

**ORDER BELOW EXH.13**

**IN SPCS No.05/2022**

01) The present application is filed by the defendants under Order 7 Rule 11 CPC through their learned advocate, seeking rejection of the plaint. It is submitted that the plaint is based on false and misleading averments, made with the intent to misguide the Court and claim possession of land long held by the defendants and their forefathers. The plaintiffs have failed to disclose a valid cause of action and have relied on vague and unsupported allegations, including the alleged non-availability of sale deeds.

02) Facts of the present application in a nutshell are as under:

It is stated by the present applicants-original defendants that they are the legal owners of land bearing Khata No.344, Survey No.256, Old Survey No.196/2 admeasuring Hec.Are.Sq.mtrs 00-80-96 situated at village Chiroda, Taluka-Mendarda, District-Junagadh from the times of their ancestors and they are cultivating the suit land from the time of their great grandfathers. The electricity connection in this land is also in the name of defendants and is still running in their names. Thus, the say of the plaintiff that his ancestors had made improvements in the suit land and constructed a well and godowns are contrary from the facts and fabricated.

It is further stated that no documentary evidence have been adduced by the plaintiff to defendant apart from the plaint and afterwards, on being asked about documentary evidence, plaintiff had adduced the documentary evidence. Therefore also, the suit of the plaintiffs is prima facie liable to be dismissed with costs. It is a settled principle of law that the documents, on the basis of which suit has been brought before this Court must be in original. No suit can be brought only on the basis of oral submission or true copy.

It is the say of the plaintiff that they have made improvement in the suit land by taking a bank loan. In this regard, it is opined that the said loan has been taken by presenting false facts and defendants are going to take legal

action by informing the bank separately about that. The defendants are the legal owners of the suit land and without their knowledge, without any documents, the plaintiff has taken loan from the bank because, no one can take loan against a property, which is not in his possession. Therefore, the plea of the plaintiff that he had taken a bank loan for improvement of the suit property is to misled the Court and a meaningless attempt of the plaintiff to strengthen a cause of action. Therefore, this plea of the plaintiff is not tenable. Defendants have no knowledge regarding this and it does not support the suit of the plaintiff in any way.

It is the say of the plaintiff that when the plaintiff was minor, his father Keshavbhai Veljibhai Kachadiya, on 12/04/1983, had purchased the suit land from his original owner Ambabhai Hardasbhai Sojitra of Chiroda village in Rs.10,000/- vide registered sale deed no.86. This say of the plaintiff is false and fabricated because if the land was purchased by his father, then he would have produced the original sale deed and in stead, he has produced a true copy of the said sale deed and as stated above, a true copy cannot be exhibited unless and until the original copy is not produced on record. Therefore, on the basis of the said true copy of sale deed cannot be a cogent and reliable evidence.

It is the say of the plaintiff that after selling the land, name of Keshav Velji Kachadiya was mutated in the revenue records vide revenue entry no.853 dated 11/01/1994 and the same was certified by the Officer. This say of the plaintiff is totally baseless because the plaintiff has not produced anything on record as to how his name was mutated in the revenue records. Therefore, such entry in the revenue record also does not help the plaintiff.

It is further stated that the suit land is in direct possession of the defendants and the plaintiff also knows this fact, but plaintiff has taken advantage of the ignorance of the defendants. Defendants had no knowledge regarding any order. If the plaintiff was the owner of the suit land, then he would have filed suit long before, but he has not done so and is trying the snatch the land of the defendants by filing the present suit. Therefore, the suit

of the plaintiff is liable to be dismissed.

Defendants have not threatened the plaintiff because intimidation is out of question. Defendants are the owners of the suit land and the suit land is in possession of the defendants. Thus, it clear that the plaintiff with a malicious intention is trying to trap the defendants in the case of land grabbing. Plaintiff has also issued legal notice to the defendants and the defendants have also replied as per law. In a nutshell, present applicants-original defendants have prayed to allow the present application under Order 7, Rule 11 of the CPC and to hold that plaintiff has brought this suit with false and fabricated submissions before this Court and is trying to snatch away the ancestral land of the defendants on the basis of false submissions viz. sale deed is missing, etc. has no basis and to reject the suit of the plaintiff with costs. In support of their application, applicants-original defendants have produced photographs of the suit land vide Mark-15/1 and reply to the notice of plaintiff vide Exh.15/2.

**03)** Against the said application, Ld. Advocate for the plaintiff has filed written statement vide Exh.22, wherein, has denied all the allegation made in the present application and submitted that the defendants have till date not filed written statement against the suit. It is further stated that as per the principles of the CPC, written statement should be filed within 90 days from the date of service of summons, but in the present case summons have been served before 5 months and still, defendants have not filed written statement and, therefore, their right to file written-statement has been closed.

It is further stated that only after filing written-statement and taking basic defence, application under Order 7 Rule 11 can be filed, but the defendants have not filed written-statement and taken basic defence and filed present application, which is not maintainable in the eyes of law. Therefore, present application deserves to be dismissed with costs.

It is further stated that the defendants have not shown any reasons which come within the purview of CPC Order 7, Rule 11 and have filed present application, which on the first instance deserves to be dismissed with

costs. Further, the reasons on the basis of which the defendants have brought the present application cannot be considered at this stage without taking into consideration the evidence on record. The plaintiff has filed the suit and, true facts have been brought before this Court. Therefore, the suit of the plaintiff does not deserve to be rejected.

It is further stated that no documentary evidence has been produced on record, which can prove that defendants are the owners of the suit land from the time of their forefathers. Only as the electricity connection is in the name of defendant does not make them the owner of the suit land. Plaintiff has made improvements in the suit land by making well and godowns etc. in the suit land. Only on the basis of the reason that the documentary evidence has been produced afterwards, the suit cannot be rejected and there are no such provisions in the CPC. It is further stated that as plaintiff is owner of the suit land, he had taken loan from the bank and for doing the same, plaintiff would not have to take permission of the defendants. Defendants are trace-passers and bank has never taken any objection regarding the said loan.

It is further stated that the suit land has been purchased for Rs.10,000/- on 12/04/1983 by father of present plaintiff when the plaintiff was minor. The plaintiff has produced on record the true copy of the said registered sale deed as the original is not found yet. This document has been registered in the office of the Sub-Registrar and cannot be created afterwards and as per the Indian Evidence Act, when the original document is not found, true copy of the said document can be considered as secondary evidence. Thus, the plea of the defendants in this regard is not maintainable.

It is further stated that the revenue entry has been made on the basis of the registered sale deed and is done by the competent officer of the Revenue Department at the relevant point of time and no appeal or revision has been filed against this entry by the defendants before any competent Court. Therefore, this revenue entry has been finalised and as per Section 135 (J) of the Land Revenue Code, this entry is legal and valid. Further, the plaintiff has in time sent a legal notice from the date of cause of action and filed the

present suit before this Court. Therefore, in a nutshell prayed to dismiss the present application with cost.

04) Heard the Ld. Advocate of Defendants as well as the Plaintiff.

