
Darga Road, Mulund (West),
Mumbai – 400 082.

13. Damyanti Maganlal Chudasama
Aged : Not Known, Occ : Not Known
having address at Laxman Baug,
Darga Road, Mulund (West),
Mumbai – 400 082.

14. Pushpa Maganlal Chudasama
Aged : Not Known, Occ : Not Known
having address at Laxman Baug,
Darga Road, Mulund (West),
Mumbai – 400 082.

15. Narayan Laxman Chudasama
Aged : Not Known, Occ : Not Known
having address at Laxman Baug,
Darga Road, Mulund (West),
Mumbai – 400 082.
16. Bhupendra Narayan Chudasama
Aged : Not Known, Occ : Not Known
having address at Laxman Baug,
Darga Road, Mulund (West),
Mumbai – 400 082.
17. Rita Narayan Chudasama
Aged : Not Known, Occ : Not Known
having address at Laxman Baug,
Darga Road, Mulund (West),
Mumbai – 400 082.
18. Haridas Laxman Chudasama
Aged : Not Known, Occ : Not Known
having address at Laxman Baug,
Darga Road, Mulund (West),
Mumbai – 400 082.
19. Mahendra Haridas Chudasama
Aged : Not Known, Occ : Not Known
having address at Laxman Baug,
Darga Road, Mulund (West),

Mumbai – 400 082.

20. Mangla Haridas Chudasama
Aged : Not Known, Occ : Not Known
having address at Laxman Baug,
Darga Road, Mulund (West),
Mumbai – 400 082.

21. Pushpa Haridas Chudasama
Aged : Not Known, Occ : Not Known
having address at Laxman Baug,
Darga Road, Mulund (West),
Mumbai – 400 082.

22. Nayan Singh Laxman Chudasama
Aged : Not Known, Occ : Not Known
having address at Laxman Baug,
Darga Road, Mulund (West),
Mumbai – 400 082.

23. Nanibai Nayan Singh
Aged : Not Known, Occ : Not Known
having address at Laxman Baug,
Darga Road, Mulund (West),
Mumbai – 400 082.

24. Manoj Nayan Singh Chudasama
Aged : Not Known, Occ : Not Known

having address at Laxman Baug,
Darga Road, Mulund (West),
Mumbai – 400 082.

25. Rajesh Nayan Singh Chudasama
Aged : Not Known, Occ : Not Known
having address at Laxman Baug,
Darga Road, Mulund (West),
Mumbai – 400 082.
26. Lilaben Laxman Chudasama, Alias
Gangabai Chagan Solanki,
Aged : Not Known, Occ : Not Known
having address at Sadhuseth Chawl, Kol
Dongri Lane No.1, Sahar Road, Andheri
(East), Mumbai – 400 069.
27. Pasibai Laxman Chudasama Alias,
Bacchubai Arjun Brahmania,
Aged : Not Known, Occ : Not Known
having address at Sadhuseth Chawl, Kol
Dongri Lane No.1, Sahar Road, Andheri
(East), Mumbai – 400 069.
28. Hiraben Satishchandra Vaje
Aged : Not Known, Occ : Not Known
having address at Ratanbai Building,
Mograwadi, Rattan Nagar, Andheri (West),
Mumbai – 400 069.

29. Parvatiben Ramshi Solanki

Aged : Not Known, Occ : Not Known

having address at Mahalaxmi Temple,

Bhulabhai Desai Road, Tardeo,

Mumbai- 400 034.

...Defendants

Mr. Sohaib Memon a/w. Ibrahim Memon for the Plaintiff.

Mr. Mayur Khandeparkar a/w. Vikramjit Singh Garewal a/w.

Dhawani Bokaria a/w. Priyank Chudasama i/b. M/s.

Purnanand & Co. for defendant no.7.

CORAM : GAURI GODSE J

RESERVED ON: 9th DECEMBER 2025

PRONOUNCED ON: 20th APRIL 2026

JUDGMENT:

1. This application is filed by defendant no. 7 praying for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 ("CPC") on the ground that the suit is barred by law, and there is no cause of action.

2. The suit is filed seeking a declaration that the plaintiffs are in possession and entitled to develop the suit property under the Development Agreement dated 28th October 1997. The plaintiffs also prayed to direct defendant nos. 1 to 6 to

pay to the plaintiffs an amount of Rs. 6,00,000/- received by them under the said agreement with interest, damages for loss of earnings in the amount of Rs. 75,60,00,000/-, with interest thereon from 29th April 2004, aggregating to Rs. 3,08,07,00,000/-, as per the particulars of claim annexed to the plaint and direction to defendant nos. 1 to 6 to pay to the plaintiffs the amount of Rs. 50,00,000/- with further interest thereon @ 18% per annum from filing of the suit till recovery being the amount spent by the plaintiffs for construction of the building described in the plaint. The plaintiffs have also prayed for an injunction restraining the defendants from entering into any development agreement, creating any third-party interests in respect of the suit property, or carrying out any construction activity on the suit property.

