MHPU020062182024

R.C.S. No. 1201/2024

Shevantibhai Mehta
vs.
Rahul Shevantibhai Mehta

ORDER BELOW EXH. 14

1. The present application is filed by defendant as per Order 7 Rule 11(a), (b), (c) & (d) of C.P.C. for rejection of plaint. It is stated in present application that, the Plaintiffs above named appears to have filed the present suit against defendant for **cancellation of gift deed dated 27/09/2020 Which is registered before the office of Ld. Sub Register, Haveli No.22 at Serial Number 8156** respectively. It is further stated that, the plaintiffs have executed the aforesaid gift deed voluntarily and out of natural love and affection towards the defendant as he happens to be a son of the plaintiffs.

2. It is further stated that, the present application is being filed on the ground that **the cause of action mentioned in the plaint is false, flimsy and based on concocted story of the plaintiffs. Defendant states and submits that, the plaintiffs do not have valid cause of action as the plaintiffs have miserably failed to mention exact date or event which led to the arising of cause of action. Defendant says that plaint lacks specific and detailed fact to substantiate the alleged fraud, coercion, or undue**

influence.

3. It is further stated that, the present suit lacks cause of action and therefore is liable rejected for want of the same, the present suit is not maintainable as the same is barred by limitation as per the provisions incorporated under Article 59 of Limitation Act 1963. It is submitted that as per the provisions of Article 59 of the Limitation Act, 1963, a suit for cancellation of any instrument i.e. Gift Deed must be instituted within the period of three years from the date when the person becomes aware about the fact entitling him to have the instrument or contract rescinded. It is further stated that, in the present matter, the gift deed was executed on 27/09/2020 and there is no specific claim in the plaint that plaintiff become aware of any fraud, coercion or undue influence at a late date. In the absence of any claim, the limitation period is deemed to start from the date of execution of the gift deed itself. And suit is barred by law of limitation and is liable to be rejected.

4. It is further stated that, the plaintiffs have miserably failed to bring the suit within the four corners of law and as such the suit as well as the Application for cancellation of gift deed is required to be rejected as such, the suit is hopelessly barred by the Law of Limitation, and therefore, an issue to that effect is required to be framed. It is submitted that the plaintiffs have not

come before this Hon'ble Court with clean hands. As such, upon a meaningful reading of the Plaint it appears to be manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, and therefore, on this ground also the application of cancellation of gift deed is required to be rejected. To that regard, it is vehemently submitted by and on behalf of the defendant that, the plaintiff appears to have raised an averment in the impugned plaint inter-alia stating that the defendant was served with a legal notice but the same came to be returned as unclaimed. However, in reply to the said baseless allegation, the defendant states and submits that, the copy of the said notice does not appear to have been appended to the present suit. As such defendant states that, no such notice was received by the defendant. The plaintiff has absolutely suppressed the aforesaid material fact from the Court thereby rendering the plaint/suit without any cause of action thereof.

5. It is further stated that, apart from the grounds which have been raised above, the present plaint is also liable to be rejected on the ground that, the plaintiff has not paid the requisite court fee as per Maharashtra Court Fees Act 1959 which mandate to pay requisite court fee. It is submitted that, plaint is undervalued and is insufficiently stamped and thus the same is liable to be for want of sufficient stamp duty. It is finally prayed that the Application may kindly be allowed and the said

impugned plaint instituted at the behest of the plaintiffs for cancellation of Gift Deed Dated 27/09/2020 may kindly be rejected with imposition of exemplary cost.

6. From the perusal of case record it reveals that, the plaintiffs failed to file their say to the present application despite sufficient opportunities granted and hence, the present application is proceeded without say of plaintiffs.

7. Considered rival submissions made the following points arise for my determination and I have noted my findings on them as follows -

SR. No.	**POINTS**	**FINDINGS**
1.	Whether in facts and circumstances of the present case the plaint is required to be rejected as per O. 7 R. 11(a) to (d) of CPC ?	… Partly Affirmative.
2.	What order ?	… Application Partly Allowed.

R E A S O N S

As to Point Nos.1 and 2 -

8. Heard learned advocate for defendant at length. The learned Advocate for defendant vehemently argued that the suit does not disclose cause of action and is barred by limitation and the suit is under valued and insufficient court fees is paid thereon

and hence the application is required to be allowed. The learned advocate for defendant had also submitted her written notes of arguments dated 16.02.2026 at Exh.16 on record. Perused the same. It is stated in said written arguments that, the Plaintiffs above named appears to have filed the present suit against defendant for cancellation of gift deed dated 27/09/2020 Which is registered before the office of Ld. Sub Register, Haveli No.22 at Serial Number 8156 respectively. Defendant states and submits that the plaintiffs have executed the aforesaid gift deed voluntarily and out of natural love and affection towards the defendant as he happens to be a son of the plaintiffs. It is further argued that: -

9. **Plaint does not disclose cause of action**.