05) Since present application has been filed by the Defendants seeking rejection of Plaint it would be profitable to refer CPC Order 7 Rule 11 and the ratio laid down by the Hon'ble Supreme Court in that regard, which reads as under:

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

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

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

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

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

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

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

It is a settled rule of law that the plea of rejection of plaint is founded on the "PLEA OF DEMURRER". A person raising such plea in law has to take the facts as stated by the opponent as correct. Despite tentative admission of such correctness, the plaint does not disclose a complete or even partial cause of action or the relief claimed is barred by law and thus, the plaint is liable to be rejected within the provisions of Order VII, Rule 11 of the Code of Civil Procedure. Plain language of this rule shows that for determination of an application under this provision, the Court has to look into the plaint. This concept has been extended by judicial pronouncement of various Courts so as to take within its ambit even the documents led by the plaintiff along with plaint or subsequent thereto but prior to the hearing of such application. It would be more so where the documents have been referred to in the plaint itself. But the defence raised by the defendants in his written statement or the documents led along therewith certainly falls beyond the zone of consideration, where an application for rejection of a plaint is being considered by the Court. The language of the rule does not admit any scope for doubt that the written statement led by the defendant cannot be referred or relied upon by the applicants for decision of such application. Whether the plaint discloses any cause of action or not, is a question founded on the basic cause of action pleaded by the plaintiff in his plaint. It must thus necessarily be construed that language of Rule 1 is circumscribed by the limitation of reading the plaint at best with its supporting documents. [See : ABN - AMRO Bank vs. PUPDA, AIR 2000 P & H 44].

22. A Full Bench of the Punjab and Haryana High Court in the case of Harnam Singh v. Surjit Singh, AIR 1984 Punj and Hary 126, held as under:

"It is well settled that a cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support the right to a judgment in his favour. In other words, it is a

bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the tenant. Negatively it does not comprise the evidence necessary to prove the bundle of facts and equally has no relation whatsoever to the defence, which may be set up by the defendant nor does it depend on the character of the relief prayed for by the plaintiff."

The well accepted canons of civil jurisprudence makes a clear distinction between "plaintiff has no cause of action" and "the plaint does not disclose cause of action" in the earlier part, there is complete absence of a right to sue. While in the latter, the right to sue may exist, but it is not well founded on the basis of the averments made in the plaint. The plaint lacks essential and material particulars which would give an effective cause of action to the plaintiff. Where on the face of it, the plaint does not disclose any cause of action, the plaint may be liable to be rejected, but where the parties are to produce oral and documentary evidence to substantiate and support their cause of action and relief claimed for in the plaint, the Court has to consider the entire material placed on record and the suit would be liable to be decided on merit.

The above distinction was clearly stated by a Full Bench of Allahabad High Court in the case of Jagannath Prasad vs. Smt. Chandrawati [AIR 1970 All 309 (FB)].

In the case of State of Orissa vs. Klockner and Company, AIR 1996 SC 2140, the Supreme Court while approving the following view taken by the learned single Judge of the High Court dismissed the Special Leave Petition.

"From the discussions in the order it appears that the learned trial Judge has not maintained the distinction between the plea that there was no cause of action for the suit and the plea that the plaint does not disclose a cause of action. No specific reason or ground is

stated in the order in support of the finding that the plaint is to be rejected under Order 7, Rule 11(a). From the averments in the plaint, it is clear that the plaintiff has pleaded a cause of action for filing the suit seeking the reliefs stated in it. That is not to say that the plaintiff has cause of action to file the suit for the reliefs sought that question is to be determined on the basis of materials (other than the plaint) which may be produced by the parties at appropriate stage in the suit. For the limited purpose of determining the question whether the suit is to be wiped out under Order 7, Rule 11(1) or not the averments in the plaint are only to be looked into. The position noted above is also clear from the petition filed by defendant No. 1 under Order 7, Rule 11 in which the thrust of the case pleaded is that on the stipulations in the agreement of 20-4-1982 the plaintiff is not entitled to file a suit seeking any of the reliefs stated in the plaint."

The Supreme Court, in *T. Arivandandam (supra)*, has observed something very important and which should not be lost sight of while deciding a matter arising under the provisions of Order VII Rule 11 and 10 of the C.P.C. I may quote the relevant observations as under: "We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is aagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful-not formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O. VII R. 11, C. P. C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O. X. C.P.C. 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, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi. "It is dangerous to be too good."

The trial Court in this case will remind itself of S. 35-A, C. P. C. and take deterrent action if it is satisfied that the litigation was inspired by vexatious motives and altogether groundless. In any view, that suit has no survival value and should be disposed of forthwith after giving an immediate hearing to the parties concerned."

Thus, if 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, the Trial Court should exercise its power under Order VII Rule 11, C.P.C. taking care to see that the grounds mentioned therein is fulfilled. If a clever drafting like one in the case on hand has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the C.P.C. In my view, the aforesaid observations are squarely applicable to the conduct of the plaintiff herein.

The Delhi High Court in *M/s. Sakthi Sugars Limited vs. Union of India*, AIR 1981 Delhi 212 relying upon the aforesaid observations of the Supreme Court held thus :- (Para 12)

"But the law in this respect is laid down by the Supreme Court in *T. Arivandandam v. T.V. Satyapal*, AIR 1977 SC 2421. It is laid down that if on a meaningful and not formal reading of a plaint it is manifest that the plaint is vexatious or meritless in the sense of not disclosing a clear right to sue trial Court should exercise its power under Order VII, Rule 11. Code of Civil Procedure, and should reject the plaint. So it is

meaningful reading of the plaint which is required. It is to be seen if actually according to law. On the allegations contained in the plaint, defendant No.2 was agent of the Union of India or not . Mere formal allegation of the plaintiff that defendant No.2 was agent of the Union of India is not to be accepted. In view of the Supreme Court authority, it is the duty of the Court to probe whether allegations made in the plaint make defendant No.2 as agent and the Union of India as the principal according to law. I have already held that according to law defendant No.2 was not agent of the Union of India and that being so plaint does not disclose any cause of action against the latter."

The Supreme Court in *Azhar Hussein vs. Rajiv Gandhi*, 1986 (supp) SCC 315 : (AIR 1986 SC 1253), though while dealing with the question relating to rejection of an election petition with reference to Order VII, Rule 11, CPC held that the purpose of conferment of power of rejection of plaint is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and the concerned litigants are relieved of the psychological burden of the litigation. The Apex Court observed that since the Court has the power to act at the threshold, the power must be exercised at the threshold itself in case the Court is satisfied that it is at case for the exercise of such power. 30. The Supreme Court in *ITC Limited (supra)*, while referring to its earlier judgment in *T. Arinandandam (supra)* observed, "the question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7, Rule 11, CPC. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint."

In *Mohan Rawale vs. Damodar Tatyaba*, (1994) 2 SCC 392 : (1994 AIR SCW 2028), the Supreme Court held that if some cause of action is disclosed, a pleading cannot be struck out merely because the

case is weak and not likely to succeed. The Supreme Court drew distinction between the "material facts" and "full particulars" with reference to the provisions of Section 83 (1) (a) and (b) of the Representation of the People Act, 1951 and further held that the distinction between "material facts" and "full particulars" is not sharp, but is one of degree. The material facts are those which party relies upon and which, if he does not prove, he fails at that time.