SUBMISSIONS ON BEHALF OF DEFENDANT NO. 7:

3. The suit is barred by the law of limitation, and there is no cause of action. Learned counsel for the plaintiff submitted that when, on the plain reading, it is seen that the suit is barred by limitation, the plaint must be rejected at the threshold. To support these submissions, he relied upon the decisions in ***Raghwendra Sharan Singh v. Ram Prasanna***

Singh¹, and Mukund Bhavan Trust and Ors v. Shrimant Chhatrapati Udyan Raje P M Bhonsle and Anr².

4. Admittedly, in the year 2010 itself, the plaintiffs had knowledge about the judgment dated 21st April 2010 in Suit No. 2257 of 2004 restraining defendant no.1 herein from dispossessing defendant no. 7 from the suit property. Therefore, the suit ought to have been filed before 2014. Admittedly, the plaintiffs are claiming through defendant no.1 and therefore, the said judgment and decree is binding on the plaintiffs. Therefore, the cause of action arose way back in 2010. The plaintiffs ought to have filed a suit for such a declaration within three years from the date when the right to sue first accrued, as per Article 58 of the Limitation Act. Considering the plaintiffs' money claim, it is clearly barred by the law of limitation. As the cause of action for return of money and damages is for breach of the development agreement dated 28th October 1997, the plaintiffs ought to have filed suit for return of consideration under said Agreement within 3 years from the date of the failure, as per Article 47 of the Limitation Act. Hence, the suit is barred by the law of limitation. To support these submissions, learned

¹ (2020) 6 SCC 601.

² (2024) 15 SCC 675.

counsel for defendant no. 7 relied upon the decision of this court in ***Rewas Ports Ltd v. Rohan Developers Pvt. Limited***³.

5. The plaintiff pleaded in paragraph 4 of the plaint that the plaintiff paid to defendant nos.1 to 6 a sum of Rs.6,00,000/- as on 28th October 1997. Therefore, the cause of action in respect of the prayer for return of money arose prior to the 2004 when defendant. 7 terminated the agreement dated 25th February 1982, as recorded in the Notice dated 23rd April 2004. The plaintiff is seeking damages and compensation for breach of said purported development agreement dated 28th October 1997. Hence, the plaintiff ought to have filed the suit seeking payment of damages and compensation within three years from the date on which the breach occurred, in view of Article 55 of the Limitation Act. The plaintiff filed a first appeal challenging the said decree in Suit No. 2257 of 2004 in 2016. Therefore, even if 2016 is considered as the date of cause of action, the suit is expressly barred by the law of limitation under Article 55. To support these submissions, learned counsel for defendant no. 7 relied upon the decision of Kerala High Court in ***Delta***

³ 2016 SCC Online Bom 3900

Foundation and Construction, Kochi & Ors. v. Kerala State Construction, Corporation Limited⁴ and the decision of the Apex Court in ***Thomas Mathew v. Construction Engineer, K.L.D.C. Limited***⁵.

6. The plaintiff is claiming right through defendant no.1. The agreement dated 25th February 1982 between defendant no.1 and defendant no.7, was validly terminated by the defendant no.7, which was never challenged by the defendant no.1. When there was an attempt to trespass upon the said property of defendant no. 7, the said Suit No. 2257 of 2004 was filed which was decreed on 21st April 2010 and accordingly plaintiff got knowledge of the said decree two months thereafter. However, according to the plaintiff, defendant no.1 assured the plaintiff that they would file an appeal and contest the matter. Admittedly, the plaintiff is claiming through and under defendant no.1, and the said judgment and decree were within the knowledge of the plaintiffs and the same was also challenged by the plaintiff by filing First Appeal (L) No. 11775 of 2016, which was dismissed in default. Therefore, the said judgment and decree are binding on the plaintiffs.

⁴ 2003 SCC OnLine Ker 19

⁵ (2018) 12 SCC 560

7. Learned counsel for defendant no. 7 submitted that the substantial relief for the declaration made by the plaintiff must be considered for the issue of limitation, and the consequential relief would not be relevant for the limitation issue. To support these submissions, he relied on the decisions of the Apex Court in ***Rajpal Singh v. Saroj Through Legal Representatives and Anr***⁶ and ***Padhiyar Pralhadji Chenaji v. Maniben Jagmal Bhai***⁷.

8. The issues pertaining to the right, title and interest of defendant no. 7 have been determined in the earlier suit, which does not give a sustainable cause of action to the plaintiff. Hence, there is no cause of action for the plaintiff to file the present suit.