The defendant states and submits that the present application is being filed on the ground that the cause of action mentioned in the plaint is false, flimsy, and based on a concocted story put forth by the plaintiffs. The defendant further states that the plaintiffs do not have a valid cause of action, **as they have miserably failed to mention the exact date or event which led to the alleged cause of action**. **The defendant submits that the plaint lacks specific and detailed facts to substantiate the alleged fraud, coercion, or undue influence**. In this regard, it is vehemently submitted on behalf of the defendant that the plaintiff has made an averment in the impugned plaint, inter alia, stating that a legal notice was served upon the defendant but the same was returned as unclaimed. In reply to the said baseless allegation, the defendant states that no copy of the alleged notice has been annexed to the present suit. The defendant categorically denies having received any such notice. The plaintiff has suppressed this material fact from the Hon'ble Court, thereby rendering the plaint devoid of any cause of action. Further, no copy of the legal notice, postal receipts, or tracking report has been annexed with the plaint.

10. **Suit barred by the law of limitation**.

The present suit is not maintainable as it is barred by limitation under the provisions of Article 59 of the Limitation Act, 1963. **It is submitted that as per Article 59 of the Limitation Act, 1963, a suit for cancellation of any instrument, including a Gift Deed, must be instituted within a period of three years from the date on which the person seeking such relief first becomes aware of the facts entitling him to have the instrument or contract cancelled or rescinded. In the present case, the suit has been filed after the expiry of the prescribed period of limitation. There is no specific pleading in the plaint regarding the exact date of knowledge**. **The suit has been filed after a delay of three years and ten months (3 years and 10 months), and is therefore hopelessly time-barred**. **Accordingly, the suit is barred by the law of limitation and is liable to be rejected**.

11. **Plaint is vexatious**

The Defendant states and submits that, in the present matter, the Gift Deed was executed out of natural love and affection on 27/09/2020 and was duly registered before the Sub-Registrar, Haveli-22. The Plaintiffs, aged about 70 years and 80 years respectively, personally appeared before the Sub-Registrar at the time of execution and registration of the said Gift Deed. There is no specific averment in the plaint that the Plaintiffs became aware of any alleged fraud, coercion, or undue influence at a later date. If there had been any undue influence, immediate steps for cancellation would have been expected, and not after a lapse of nearly four years (4 years). **There are disputes regarding the property of plaintiff and partition suit RCS 2090/23 pending in court. This suit is filed only to harass and pressurize defendant. The present suit appears to be an afterthought influenced by family disputes between brothers**. **That the Page No. 3 of the Gift Deed clearly records that the document was drafted as per the instructions of the executant. The thumb impression and signatures of the Plaintiffs are present on the Gift Deed**. **It is further submitted that the signatures of the Plaintiffs appearing on the Gift Deed are not similar to the signatures appearing on the plaint and the documents annexed thereto**. **The Plaintiffs voluntarily shifted to reside with their other son. No rent agreement or any proof of tenancy has been produced on record**.

12. It is submitted that the Plaintiffs have not approached this Hon'ble Court with clean hands. Upon a meaningful reading of the plaint, it appears to be manifestly vexatious and meritless, inasmuch as it does not disclose a clear right to sue. Therefore, on this ground also, the suit for cancellation of the Gift Deed deserves to be rejected.

13. Plaint is undervalued and is insufficiently stamped.

The Defendant states and submits that, apart from the grounds raised hereinabove, the present plaint is also liable to be returned or rejected on the ground that the Plaintiff has not paid the requisite court fee as mandated under the provisions of the Maharashtra Court Fees Act, 1959. It is submitted that a suit for cancellation of an instrument requires payment of ad valorem court fee under Section 6(iv)(d) read with Section 6(ha) of the Maharashtra Court Fees Act, 1959. The Defendant further submits that the plaint is undervalued and insufficiently stamped. Therefore, the same is liable to be returned for want of proper valuation and payment of sufficient court fees. Defendant submits that the plaintiffs have miserably failed to bring the suit within the four corners of law and as such the suit as well as the suit for cancellation of gift deed is required to be rejected.

14. It is finally argued and prayed that the application

may be allowed and that the plaint filed by the Plaintiffs seeking cancellation of the Gift Deed dated 27/09/2020 be rejected with the imposition of exemplary costs.