In *William vs. Wiloox* (1838 (8) Ad and El 331), Lord Denman, C.J. said thus :

"It is an elementary rule in pleading that, when a state of facts is relied it is enough to allege it simply, without setting out the subordinate facts which are the means of providing it, or the evidence sustaining the allegations."

The learned single Judge of Rajasthan High Court in *Ranjeet Mal vs. Poonam Chand*, AIR 1983 Rajasthan 1, held, "what is to be determined by the Court at the stage of deciding as to whether the plaint discloses any cause of action or not, is to find out from the allegations of the plaint itself as to whether a bogus, wholly vexatious or frivolous litigation was sought to be initiated under the garb of ingenious drafting of the plaint and to guard against the mischief of a litigant misusing the process of the Court, by entering into a false litigation, merely for the purposes of harassing the other party and obtaining undue advantage of the process of the Court by adopting tactics and in starting sham and shady actions."

While dealing with provisions of order 33, Rule 5 clause (a), the Supreme Court in *Vijay Pratap Singh vs. Dukh Haran Nath Singh* [AIR 1962 SC 941], held in paragraph 9 of the report thus :

"By the express terms of R.5 Cl. (d), the Court is concerned to ascertain whether the allegations made in the petition show a cause of action. The Court has not to see whether the claim made by the petitioner is likely to succeed; it has merely to satisfy itself that the

allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the Court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the Court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the Court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him. By the Statute, the jurisdiction of the Court is restricted to ascertaining whether on the allegations a cause of action is shown: the jurisdiction does not extend to trial of issues which must fairly be left for decision at the hearing of the suit."

Thus, the cause of action has a well defined legal connotation, though not defined, which means bundle of essential facts, if traversed, has to be proved by the plaintiff to entitle him to the relief. It reflects to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved to entitle the plaintiff to the decree. The consistent legal position which is also mandatorily enacted by Order VII, Rule 11 (a) CPC is, that the Court must reject the plaint which does not disclose cause of action. Obviously there is a difference between the nondisclosure of cause of action in the plaint and the absence of cause of action for the suit. The ground for rejection of plaint is failure to disclose a cause of action and not that there is no cause of action for the suit. It is not competent for the Court to go into the correctness or otherwise of the allegations constituting the

cause of action. In other words, the correctness or otherwise of the allegations constituting the cause of action is beyond the purview of Order VII, Rule 11(a), CPC. However, to find out whether the plaint discloses cause of action or not, the Court has to consider the allegations made in the plaint intelligently and meaningfully and need not be influenced by ingenious and clever drafting creating illusion of cause of action. The ritual of repeating a word or creation of an illusion in the plaint can certainly be unraveled and exposed by the Court while dealing with an application under Order VII, Rule 11(a). The Court must scan and scrutinise the allegations made in the plaint to find out whether forensic cleverness while drafting the plaint has been employed to get out of the clutches of Order VII, rule 11, C.P.C. and if on a careful scan and scrutiny of the pleading the conclusion of the Court is in affirmative, the consequence of rejection of plaint must follow. The Court has to see while exercising its power for rejection of plaint, which it must whether, the allegations in the plaint as they stand, fail to prove the cause of action. While considering the question whether the plaint discloses any cause of action or not, the Court has to find out from the allegations made in the plaint itself and not beyond it as to whether a bogus, wholly vexatious or frivolous litigation has been initiated by the plaintiff or that the claim made by the plaintiff is a legally recognisable claim. What is required to be disclosed by the plaintiff is a clear right to sue and failure to do so must necessarily entail in rejection of the plaint.

The scope of Order VII, Rule 7, C.P.C. has been elaborately considered in *Sopan Sukhdeo Sable vs. Asstt. Charity Commissioner*, (2004) 3 SCC 137 : (AIR 2004 SC 1801), wherein the Supreme Court held as under:

"In *Saleem Bhai v. State of Maharashtra* ((2003) 1 SCC 557) : (AIR 2003 SC 759) it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for deciding

an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are germane: the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage."

The above Sopan Sukhdeo Sable case, (2004) 3 SCC 137 : (AIR 2004 SC 1801) has been referred to in the subsequent judgment-Popat and Kotecha Property vs. State Bank of India Staff Assn., (2005) 7 SCC 510. As held by the Supreme Court in Popat and Kotecha Property vs. State Bank of India Staff Assn., (2005) 7 SCC 510), the real object of Order VII, Rule 11 of the Code is to keep out of courts irresponsible suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by searching examination of the party in case the court is prima facie of the view that the 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.

In Balasaria Construction (P) Ltd. v. Hanuman Seva Trust, (2006) 5 SCC 658, the Supreme Court considered the question whether words "... barred by law..." in Rule 11(d) would also include bar by the law of limitation. Referring to various judgments and conict of views, the Supreme Court held as under:

"This case was argued at length on 30-8-2005. Counsel appearing for the appellant had relied upon a judgment of this Court in N.V. Srinivasa Murthy v. Mariyamma (2005) 5 SCC 548 : (AIR 2005 SC 2897) for the proposition that a plaint could be rejected if the suit is ex facie barred by limitation. As against this, counsel for the respondents relied upon a later judgment of this Court in Popat and Kotecha Property v. SBI Staff Assn.(2005) 7 SCC 510. in respect of the

proposition that Order 7, Rule 11(d) was not applicable in a case where a question has to be decided on the basis of fact that the suit was barred by limitation. The point as to whether the words barred by law occurring in Order 7 Rule 11(d) CPC would include the suit being barred by limitation was not specifically dealt with in either of these two judgments, cited above. But this point has been specifically dealt with by the different High Courts in Mohan Lal Sukhadia University v. Priya Soloman AIR 1999 Raj 102, Khaja Quthubullah v. Govt. of A.P. AIR 1995 AP 43, Vedapalli Suryanarayana v. Poosarla Venkata Sanker Suryanarayana (1980) 1 An LT 488 : (1980) 1 APLJ 173 (HC), Arjan Singh v. Union of India AIR 1987 Del 165, wherein it has been held that the plaint under Order 7 Rule 11(d) cannot be rejected on the ground that it is barred by limitation. According to these judgments the suit has to be barred by a provision of law to come within the meaning of Order 7 Rule 11 CPC. A contrary view has been taken in Jugolinija Rajia Jugoslavija v. Fab Leathers Ltd. AIR 1985 Cal 193, National Insurance Co. Ltd. v. Navrom Constantza AIR 1988 Cal 155, J. Patel and Co. v. National Federation of Industrial Co.op.Ltd. AIR 1996 Cal 25 and State Bank of India Staff Assn. v. Popat and Kotecha Property (2001) 2 Cal LT 34. The last judgment was the subject-matter of challenge in Popat and Kotecha Property v. SBI Staff Assn.(2005) 7 SCC 510. This Court set aside the judgment and held in para 25 as under:

(SCC P.517)

"When the averments in the plaint are considered in the background of the principles set out in Sopan Sukhdeo case (2004) 3 SCC 137 : (AIR 2004 SC 1801) the inevitable conclusion is that the Division Bench was not right in holding that Order 7, Rule 11, CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that

the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years needs evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11. This is not so in the present case."