9. The plaintiff has contended in paragraph 9 of the plaint that the plaintiff has a continuous cause of action. However, this Court has held that non-performance of a party's obligation under the contract cannot be said to constitute a continuous breach, so that a fresh period of limitation can be said to begin at every moment during which the breach continues. Once a limitation begins to run, it runs its full

⁶ (2020) 15 SCC 260.

⁷ (2022) 12 SCC 128.

course. To support these submissions, learned counsel for defendant no. 7 relied upon the decision of this court in ***Khodiyar Enterprises v. Prataprai Vasa***⁸.

10. The pleadings on the continuous cause of action are a result of clever drafting. Therefore, the cause of action pleaded is not a genuine and real cause of action. To support his submissions learned counsel for defendant no. 7 relied upon the decisions of the Apex Court in ***N. V. Srinavasa Murthy and Ors v. Mariyamma (Dead) by Proposed Lrs and Ors***⁹ and ***State of Punjab V. Bhagwantlal Singh***¹⁰

11. Therefore, the plaintiffs have no real and meaningful cause of action to maintain the present suit. The cause of action for a declaration based on the 1997 agreement is barred by limitation under Article 58 of the Limitation Act. The prayer for the return of the amount based on the terms and conditions of the 1997 agreement is barred by limitation under Article 47 of the Limitation Act. The claim for damages in prayer clause 'C' and the prayer for refund of money in prayer clause 'D' are barred by limitation under Article 55 of

⁸ 2025 SCC OnLine Bom 1067.

⁹ (2005) 5 SCC 548.

¹⁰ (2024) 15 SCC 139.

the Limitation Act. Hence, the plaint deserves to be rejected at the threshold under Order VII Rule 11 (a) and (d) of the CPC.

SUBMISSIONS ON BEHALF OF THE PLAINTIFF:

12. Learned counsel for the plaintiff relied upon the exhaustive pleadings in the plaint to support the plaintiff's contentions on the rights claimed in respect of the disputed property. According to the learned counsel for the plaintiff, the agreement dated 28th October 1997 is not yet terminated; however, the plaintiff was unable to carry out any further construction in view of the prohibitory orders passed in the Suit No. 2257 of 2004. According to the learned counsel for the plaintiff, despite issuing further permissions in favour of the plaintiff, a collusive suit was filed only to deprive the plaintiff of the rights in respect of the suit property. The plaintiff filed a substantive first appeal in this court, and the same is pending. Even defendant nos. 1 to 4 have filed a separate first appeal before this court and the same has been admitted and is pending.

13. Learned counsel for the plaintiff submits that the entire action between the defendants inter se is collusive in nature;

hence the plaintiff has filed a separate first appeal raising grounds of challenge in reference to the collusive action of the defendants *inter se*. He submitted that despite the development agreement in favour of the plaintiff, they were continuously precluded by the defendants from carrying out further construction, and therefore there is a continuous cause of action and the period of limitation for seeking any of the relief in the suit has not started. Hence, the plaintiff would be entitled to lead evidence to support the contentions that there is a continuous breach of contract, and therefore a continuous cause of action, and the suit is within limitation.

14. Learned counsel for the plaintiff further submitted that in view of the substantive pleadings in the plaint and the supporting documents, the suit raises triable issues and therefore, it cannot be rejected at the threshold. To support his submissions, learned counsel for the plaintiff relied upon the decisions in ***Vinod Infra Developers Ltd. Vs Mahaveer Lunia***¹¹, and ***Ramesh Desai Vs Bipin Mehta***¹².

CONSIDERATION OF SUBMISSIONS AND ANALYSIS:

15. I have carefully perused the pleadings in the plaint and

¹¹ 2025 INSC 772

¹² 2006 (5) DVV 638.

the supporting documents. Considering the checkered history of the litigation and the source of rights claimed by the plaintiff, it is necessary to discuss the facts pleaded in the plaint in detail as they would be necessary for examining the objection on bar of limitation raised by defendant no. 7. The plaintiff is a registered partnership and claims to be in the business of construction and redevelopment of residential and commercial buildings. The plaintiff has pleaded that the suit property bearing Survey No. 88/1, City Survey Nos. 837, 838 and 839 (old nos. 467-465) Hissa Nos. 19 and 20, admeasuring 7260 square yards, equivalent to 6070.06 square meters, stood in the name of Mr Laxmanbhai Madan Chudasama.

16. By an Agreement for Sale dated 2nd August 1964 executed between Mr. Laxmanbhai Madan Chudasama, as the vendor and Mr. Prithviraj Singh, as the purchaser, the vendor agreed to sell to the said purchaser the suit property. As per the terms and conditions of the said agreement, Mr Prithviraj Singh was required to meet certain obligations, which were not performed, and therefore disputes arose between the said Mr Laxmanbhai Madan Chudasama and

the said Mr Prithviraj Singh in and around 11th April 1967.

17. It is further pleaded that the disputes thereafter were resolved and the said Mr Prithviraj Singh was placed in exclusive possession of the suit property in part performance of the contract. It is said that Mr Laxmanbhai Madan Chudasama passed away in Mumbai, leaving behind his sons and daughters as his legal heirs. Defendants Nos. 10, 15, 18 are his sons and defendant nos. 26, 27, 28 and 20 are his daughters. One of his sons, Mr Lakhaji Laxman Chudasama (now deceased), executed a Declaration dated 17th October 1967 and confirmed the said Agreement for Sale dated 2nd August 1964. Thereafter, one person, Mr Hansraj Thakersey, initiated an auction of the suit property in view of a deed of mortgage; however, Mr Prithviraj Singh took legal action and stopped the auction. Therefore, disputes arose between the said Mr Prithviraj Singh and the legal heirs of Mr Laxmanbhai Madan Chudasama and therefore, the said Mr Prithviraj Singh filed Suit No. 984 of 1972 in this court against the legal heirs of Mr Laxmanbhai Madan Chudasama, and the said Mr Hansraj Thakersey and others for specific performance of the contract.

18. In the said Suit No. 984 of 1972, the said Mr. Lakhaji Laxman Chudasama and the legal heirs of Mr. Laxmanbhai Madan Chudasama filed their written statement and contended that the said Mr. Hansraj Thakersey was not a mortgagee of the suit property; however, one Mrs. Santaben Kalidas Thosani was a mortgagee of the suit property, but, she was not made a party defendant to the said suit. The legal heirs of Mr Laxmanbhai Madan Chudasama inherited the suit property from their grandfather and further denied the transaction of sale and possession of the suit property being handed over to Mr Prithviraj Singh. Thereafter, the said Mr. Prithviraj Singh amended the plaint in Suit No. 984 of 1972 and therein added Mrs. Santaben Kalidas Thosani, Mr. Mahendra Kalidas Thosani, Mr. Pravinchandra Kalidas Thosani, Mr. Narendra Kalidas Thosani to the said Suit.

19. The defendant nos. 11 to 14, i.e. the said Thosani's, in the said Suit No. 984 of 1972, filed their written statement 1 and contended that the said Mr. Lakhaji Laxman Chudasama and others had sold and conveyed vide a registered deed of conveyance dated 11th January 1973, a plot of land admeasuring 1000 square yards of the suit property to them.

20. It is further pleaded that in the said written statement it came on record that by an agreement for sale dated 12th September 1972 the said Mr. Lakhaji Laxman Chudasama in his capacity as Karta and Manager of his joint family containing of himself, his wife Kamla (since deceased), his daughter Prabhavati, his sons Bhagwan and Ganesh had agreed to sell to the said Thosanis' out of the said property an area of 5000 square yards, however it was further contended in the written statement that the said Thosani's' were aware of the deed of mortgage dated 3rd April 1971 made between the said Mr. Lakhaji Laxman Chudasama (since deceased) and the said Mr. Hansraj Thakersey and that legal heirs of Mr. Laxmanbhai Madan Chudasama had also right in the suit property and therefore, on the basis of execution of various documents the said Thosanis paid to the said Mr. Hansraj Thakersey amounts and accordingly by a deed of transfer of mortgage dated 11th January 1973 and a Deed of Further Charge dated 11th January 1973 was executed between the parties and therefore, the entire suit property came to vest in the names of the said Thosanis.

21. Thereafter, the dispute in the said Suit No. 984 of 1972

was resolved and consent terms dated 25th February 1982 was entered into between all parties concerned in the said suit and all the agreements, mortgages and deeds as stated above came to rest and pursuant to the said Consent Terms an articles of agreement dated 25th February 1982 was entered into between the said Mr. Lakhaji Laxman Chudasama (since deceased) and his legal heirs referred to as the vendors of the one part and M/s. Ganesh Builders (i.e. the defendant no.1 herein), therein referred to as the purchaser, and the entire suit property was sought to be sold to the said M/s. Ganesh Builders (i.e. the defendant no.1 herein). As per the consent terms till the entire payment was made, defendant nos. 7 to 29 would have a charge on the suit property. It is pleaded by the plaintiffs that, as per the consent terms, the predecessor of defendant nos. 7 to 29 and all other defendants in the Suit No. 984 of 1972, have reconveyed and transferred all the right, title and interest in the suit property in favour of Mr Nemchand Shivaji Motta and Bipin Shivshanker, by accepting consideration from defendant no.1. The particulars of the payments made by cheques are pleaded in the plaint.