Noticing the conict between the various High Courts and the apparent conict of opinion expressed by this Court in N.V. Srinivasa Murthy v. Mariyamma (2005) 5 SCC 548 : (AIR 2005 SC 2897) and Popat and Kotecha Property v. State Bank of India Staff Assn.(2005) 7 SCC 510 the Bench referred the following question of law for consideration to a larger Bench:

"Whether the words "barred by law" under Order 7, Rule 11(d) would also include the ground that it is barred by the law of limitation. In Balasaria Construction (P) Ltd. v. Hanuman Seva Trust,(2006) 5 SCC 662, keeping in view the importance of question and the conflict of opinion, the Supreme Court referred the matter to a larger Bench."

39. However, it appears from what has been observed in para 6 by the Supreme Court in Balasaria Construction (supra) that as the question referred to the Larger Bench became academic, the case was, therefore, sent back to the Bench for disposal on merits based on the facts of the case. Para 6 in Balasaria Construction (supra) reads as under:

"..... It is not the case of either side that as an absolute proposition an application under Order 7 Rule 11 (d) can never be based on the law of limitation. Both sides state that the impugned judgment is based on the facts of this particular case and the question whether or not an application under Order 7 Rule 11(d) could be based on law of limitation was not raised and has not been dealt with. Both sides further state that the decision in this case will depend upon the facts of

this case."

Order VII Rule 11 of the C.P.C. casts a duty upon the Court to reject the plaint if the circumstances indicates therein are found to be existing. It cannot be the law that this power of the Court would be curtailed in any manner even if the Court proceeds with the suit to some length, without application of mind, on this point. The rule itself does not indicate anywhere that the power is to be exercised upon an application or, if such an application is led, it should be at a particular stage. I may only add that an action under Order VII Rule 11 of the C.P.C. does not await an application by any party. It is the duty of the Court to reject the plaint if reasons, therefore, are found to be existing from a reading of the plaint itself and other documents relied upon by the plaintiff and annexed with the plaint.

41. I may also refer to and rely upon a decision of the Bombay High Court in the case of SNP Shipping Services Pvt Ltd and others vs. World Tanker Carrier Corporation and another [AIR 2000 Bombay 34]. His Lordship S.S. Nijjar, J. (as His Lordship then was) has observed as under:

"Order VI. Rule 16. Striking out pleadings :- The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading - (a) which may be unnecessary, scandalous, frivolous or vexatious, or (b) ..... (c) which is otherwise an abuse of the process of the Court."

"Order VII. Rule 11 Rejection of plaint :- The plaint shall be rejected in the following cases :-

- (a) where it does not disclose a cause of action.
- (b) .....
- (c).....
- (d) where the suit appears from the statement in the plaint to be barred by any law."

The aforesaid provisions have been subject-matter of discussion by the

Indian Courts in a number of cases. Analogous provisions have also been examined by Courts in England. In India under Order 7, Rule 11 the plaint can be rejected where it does not disclose a cause of action or where the suit appears from the statement made in the plaint to be barred by any law. For the purpose of deciding that the plaint "does not disclose a cause of action", the Courts generally look only at the plaint. However, there is a rider to this rule, that when the plaint is based on a document, the same can also be looked into. This proposition has been recognised by the Rajasthan High Court in the case of *Bhagwan Das v. Goswami Brijesh Kumarji*, (AIR 1983 Rajasthan 3). In paragraph 7 of the aforesaid judgment, it is observed as follows :-

"7. Learned counsel for the opposite party may be right in urging that if the plaint is based on a document, then such a document may be considered as forming part of the plaint itself and the document can also be looked into, while considering the averments of the plaint, for the purpose of deciding the question that the plaint discloses a cause of action or not. But it has to be remembered that the averments made in the plaint as well as the contents of the document which may constitute part of the plaint, can be looked into on the face value thereof and the question relating to the validity or invalidity of the document cannot be considered at the stage of deciding an application under O. 7, R. 11, CPC."

Similar proportion is laid down in the case of *Wenlock v. Moloney*, (1965) 2 All ER 871. In this case the observations of Lord Herschell in *Lawrance v. Lord Norreys* (1886-90) All ER rep. at p. 863) have been reproduced which are as under :

"It cannot be doubted that the Court has an inherent jurisdiction to dismiss an action which is an abuse of the process of the Court. It is a jurisdiction which ought to be very sparingly exercised, and only in very exceptional cases. I do not think its exercise would be justified

merely because the story told in the pleadings was highly improbable, and one which it was difficult to believe could be proved."

There is a slight difference between the law in England and the law in India with regard to the rejection of the plaint at the initial stage. In India, plaint can only be rejected, inter alia, if it discloses no cause of action. On the other hand, in England the plaint can be rejected if it discloses no "reasonable cause of action". The provision is contained in RSC O. 18 R. 19, which is as under :

"(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement of any writ in the action, or anything in any pleading or in the endorsement, on the ground that-

(a) it discloses no reasonable cause of action or defence, as the case may be; or

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the Court; and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a)....."

**06)** A perusal of the aforesaid provision would show that, literally speaking, the power is a little wider in England. But judicial interpretation has virtually equated the term "no reasonable cause of action" occurring in RSC Order 18, R. 19 to the phrase "no cause of action" occurring in Order VII, Rule 11(a) of the CPC. The Indian as well as the English Courts are very reluctant to reject the plaint at the threshold. Analysing the aforesaid provision in the case of *Drummond Jackson v. British Medical Association*, (1970) 1 All ER 1094 Lord Pearson observes :

"Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases....."

Similar views expressed by other Judges are also noticed, as follows : In *Nagle v. Feilden* (1966) 1 All ER 689 at page 695) *Danckwerts Ltd.* observes :

"The summary remedy which has been applied to this action is one which is only to be applied in plain and obvious cases, when the action is one which cannot succeed or is in some way an abuse of the process of the Court." *Salmon LJ* at page 697 observes :

"It is well settled that a statement of claim should not be struck out and the plaintiff driven from the judgment seat unless the case is unarguable". Thus the Rule appears to be that the plaint can be rejected in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process of the Court. The plaint should not be struck out unless the case is unarguable. In the same judgment *Sir Gordon Willmer* at page 1105 observed as follows :

"The question whether a point is plain and obvious does not depend on the length of time it takes to argue. Rather the question is whether when the point has been argued, it has become plain and obvious that there can be but one result."