22. Thus, it is pleaded that pursuant to the consent terms,

an agreement dated 25th February 1982 was executed between Lakhaji Laxman Chaudasama, Kamlabai Lakhaji Chaudasama, and defendant nos. 7 to 29 as vendors and M/s Ganesh Builders, i.e. defendant no. 1 as purchaser. It is further pleaded that defendant nos. 1 to 4 constructed a building and entered into a development agreement dated 28th October 1997, with the plaintiff and accorded the right to further develop by utilising the balance FSI on the suit property and sell the flats to the prospective purchasers. Under the said development agreement, the plaintiffs paid Rs. 38 lakhs to defendant no. 1 as a lump sum consideration for the assignment of the development rights. It is further pleaded that defendant no.1 had put a condition to provide a flat admeasuring more than 600 square feet to Lakhaji Laxman Chaudasama. The plaintiffs accordingly constructed a building of ground +2 floors; however, in the middle, the construction was stopped. Sometime around 2002, the suit property was declared as a private forest and after a long litigation, the suit property was finally released from the private forest in accordance with the order passed by the Apex Court in Civil Appeal No. 1102 of 2014.

23. Thereafter, defendant nos. 7, 8 and 9 filed the collusive

suit, L.C. Suit No. 2257 of 2004, in the city civil court against defendant nos. 1 and 2, along with one Jagdish Patel as a sole proprietor of M/s Patel Associates. It is alleged in the said suit that Jagdish Patel, with the help of defendant no. 2 was trying to trespass and forcefully occupy the suit property of defendant nos. 7 to 9. In the said suit, fraudulent statements were made that they had terminated the agreement dated 25th February 1982 and had issued a notice dated 23rd April 2004. In the said suit, other allegations were made that since defendant nos. 7 to 9, had terminated the agreement dated 25th February 1982, defendant nos. 1 and 2, and Jagdish Patel, are not entitled to claim any rights based on the agreement dated 25th February 1982. It is further alleged in the said suit that if defendant no. 2 attempted to construct a building on the suit property, hence, by issuing notice the construction was stopped.

24. The plaintiffs pleaded that later on they found out that such a collusive suit had been filed, and it was decreed against defendants nos. 1 and 2 and Jagdish Patel, restraining them from trespassing on the suit property, excluding the portion of the cooperative society. By the said

decree, an injunction was passed to protect the possession of defendants nos. 7 to 9 without following the due process of law. In paragraph 3 (xxxiv) of the plaint, it is pleaded that the plaintiffs were not joined as parties in the L.C. Suit No. 2257 of 2004. However, after more than two months, when the plaintiff's partner found out about the judgment dated 21st April 2010, they confronted the partners of defendant no. 1, who had assured the plaintiff's partners that they were challenging the said decree. It is further stated that after a period of three months, defendant nos. 1, 2 and Jagdish Patel filed First Appeal along with an application for condonation of delay. However, it was dismissed for failure to remove office objections. The plaintiff has pleaded that, though the partners of defendant no. 1 had assured, they did not take steps to challenge the order passed.

25. The plaintiff further pleaded that after the Apex court passed orders regarding the release of the property as a private forest, the plaintiff filed a first appeal in this court. The plaintiffs further pleaded that defendant nos. 1 and 2 also filed a civil application to restore the first appeal. However, no further steps were taken. Hence, in such circumstances, it is

contended by the plaintiffs that the defendants nos. 1 to 6 would be under an obligation to return the amount paid by the plaintiff. It is thus the plaintiff's case that the agreement dated 28th October 1997 in their favour was never terminated, and therefore defendant nos. 1 to 6 would be under an obligation to return the amount and also make payment towards damages, as the plaintiff has spent huge amounts in carrying out the construction.

26. Thus, the main allegation of the plaintiff is that in a conclusive suit filed by the defendants nos. 7, 8 and 9 against defendants nos. 1, 2 and Jagdish Patel, the plaintiff's rights are sought to be defeated. It is the plaintiff's contention that since the agreement of 1997 in favour of the plaintiff is still subsisting, the plaintiff has a right to seek the relief claimed in the present suit. Thus, the plaintiff claims that there is no bar of the law of limitation as the plaintiff's agreement of 1997 is still valid and subsisting. Hence, the plaintiff has a continuous cause of action to seek the suit relief against the defendants.

27. Learned counsel for defendant no. 7 has mainly referred to paragraph 3 (xxxiv) of the plaint, where it is

contended that after a period of two months, the plaintiff learnt about the judgment in LC Suit No. 2257 of 2004. Hence, according to the learned counsel for defendant no. 7, after two months from the judgment dated 21st April 2010, the plaintiff had knowledge of the judgment passed in the said suit. Hence, the limitation period, based on the allegation that the suit was collusive, would start running from the end of two months from the judgment dated 21st April 2010. Therefore, according to defendant no. 7, the suit filed on 2nd June 2021 is barred by the law of limitation.