42. I may also refer to and rely upon one another Division Bench decision of this Court in the case of *Maharaj Shri Manvendrasinhji R. Jadeja vs. Rajmata Vijaykunverba Wd/o Maharaja Mahendrasinhji*, reported at 1999 (1) GLR 261 at paras 14, 15 and 16, which reads as under:

"Having noticed brief summary of the plaint and prayers earlier, it would be relevant to refer to the provisions of Order 7, Rule 11(a) of the CPC and the scope thereof. Order 7, Rule 11 (a) of the CPC provides that the plaint shall be rejected in case where it does not

disclose a cause of action. Order 7, Rule 11 (a) of the CPC is mandatory and if it is found that the plaint does not disclose a cause of action, the Court has no option but to reject the plaint. To find out whether a plaint discloses a cause of action or not, the Court has to look only to the averments made in the plaint. When a plaint is based on a document led along with the plaint, it can, however, be considered to ascertain if plaint discloses any cause of action. Cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. The words "cause of action" mean the whole bundle of material facts which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit. What is to be done by the Court at the stage of deciding as to whether the plaint discloses any cause of action or not is to find out from the allegation of the plaint itself as to whether a bogus, wholly vexatious or frivolous litigation is sought to be initiated under the garb of ingenuous drafting of the plaint or not because it is the duty of the Court to guard against the mischief of a litigant misusing the process of court by entering into a false litigation merely for the purpose of harassing the other party and to nip in the bud the litigation which is sham and shabby in character. In order to find out whether the plaint discloses a cause of action or not, the averments made in the plaint and documents annexed thereto should be scrutinised meaningfully and if on such scrutiny it is found that the plaint does not disclose cause of action, it has got to be rejected in view of the provisions of Order 7, Rule 11(a) of the CPC. When it is said that the Court should take into consideration the averments made in the plaint for the purpose of deciding the question whether the averments made in the plaint disclose cause of action or not, it does not mean that the Court is precluded from applying the statutory provisions or case-law to the averments made in the plaint. If an assertion made in the plaint is contrary to statutory law or case-law, it cannot be considered as

disclosing cause of action. In ITC Ltd., (AIR 1998 SC 634) (supra), bank had led suit against the appellant and others and claimed relief for a sum of Rs. 52,59,639-66 ps. After the suit was led, it was transferred to the Debt Recovery Tribunal. Before the Tribunal, an application was led by the appellant under Order 7, Rule 11 of the CPC for rejecting the plaint, so far as appellant was concerned, on the ground that no valid cause of action had been shown against the appellant. That application was rejected by the Tribunal. Against the said order, an appeal was led before the Debts Recovery Appellate Tribunal. The appeal was dismissed in limine. Thereupon a writ petition was led by the appellant, which was dismissed holding that the question should be decided at the trial. Against that judgment, the appellant had led an appeal before the Division Bench of the High Court, which was also dismissed. The matter was thereafter carried before the Supreme Court. After taking into consideration the decided cases on the point whether there was fraudulent movement of goods under which letter of credit was obtained which in turn entitled the bank to le the suit, the Supreme Court held that that point was already decided by decision of the Supreme Court in U.P. Cooperative Federation's case and, therefore, the allegation of non-supply of goods by the sellers to the buyers did not by itself amount, in law, to a plea of "fraud" as understood in this branch of the law and hence by merely characterizing alleged non-movement of goods as "fraud", the bank was not entitled to claim that there was a cause of action based on fraud or misrepresentation. While allowing the appeal, what is emphasised by the Supreme Court is that the question whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7, R. 11 of the CPC has to be decided with reference to averments made in the plaint and clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint.

In view of this decision of the Supreme Court, it is evident that if something purely illusory has been stated with a view to get out of Order 7, Rule 11 of the CPC by resorting to clever drafting, it cannot be said that the plaint discloses a cause of action and if a clear right to sue is not shown in the plaint, it is liable to be rejected.

15. In the light of scope of Order 7, Rule 11 (a) of the CPC, we would now proceed to examine different submissions made on behalf of the appellant. The submission that the plaint was presented on December 26, 1978, whereas issues for determination were framed by the learned Judge on July 21, 1981 and therefore the application led by the respondent under Order 7, Rule 11(a) of the CPC on June 26, 1996 should not have been entertained at such a long distance of time, has no substance. As noted earlier, the provisions of Order 7, Rule 11(a) of the Code of Civil Procedure are mandatory in nature. It is the duty of the Court to reject the plaint which does not disclose cause of action. If a plaint can be rejected at threshold of the proceedings, we do not see any reason as to why it cannot be rejected at any subsequent stage of the proceedings. Even if after framing of issues, the basic defect in the plaint persists, namely, absence of cause of action, it is always open to the contesting defendants to insist that the plaint be rejected under Order 7, R. 11 of the CPC and the Court would be acting within its jurisdiction in considering such a plea. Order 7, Rule 11 of the CPC does not place any restriction or limitation on the exercise of the court's power. It does not either expressly or by necessary implication provide that power under Order 7, Rule 11 of the CPC should be exercised at a particular stage only. In the view we are taking, we are fortified by the judgment of the Supreme Court rendered in the case of ITC Ltd., (AIR 1998 SC 634) (supra). Therein, the suit was led by the Bank in the year 1985. In 1995, it was transferred to Debt Recovery Tribunal and thereafter an application was led by the appellant under the provisions of Order 7,

Rule 11 of the CPC for rejection of the plaint as not disclosing any cause of action against the appellant. The application led by the appellant was rejected not only by the Tribunal and Appellate Tribunal, but also by the High Court. When the matter reached before the Supreme Court in the year 1997, it was contended that the power under Order 7, Rule 11 of the CPC should not be exercised after such a long lapse of time, more particularly when issues were framed. That plea has been negatived by the Supreme Court in following terms:-

"13. We may state that in the context of Order 7, Rule 11, CPC, a contention that once issues have been framed, the matter has necessarily to go to trial has been clearly rejected by this Court in *Azhar Hussain v. Rajiv Gandhi*, (AIR 1986 SC 1253) (SCC p.324) as follows: (SCC para 12): (Para 12 of AIR) "In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial... is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court..."

The above said judgment which related to an election petition is clearly applicable to suits also and was followed in *Samar Singh v. Kedar Nath*, (AIR 1987 SC 1926). We, therefore, hold that the fact that issues have been framed in the suit cannot come in the way of consideration of this application led by the appellant under Order 7, Rule 11, CPC."

16. In view of settled legal position, plea that powers under Order 7, Rule 11 (a) of the CPC should not have been exercised after framing of issue cannot be upheld and is hereby rejected."

43. On the cause of action, I may refer to the decision of the Supreme Court in the case of *Church of Christ Charitable Trust and Educational*

Charitable Society represented by its Chairman vs. Ponniamman Educational Trust represented by its Chairperson / Managing Trustee, reported in (2012) 8 SCC 706, wherein the Supreme Court has observed in paras 12 to 18 as under:

"It is also useful to refer the judgment in T. Arivandandam v. T.V. Satyapal and Anr., (1977) 4 SCC 467 :

(AIR 1977 SC 2421), wherein while considering the very same provision, i.e. Order VII, Rule 11 and the duty of the trial Court in considering such application, this Court has reminded the trial Judges with the following observation:

"The learned Munsif must remember that if on a meaningful - for formal-reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And if clever drafting has created the illusion of a cause of action nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial 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, (Cr.XI) and must be triggered against them" It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII, Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code. Cause of action:

While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable

to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue.

In *A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies, Salem* (1989) 2 SCC 163 : (AIR 1989 SC 1239), this Court explained the meaning of "cause of action" as follows: "12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff."

It is useful to refer the judgment in *Bloom Dekor Ltd. v. Subhash Himatlal Desai and Ors.* (1994) 6 SCC 322, wherein a three Judge Bench of this Court held as under:

"By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court, (*Cooke v. Gill*, 1873 LR 8 CP 107). In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit." It is mandatory that in order to

get relief, the plaintiff has to aver all material facts. In other words, it is necessary for the plaintiff to aver and prove in order to succeed in the suit.

Forms 47 and 48 of Appendix A of the Code 16. Mr. K. Parasaran, learned senior counsel by taking us through Form Nos. 47 and 48 of Appendix A of the Code which relate to suit for specific performance submitted that inasmuch as those forms are statutory in nature with regard to the claim led for the relief for specific performance, the Court has to be satisfied that the plaint discloses a cause of action. In view of Order VII, Rule 11(a) and 11(d), the Court has to satisfy that the plaint discloses a cause of action and does not appear to be barred by any law. The statutory forms require the date of agreement to be mentioned to recite that it does not appear to be barred by limitation. In addition to the same, in a suit for specific performance, there should be an agreement by the defendant or by a person duly authorized by a power of attorney executed in his favour by the owner.

In the case on hand, the plaintiff-respondent to get a decree for specific performance has to prove that there is a subsisting agreement in his favour and the second defendant has the necessary authority under the power of attorney. Order VII, Rule 14 mandates that the plaintiff has to produce the documents on which the cause of action is based, therefore, he has to produce the power of attorney when the plaint is presented by him and if he is not in possession of the same, he has to state as to in whose possession it is. In the case on hand, only the agreement between the plaintiff and the second defendant has been led along with the plaint under Order VII, Rule 14(1). As rightly pointed out by the learned senior counsel for the appellant, if he is not in possession of the power of attorney, it being a registered document, he should have led a registration copy of the same. There is no such explanation even for not filing the registration copy of the power of attorney. Under Order VII, Rule 14(2) instead of explaining in whose

custody the power of attorney is, the plaintiff has simply stated 'Nil'. It clearly shows non-compliance of Order VII, Rule 14(2).

In the light of the controversy, we have gone through all the averments in the plaint. In paragraph 4 of the plaint, it is alleged that the 2nd defendant as agreement holder of the 1st defendant and also as the registered power of attorney holder of the 1st defendant executed the agreement of sale. In spite of our best efforts, we could not find any particulars showing as to the documents which are referred to as "agreement holder". We are satisfied that neither the documents were led along with the plaint nor the terms thereof have been set out in the plaint. The above-mentioned two documents were to be treated as part of the plaint as being the part of the cause of action. It is settled law that where a document is sued upon and its terms are not set out in the plaint but referred to in the plaint, the said document gets incorporated by reference in the plaint. This position has been reiterated in U.S. Sasidharan v. K. Karunakaran and another (1989) 4 SCC 482 : (AIR 1990 SC 924) and Manohar Joshi v. Nitin Bhaurao Patil and another (1996) 1 SCC 169 : (AIR 1996 SC 796 : 1996 AIR SCW 145)."

The Supreme Court has further reminded the Trial Judges' of the observations in T. Arivandandam (supra) observing as under:

"It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII, Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code."

In Chhotanben and another vs. Kiritbhai Jaikrushnabhai Thakkar and others reported in 2018 (3) GLR 2308, the Supreme Court has observed as under:

" What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any 14 application led by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers-original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and led the subject suit within two days therefrom. According to the appellants, the suit has been led within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application led by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.

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

17. These decisions have been noted in the case of *Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust* (2012) 8 SCC 706, where this Court, in paragraph 11, observed thus:

"This position was explained by this Court in *Saleem Bhai vs. State of Maharashtra*, in which, while considering Order 7 Rule 11 of the Code, it was held as under: (SCC p. 560, para 9) "9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit-before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court."

It is clear that in order to consider Order 7 Rule 11, the court has to

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

18. The High Court has adverted to the case of *Church of Christ Charitable Trust and Educational Charitable Society* (supra), which had occasion to consider the correctness of the view taken by the High Court in ordering rejection of the plaint in part, against one defendant, on the ground that it did not disclose any cause of action qua that defendant. The High Court has also noted the decision relied upon by the contesting respondents in the case of *Mayur (H.K.) Ltd. and Ors.* (supra), which has restated the settled legal position about the scope of power of the Court to reject the plaint under Order VII Rule 11(d) of CPC.

19. In the present case, we find that the appellants (plaintiffs) have asserted that the suit was led immediately after getting knowledge about the fraudulent sale deed executed by original defendant Nos.1 & 2 by keeping them in the dark about such execution and within two days from the refusal by the original defendant Nos.1 & 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the Trial Court that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order VII Rule 11(d)." - ANALYSIS:

Under Order VII Rule 11 of the C.P.C., the Court has jurisdiction to reject the plaint where it does not disclose a cause of action, where the relief claimed is undervalued and the valuation is not corrected within a time as fixed by the Court, where insufficient court fee is paid and the additional court fee is not supplied within the period given by the Court, and where the suit appears from the statement in the plaint to be barred by any law. The Court should also be careful while reading the contents of the plaint. 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, the Court should exercise its power under Order VII Rule 11 of the C.P.C.

From the various decisions referred to above and discussed, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the C.P.C. Essentially, whether the plaint discloses a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated, but not the evidence. So long as the plaint discloses some cause of action, which requires determination by the Court, the mere fact that in the opinion of the Judge, the plaintiff may not succeed in seeking specific performance of contract, cannot be a ground for rejection of the plaint. Bardoli Shreerang Exhibitors Private Limited Versus Maheshbhai Babubhai Hirpara-2021 (0) AIJEL-HC 243278 Rejection of plaint on the ground of limitation cannot be rejected on the ground that suit is time-barred - for limited purpose of determining the question

whether plaint is to be rejected under Order 7 Rule 11(a) CPC or not, averments in plaint are only to be looked into.