28. Hence, in the context of these pleadings and the objection raised by defendant no. 7, it is necessary to refer to the legal principles governing the law of limitation applicable to such a cause of action pleaded in the present suit.

29. In ***Raghwendra Sharan Singh***, a registered gift deed was executed by the original plaintiff in the year 1981. The suit filed by the plaintiff challenging the registered gift deed was filed after a period of approximately 22 years; hence, the defendant prayed for the rejection of the plaint on the ground that the suit was barred by the law of limitation under Article 59 of the Limitation Act. The plaintiff filed the suit for a

declaration that the defendant had acquired no title and possession of the said property on the basis of the deed of gift, and that the plaintiff has title and possession of the said property, and for a declaration that the gift deed was not binding upon the plaintiff. Not making a prayer to set aside the gift deed was a result of clever drafting, as such a prayer would be barred by limitation, considering Article 59 of the Limitation Act and, therefore, only a declaration was prayed to get out of the provisions of the Limitation Act. Hence, the plaint was rejected on the ground that the suit was barred by law.

30. In ***Mukund Bhavan Trust***, the suit was filed for a declaration that the plaintiff was an absolute owner of the land and for an injunction. The plaintiff also prayed for a declaration in 2008 to the effect that the compromise reached in the suits of 1951 and 1988 was null and void. The Apex Court, therefore, held that a claim based on a fictional cause of action with averments that are adverse, vague and baseless, is a result of clever drafting to create an illusory cause of action. It is therefore held that a suit with fictional dates created with respect to the cause of action was only to

overcome the bar of limitation. Hence, such a suit, filed based on an illusory cause of action, must be rejected at the threshold in view of the spirit and intention of Order VII Rule 11 (d) of the CPC.

31. In **Rewas Ports Ltd.**, this court was deciding a company petition seeking the winding up of the respondent on the ground that the company was unable to pay its debts. In view of the facts of that case, this court held that the period of limitation for recovery of money is three years from the date of the failure to pay, in light of the terms agreed between the parties. Hence, it was held that under Article 47 of the Limitation Act that provides for recovery of money paid upon an existing consideration, which afterwards fails, the limitation period would be three years from the date of such failure.

32. The observations of this Court in **Khodiyar Enterprises** on the provisions of Article 54 of the Limitation Act were in a first appeal arising out of a suit for specific performance decided after a full-fledged trial. Hence, the said decision is not relevant to deciding the controversy in the present case. In the decision of Kerala High Court, in **Delta**

Foundation, the suit was for the realisation of money for some work for which an agreement was entered into between the parties on 24th March 1987, but the work was terminated on 22nd April 1988. The suit was instituted on 7th November 1991, claiming damages. The High Court held that the starting point of limitation under Article 55 of the Limitation Act is when the contract is broken, or the breach in respect of which the suit is instituted occurs, and the period provided is three years. It was thus held that the moment breach occurs, time begins to run, and the starting point of limitation for suit for compensation for breach of contract is when the contract is broken. In the said case, the trial court held the suit barred by limitation after a full-fledged trial. The appeal filed against the Kerala High Court's decision was dismissed by the Apex Court. In **Thomas Mathew**, the view taken by the Kerala High Court is referred to with approval.

33. In the present case, the facts regarding the manner in which the title to the suit property or the right to develop has been transferred from one party to another and the decision in the suit filed by defendant nos. 7, 8 and 9 against defendant nos. 1 and 2 without impleading the plaintiff as a

party are pleaded in detail. Hence, at a preliminary stage, it would be difficult to ascertain the exact date for computing the period of limitation, as the contract in favour of the plaintiff is still existing according to the plaintiff. Hence, period of limitation cannot be computed at this stage on the ground that the contract is broken. Hence, in view of the exhaustive facts pleaded in the present case, a triable issue arises on the cause of action, and therefore, it is not possible to decide the issue of limitation at this preliminary stage.

34. The decision of the Apex Court in ***Rajpal Singh*** arises out of a suit decided after a full-fledged trial. The point of determination on the bar of limitation under Articles 59 and 65 was decided in a composite suit for cancellation of sale and for recovery of possession. It was therefore held that the prayer for cancellation of the sale deed was to be considered as the substantive relief for reckoning the period for limitation.