(a) Code of Civil Procedure, 1908 - Or. 7 R. 11(d) - rejection of plaint on the ground of limitation - time barred suit - all sixteen partners of firm agreed to transfer their shares in partnership firm as well as suit property in favour of plaintiff company - thus 70% of share of suit property was transferred in favour of plaintiff company by virtue of such sale deed - suit against remaining five partners seeking specific performance of agreement to sell the property - plaintiff company was allowed to withdraw 70% of said amount without furnishing security - plaintiff seeking a declaration that said sale deeds are illegal, unlawful and void ab initio and for a further declaration that under such sale deeds so-called purchasers would derive no right, title or interest in suit properties - defendants no. 5 to 7 preferred application prayed for rejection of plaint on ground of limitation - challenged - held, plaint could not have been rejected on the ground that suit is time-barred - plaintiff, in no uncertain terms, has pleaded in plaint that he came to know about the execution of sale deeds only when defendants no. 7 and 8 led their written statement - court below has gone to the extent of ascertaining the veracity of such statement made in plaint - court below imputes bad faith to the plaintiff saying that plaintiff intentionally has not stated the date of filing of said written statement - averment made in plaint on close introspection does not indicate a bogus or a frivolous litigation or an illusory drafting to obviate the obstacle of Order 7 Rule 11(d) CPC - where the question of limitation is a mixed question of fact and law and suit does not appear to be barred by limitation on the face of it, then facts necessary to prove limitation must be pleaded, an issue raised and then proved - plea of limitation is a mixed question of law and fact - jurisdiction of court to take action under Order 7 Rule 11(d) of CPC can arise only in case where pleadings in plaint are sufficient to disclose the bar to suit,

and not otherwise - impugned order of Trial Court rejecting the plaint quashed and set aside - appeal allowed. (Para 33,34,35,44)

(b) Code of Civil Procedure, 1908 - Or. 7 R. 11(a) - rejection of plaint on the ground of failure to disclose any cause of action - serious misconception of law in the mind of courts below that once suit is found to be time-barred, cause of action automatically becomes illusive - on a fair reading of application led by defendants under Order 7 Rule 11 CPC, it is clear that case of defendants is that plaintiff has no cause of action to file the suit - it is not specifically pleaded by defendants that plaint does not disclose any cause of action - court below has also not recorded any specific finding to this effect - court below has failed to maintain the fine distinction between the plea that there was no cause of action for suit and plea that plaint does not disclose a cause of action - no specific reason or ground has been stated in impugned order in support of finding that plaint is to be rejected under Order 7, Rule 11(a) - plaintiff has pleaded a cause of action for ling suit seeking reliefs stated in it - therefore, that is not to say that plaintiff has a cause of action to file suit for reliefs sought for - for limited purpose of determining the question whether plaint is to be rejected under Order 7, Rule 11(a) CPC or not, averments in plaint are only to be looked into - court below committed a serious error in rejecting the plaint. (Para 41,43)

The averment made in the plaint appears to be candid and does not intend to camouflage the intention of the plaintiff to circumvent Order 7 Rule 11(d) CPC. The averment made in the plaint on close introspection does not indicate a bogus or a frivolous litigation or an illusory drafting to obviate the obstacle of Order 7 Rule 11(d) CPC. The application led under Order 7 Rule 11 CPC appears to have been done as a matter of course as the averments made in the same suggest.

34. When limitation is a pure question of law and from the pleadings itself it becomes apparent that a suit is barred by limitation, then, of

course, it is the duty of the court to decide limitation at the outset even in the absence of a plea. However, in cases like the one on hand, where the question of limitation is a mixed question of fact and law and the suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved. (see *Narne Rama Murthy vs. Ravula Somasundaram*, 2005 (6) SCC 614)

Time and again, this Court has, in many orders, explained stating that a plea of limitation cannot be decided as an abstract principle of law divorced from the 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 considered by the Supreme Court in the case of *Balalaria Construction Pvt. Ltd. vs. Hanuman Seva Trust and others*, decided on 8th October 2005), held as under :

"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."

***Hon'ble Gujarat High Court has sumed its final conclusions as under:***

***(1) Undoubtedly, Order 7, Rule 11(d) of the CPC provides that the plaint shall be rejected in case when the suit appears from the statement in the plaint to be barred by any law. The object behind the said provision of law is to avoid manifestly vexatious and meritless litigation and to protect the parties being unnecessarily harassed by***

*others. The clause (d) of Rule 11 of the Order 7 of the CPC would apply to the cases when it would reveal from the contents of the plaint that the suit is barred. In other words, in order to enable the court to arrive at the conclusion that the suit led by plaintiff is barred, the pleadings in the plaint should apparently disclose the facts revealing the bar to the suit instituted by the plaintiff. The conclusion under clause (d) regarding the bar to the suit cannot be arrived at on the basis of materials extraneous to the pleadings in the plaint. The jurisdiction of the court to take action under Order 7, Rule 11(d) of the CPC can arise only in case where the pleadings in the plaint are sufficient to disclose the bar to the suit, and not otherwise. Of course, the jurisdiction can be exercised at any stage of the suit, however, the decision under Order 7, Rule 11(d) of the CPC has to be on the basis of the pleadings in the plaint. (2) A plaint can be rejected under the said provision of law only if the plaint on the face of it discloses the same to be barred by any law in force, and not by referring to the materials which are sought to be placed on record by the defendant in answer to the plaint. In case the defendant requires to refer to any material other than the plaint, certainly such an exercise is permissible by way of leading evidence after framing issues and satisfying the court about the non-maintainability of the suit. But the same exercise cannot be done under Order 7, Rule 11(d) of the CPC. On account of any material being available with the defendant to prove that the suit being not maintainable, the same cannot be a ground to non-suit the plaintiff by exercise of power under Order 7, Rule 11(d) of the CPC. In order to get the necessary relief on the basis of such materials, the defendant will have to lead necessary evidence by producing such materials on record in accordance with the provisions of law and only thereupon the court can take appropriate decision as regards the objection sought to be raised by the defendant regarding non-maintainability of the suit.*

07) In light of the aforementioned principles, the plain language of **Order 7 Rule 11** of the **Code of Civil Procedure (CPC)** makes it clear that, for determining an application under this provision, the Court must primarily examine the plaint itself. Judicial pronouncements have extended this interpretation, indicating that the scope of this rule encompasses not only the plaint but also any documents filed by the plaintiff along with the plaint or any documents submitted thereafter, but before the hearing of the application for rejection. This is particularly applicable where such documents are specifically referenced in the plaint. However, it is crucial to note that the defence raised by the defendant in the written statement or any documents accompanying the written statement fall outside the purview of the Court's consideration when an application for rejection of the plaint is being decided. The language of **Order 7 Rule 11** unequivocally prohibits reliance on the written statement filed by the defendant for the purpose of adjudicating the rejection application. The question of whether the plaint discloses a cause of action is fundamentally based on the cause of action as pleaded by the plaintiff in the plaint itself. Therefore, it must be interpreted that the language of Rule 11 is confined to the limitation of considering only the plaint and any supporting documents annexed to it, without extending to the written statement or documents submitted by the defendant. The plaintiff has filed the present suit seeking a declaration, recovery of possession, and a perpetual injunction under Sections 34, 36, 38, and 39 of the Specific Relief Act and relevant provisions of the Civil Procedure Code. The plaintiff contends that he is the lawful owner and titleholder of agricultural land bearing Survey No. 256 (Old Survey No. 196/2), situated in Village Chiroda, Taluka Mendarada, District Junagadh, admeasuring 00-80-96 hectares. This land was purchased by the plaintiff's father, Keshavbhai Veljibhai Kachadiya, on behalf of the minor plaintiff through a registered sale deed dated 12.04.1983 from its original owner, Ambabhai Hardasbhai Sojitra. Since the date of purchase, the plaintiff's name has been continuously reflected in the revenue records and government survey entries, and various improvements, including a well and

storage structures, were made on the land. The defendants, who are closely related to each other and own adjoining lands, have a long-standing interest in the suit property and previously, through their predecessor, had filed a civil suit in 1983 to assert possession over the land. That suit was dismissed on 10.06.1988, and no appeal was preferred, allowing the judgment to attain finality. Despite this, on 05.03.2022, the defendants, taking undue advantage of the plaintiff's serious medical condition (chronic kidney disease requiring regular dialysis) and the simple nature of his father, allegedly dispossessed the plaintiff from the suit property by use of force and intimidation. They have continued to remain in illegal possession, depriving the plaintiff of his livelihood and access to the property. Though a legal notice was served on the defendants on the same date, they have failed to comply. As such, the plaintiff prays for a declaration of ownership, recovery of possession, a perpetual injunction restraining the defendants and their agents from transferring or interfering with the property, compensation for interim crop yields, and any other reliefs the Court may deem fit.

**08)** The defendants, in their application seeking the rejection of the plaint under Order 7, Rule 11 of the CPC, have raised several grounds to challenge the plaintiff's suit. They assert that they are the rightful and legal owners of the suit land, which they have cultivated for generations, dating back to their great-grandfathers. The electricity connection for the land is still in the defendants' name, further affirming their possession. The plaintiff's claim that his ancestors made improvements to the land, including constructing a well and godowns, is dismissed as fabricated and contrary to the facts. Moreover, the defendants argue that the plaintiff has failed to provide any original documentary evidence to support his claims, submitting only a true copy of the sale deed instead of the original, which cannot be accepted as reliable evidence under law. The defendants further contest the plaintiff's claim regarding a bank loan for improvements on the land, asserting that the loan was obtained based on false information and without the defendants' knowledge. Since the plaintiff cannot take a loan on property that is not in his

possession, the defendants argue that this claim is misleading and lacks credibility. The plaintiff's assertion that his father purchased the suit land in 1983 is also called into question because he has only provided a true copy of the sale deed, not the original, making this claim questionable. Similarly, the plaintiff's statement that his name was mutated in the revenue records in 1994 is dismissed as baseless due to the lack of supporting evidence. The defendants maintain that they are in direct and continuous possession of the suit land, a fact the plaintiff is fully aware of. They argue that the plaintiff is attempting to exploit their ignorance and file this suit to unlawfully claim their ancestral land. The defendants also deny any allegations of intimidation or threats, stating that they have not engaged in any such actions. They argue that the plaintiff's suit is filed with malicious intent, aiming to deceive the Court and seize the defendants' land through false and fabricated claims. In light of these grounds, the defendants have prayed for the rejection of the plaint under Order 7, Rule 11 of the CPC, contending that the suit is devoid of merit.

**09)** Upon a plain and careful reading of the plaint, this Court finds that the plaintiff has clearly pleaded a cause of action, asserting lawful ownership and title over the suit land based on a registered sale deed dated 12.04.1983, followed by continuous and consistent possession, as duly reflected in the revenue records. It is specifically pleaded that on 05.03.2022, the defendants unlawfully and forcibly dispossessed the plaintiff from the suit property, despite a prior adjudication in his favour in Civil Suit No. 949/1983, which had attained finality. It is also stated that the plaintiff issued a legal notice demanding restoration of possession, but the same was not complied with by the defendants. These averments, when taken at face value, do disclose a cause of action for filing the present suit. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court exercising the powers under Order VII Rule 11 of the C.P.C. Whether the plaint discloses a cause of action is essentially a question of fact, which must be determined based on the averments made in the plaint, taken as true. A cause of action is a bundle of material facts that the plaintiff is required to prove in order to obtain

relief. These material facts must be stated in the plaint, but not the evidence. As long as the plaint discloses a cause of action that requires judicial determination, mere allegations by the defendant challenging the existence of a cause of action are not sufficient grounds to reject the plaint. The defendant's contention that no valid cause of action has been pleaded is to be addressed at the stage of trial and does not justify rejection of the plaint at this preliminary stage. In view of the settled legal principles governing Order 7, Rule 11 of the CPC, it is well established that for deciding such an application, only the averments in the plaint and the documents filed by the plaintiff can be considered. The written statement or any documents filed by the defendants cannot be taken into account at this stage. The plaint must be read as a whole and its averments must be assumed to be true to examine whether a cause of action is disclosed and whether the suit is barred by any law. Further upon a plain and meaningful reading of the plaint, this Court finds that the averments made therein do disclose a cause of action for the reliefs claimed by the plaintiff. At this stage, the assertions in the plaint are to be accepted as true, and they are sufficient to justify the institution of the suit and invoke the jurisdiction of the Court. It must be emphasized that there exists a fine distinction between the plea that the plaint does not disclose a cause of action and the plea that the plaintiff has no cause of action. The former relates strictly to the contents of the plaint and may warrant rejection under Order 7 Rule 11(a) of the CPC. The latter, however, is a matter for trial and can be determined only after evaluating the materials and evidence brought on record by the parties. In the present case, the plaint contains specific averments which, on their face, set out a cause of action. Whether the plaintiff will ultimately succeed in proving the same is a matter to be adjudicated upon trial, and not at the threshold stage.

**10)** As for the objection under Order 7 Rule 11(d) CPC, it is a settled principle that the plaint can be rejected under this clause only if, from the statements in the plaint itself, the suit appears to be barred by any law. No such bar—whether under the law of limitation or any other provision—is

evident from the pleadings. Any defence material or contention intended to show such a bar cannot be relied upon for rejecting the plaint under this provision. As regards limitation, the present suit is one for declaration of ownership, recovery of possession, and permanent injunction, which squarely falls under the ambit of Article 65 of the Limitation Act. Said Article prescribes a limitation period of twelve years from the date of dispossession. In the present case, the date of alleged dispossession is 05.03.2022, and the suit has been instituted within the prescribed period. Therefore, the suit is not barred by the law of limitation. In light of the above discussion and the legal position, this Court is of the considered opinion that the plaint discloses a cause of action and is not barred by limitation. Furthermore, grounds raised by the defendants in their application which pertain to factual disputes or defences are beyond the scope of consideration under Order 7, Rule 11 and can be adjudicated only after the full fledged trial. Hence, the application filed by the defendants under Order 7, Rule 11 CPC deserves to be rejected. There for I pass the following final order.

**-:: ORDER ::-**

1. The present application vide Exh.13, filed by the defendants through their learned advocate seeking rejection of the plaint under Order 7 Rule 11 of the CPC, is hereby rejected.
2. No order as to costs.  
Order pass in the open Court today on 22/04/2025.

Date:22/04/2025

**(AVINASH KAMAL BHATT)  
ADDITIONAL SENIOR CIVIL JUDGE &  
CHIEF JUDICIAL MAGISTRATE  
JUNAGADH  
Code No.GJ00862**