35. In ***Padhiyar Prahladi Chenaji***, the impugned judgment and order was passed by the High Court in a second appeal, by which the High Court had dismissed the appeal and confirmed the judgment and decree passed by

the trial court and the first appellate court, granting an injunction in favour of the plaintiff restraining the defendant from disturbing the possession of the plaintiff. It was held that once the suit is held to be barred by limitation qua the declaratory relief, the prayer for permanent injunction, which was a consequential relief, can also be said to be barred by limitation. It is further held that under normal circumstances, the relief of permanent injunction sought is a substantive relief, and the period of limitation would commence from the date on which the possession is sought to be disturbed, so long as the interference in possession continues. However, in the case of consequential relief, when the substantive relief of declaration is held to be barred by limitation, the said principle shall not be applicable. In the said case, the prayer for cancellation of sale deed and declaration was held to be barred by limitation under Article 58 of the Limitation Act.

36. In ***N. V. Srinivasa Murthy***, the Apex Court held that omitting to claim a relief warranted on the facts and claiming other relief to get around the bar of limitation is impermissible. In the facts of the said case, it was held that the foundation of the suit was that a registered sale of 1953

was, in fact, only a loan transaction executed to secure the amount borrowed by the plaintiff's predecessor. Therefore, the relief of declaration that the sale deed was a loan transaction ought to have been claimed in the suit. Hence, the cause of action for seeking a declaration and for obtaining reconveyance, according to the plaintiff's own pleadings, arose when the plaintiff claimed to have repaid the entire loan amount and obtained a promise from the defendants to reconvey the property by registered deed. Hence, it was held that reckoning the cause of action from 25th March 1987, the suit filed on 26th August 1996 was barred by time. The plaint was therefore rejected by the Apex Court as barred by limitation.

37. In the ***State of Punjab***, the Apex Court held that a suit for possession filed without claiming relief of declaration was not maintainable. Although the order impugned before the Apex Court arose out of a decree passed after a full trial, in the facts of the case, it was held that the plaint ought to have been rejected on the ground of being vague and not carrying the necessary and material particulars.

38. The other decisions relied upon by the learned counsel

for defendant no. 7 on principles of res judicata and estoppel cannot be applied in the facts of the present case, at this preliminary stage. Hence, it is not necessary to discuss them.

39. In ***Vinod Infra Developers***, Apex Court held that the High Court erred in treating the second cause of action pertaining to the registered sale deeds as merely “academic”, and proceeded to reject the plaint in its entirety without undertaking a judicial examination of this distinct issue. It is held that the approach is contrary to the well-settled legal principle that a plaint may be rejected under Order VII Rule 11 CPC only if, on a plain reading of the plaint, it discloses no cause of action or falls within the other narrowly defined grounds under the said provision, such as under-valuation, insufficient court fees, or bar by any law. The well-settled legal principle was followed that a plaint cannot be rejected in its entirety merely because one of the prayers or reliefs sought is legally untenable, so long as other reliefs are maintainable and based on independent causes of action. The Apex Court held that the trial court rightly held that the issues are triable and that the application filed under Order VII Rule 11 CPC was without merit, and that the High

Court erred in overturning this finding and rejecting the plaint in its entirety. After discussing the reliefs claimed that were based on independent causes of action, the Apex Court held in paragraphs 9.6 and 9.7 as under:

“.....Therefore, the High Court's wholesale rejection of the plaint, without appreciating that the reliefs claimed flowed from multiple and distinct causes of action - particularly one arising after the revocation of the power of attorney - amounts to an improper application of Order VII Rule 11CPC. Selective severance of reliefs is impermissible where different causes of action are independently pleaded and supported by distinct facts.

9.7. Although the private respondents contend that the power of attorney was notarized, a consent letter was executed, and the transaction was reflected in the income tax records - while also asserting possession over the subject property and alleging that the suit was instituted merely to harass and disturb such possession - these are all matters that require adjudication during trial. Such factual disputes cannot be resolved at the stage of considering an application under Order VII Rule 11 CPC. Therefore, these

contentions, even if raised, do not furnish a valid ground for rejection of the plaint at the threshold.”

40. In **Ramesh B. Desai**, the petitioners in a company petition had relied upon Section 17 of the Limitation Act in support of their claim that the limitation would start running only when they got knowledge of the fraud committed by the contesting respondents. It was held that in paragraphs 13 and 19 as under:

“13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in Major S.S. Khanna v. Brig. F.J. Dillon [(1964) 4 SCR 409 : AIR 1964 SC 497] and it was held as under: (SCR p. 421)

“Under Order 14 Rule 2, Code of Civil Procedure where issues both of law and of fact arise in the same suit, and the court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of

fact may be exercised only where in the opinion of the court the whole suit may be disposed of on the issues of law alone, but the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the court; not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.”

Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the abovequoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue.

19. *A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. A plea of limitation is a mixed question of law and fact. The question whether the words “barred by law” occurring in Order 7 Rule 11(d) CPC would also include the ground that it is barred by law of limitation has been recently considered by a two-Judge Bench of this Court to which one of us was a member (Ashok Bhan, J.) in *Balasaria Construction (P) Ltd. v. Hanuman Seva**

Trust [(2006) 5 SCC 658, below] it was held: (SCC p. 661, para 8)

“8. After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) CPC and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. Question of limitation is a mixed question of law and fact. Ex facie in the present case on the reading of the plaint it cannot be held that the suit is barred by time.”

This principle would be equally applicable to a company petition. Therefore, unless it becomes apparent from the reading of the company petition that the same is barred by limitation the petition cannot be rejected under Order 7 Rule 11(d) CPC.”

41. The decision in **Ramesh B. Desai** is considered with approval in the three-judge bench decision of the Apex Court in **Nusli Neville Wadia v. Ivory Properties**¹³ regarding the determination of the question of limitation as a preliminary issue. It is held that it cannot be laid down as a proposition of law under Order VII Rule 11(d) that the plaint cannot be rejected as barred by limitation, but it is permissible to do so mainly in a case where the plaint averment itself indicates

¹³ (2020) 6 SCC 557.

the cause of action to be barred by limitation and no further evidence is required to adjudicate the issue.

42. Therefore, in view of the legal principles, discussed above, it is clear that when the facts pleaded in the plaint regarding a cause of action warrants a trial, the plaint cannot be rejected at the threshold on the point of the bar of limitation. When the issue of limitation is a mixed question of law and facts in a given case, the plaint cannot be rejected at the threshold. When all basic and primary facts which must be proved at the trial are pleaded by a party to establish the existence of a cause of action, to ensure the conduct of a fair trial, the plaintiff would be entitled to lead evidence to prove that, in view of the cause of action pleaded, the suit would be within the limitation. Therefore, when the pleadings, if taken as a whole, would clearly show that they constitute a triable issue, the plaint cannot be rejected at the threshold. The object and purpose of pleadings is to enable the opposite party to know the case he has to meet with. Therefore, when the pleadings disclose a cause of action and are sufficient to raise a triable issue, the plaint cannot be rejected at the threshold on the ground of limitation or no cause of action.

43. In the present case, the suit is filed for a declaration that the plaintiff is in possession of the suit property, in view of the agreement dated 28th October 1997, which is still valid and subsisting, and for further reliefs for return of money and damages on the ground of breach of the terms and conditions of the agreement. The basis for filing such a suit is that the defendants inter se filed a collusive suit to defeat the plaintiff's rights. It is contended that defendant no. 1 had executed the said agreement in favour of the plaintiff, and the plaintiff was put in possession. Hence, it is the plaintiff's case that without terminating the agreement in favour of the plaintiff, the defendants filed the collusive suit to claim that defendant nos. 7, 8 and 9 were in possession of the suit property. Thus, there is neither any challenge to any agreement nor any prayer for its cancellation. A stray sentence in the plaint regarding the knowledge about the decision in the collusive suit cannot be picked up to hold that the suit is barred by limitation by ignoring the other material pleadings regarding the continuous cause of action. In view of the distinct causes of action pleaded for the reliefs claimed, the merits of the cause of action cannot be examined at this preliminary stage to hold that the suit is

barred by limitation. Hence, none of the decisions relied upon by the learned counsel for defendant no. 7 would be of any assistance at this preliminary stage to hold that the suit is barred by limitation.

44. The plaintiff has filed this suit for various reliefs with exhaustive pleadings to point out the source of title and possession, and how the title and possession vested in defendant no. 1 and therefore claimed rights through defendant no. 1. Hence, the cause of action in the present case and the issue of limitation would depend upon the bundle of facts, which raises a triable issue. The plaintiff would be entitled to lead evidence to support the contentions that the suit is within limitation in view of the cause of action pleaded in the plaint and the distinct cause of action for each relief needs to be ascertained based on the pleadings and evidence. The plaintiff claims to be in possession of the suit property by contending that the agreement in favour of the plaintiff is still valid and subsisting. Plaintiff has not pleaded that its possession is sought to be disturbed. The basis for filing the suit is the collusive suit between the defendants, which according to the plaintiff is to defeat the plaintiff's right.

Therefore, even if the first prayer for declaration of possession is considered as the substantial relief, in view of Article 58, it cannot be said at this stage, that the knowledge of the collusive suit is the date to compute limitation period, on the ground that the right to sue first accrued. Therefore, in the facts of the present case, only after a full-fledged trial the exact date for computing the period of limitation can be ascertained.

45. The issue of whether there is any merit in the cause of action pleaded in the plaint would depend upon the rival pleadings and the evidence that would be led by the parties. Therefore, at this preliminary stage, it cannot be held that the suit is barred by limitation. Hence, the plaint cannot be rejected at the threshold.

46. For the reasons recorded above, the interim application for rejection of plaint is dismissed.

[GAURI GODSE, J.]