15. **The Ld. Advocate for plaintiff in support of her submission had placed reliance upon undermentioned authority**: -

Raghwendra Sharan Singh vs. Ram Prasanna Singh (Dead) by LRs, Civil Appeal No. 2960 of 2019 arising out of SLP (C) No.20068 of 2013, decided on 13.03.2019 Hon'ble Supreme Court. It is observed by Hon'ble Supreme Court while dealing Order VII Rule 11 read with Order XIV Rule 2 of CPC, Article 59 of the Limitation Act, Sections 91 & 92 of Evidence Act as well as Section 47 of the Registration Act and it is observed and held that

> 6. Heard the learned counsel appearing on behalf of the respective parties at length. We have perused the impugned judgment and order of the High Court as well as the order of the trial Court, dismissing the application under Order 7 Rule 11 of the CPC and refusing to reject the plaint in exercise of powers under Order 7 Rule 11 of the CPC. We have also considered the averments in the plaint.
>
> 6.1 At the outset, it is required to be noted that the plaintiff has instituted the suit against the defendant for a declaration that the defendant has acquired no title and possession on the basis of the deed of gift dated 06.03.1981 and that the plaintiff has got title and possession in the said property. In the suit, the plaintiff has prayed for the following reliefs:
> "A. That on adjudication of the facts stated above, it be declared that the defendant acquired no title and

possession on the basis of the said showy deed of gift dated 06.03.1981 and the plaintiff has got title and possession in the said property.

B. That it be declared that the said showy Deed of Gift dated 06.03.1981 is not binding upon the plaintiff.

C. That the possession of the plaintiff be continued over the suit-property and in case if he is found out of possession, a decree for recovery of possession be passed in favour of the plaintiff.

D. That the defendant be restrained by an order of ad-interim injunction from transferring or encumbering or interfering with the possession of the plaintiff over the suit land, during the pendency of the suit.

E. That the cost of the suit be awarded to the plaintiff and against the defendant.

F. Any other relief or reliefs which deems fit and proper, be awarded to the plaintiff and against the defendant."

Considering the averments in the plaint, it can be seen that, as such, the plaintiff has specifically admitted that the plaintiff and his brother executed the gift deed on 06.03.1981. It is admitted that the gift deed is a registered gift deed. It also emerges from the plaint that till 2003, neither the plaintiff nor his brother (during his lifetime) challenged the gift deed dated 06.03.1981 nor, at any point of time, claimed that the gift deed dated 06.03.1981 was a showy deed of gift. In fact, it is the defendant-appellant herein who instituted the suit in the year 2001 against his brothers to which even the plaintiff was a party as defendant No. 10 and that was a partition suit filed by the appellant herein-original defendant. It appears that the summon and the copy of was served the plaint T.S. (Partition) Suit No. 203 of 2001 upon the plaintiff in the year 2001 itself. Still, the plaintiff averred in the plaint that it came to

<u>the knowledge of the plaintiff with respect to the gift deed on 10.04.2003. Thus, it is born out from the averments in the plaint that, till 2003, the plaintiff never disputed the gift deed and/or never claimed that the gift deed dated 06.03.1981 was a showy deed of gift. With the aforesaid facts and circumstances, the application submitted by the appellant-original defendant to reject the plaint in exercise of powers under Order 7 Rule 11 of the CPC is required to be considered.</u>

6.2 <u>While considering the scope and ambit of the application under Order 7 Rule 11 of the CPC, few decisions of this Court on Order 7 Rule 11 of the CPC are required to be referred to and considered</u>.

6.3 In the case of **T. Arivandandam (supra)**, while considering the very same provision i.e. Order 7 Rule 11 of the CPC and the decree of the trial Court in considering such application, this Court in para 5 has observed and held as under:

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving 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 Order 7. Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits....."

6.4 In the case of **Church of Christ Charitable Trust and Educational Charitable Society (supra)**, this Court in paras 13

has observed and held as under:

"13. 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."

6.5 In **A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem** (supra), 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."

6.6 In the case of **Sopan Sukhdeo Sable (supra)** in paras 11 and 12, this Court has observed as under:

"11. In **I.T.C. Ltd. v. Debts Recovery Appellate Tribunal [(1998) 2 SCC 70]** it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code 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 of the Code.
12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting 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 Code. **(See T. Arivandandam v. T.V. Satyapal (supra)**."

6.7 In the case of **Madanuri Sri Rama Chandra Murthy (supra)**, this Court has observed and held as under:

"7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage."

6.8 **In the case of Ram Singh (supra), this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation**.

7. Applying the law laid down by this Court in the aforesaid decisions on exercise of powers under Order 7 Rule 11 of the CPC to the facts of the case in hand

and the averments in the plaint, we are of the opinion that both the Courts below have materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11 of the CPC. It is required to be noted that it is not in dispute that the gift deed was executed by the original plaintiff himself along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the plaintiff. It is the case of the plaintiff that the gift deed was a showy deed of gift and therefore the same is not binding on him. However, it is required to be noted that for approximately 22 years, neither the plaintiff nor his brother (who died on 15.12.2002) claimed at any point of time that the gift deed was showy deed of gift. One of the executants of the gift deed brother of the plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. It was the appellant herein-original defendant who filed the suit in the year 2001 for partition and the said suit was filed against his brothers to which the plaintiff was joined as defendant No. 10. It appears that the summon of the suit filed by the defendant being T.S. (Partition) Suit No. 203 of 2001 was served upon the defendant No.10-plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e. the period from 1981 till 2001/2003, the suit property was mortgaged by the appellant herein-original defendant and the mortgage deed was executed by the defendant. Therefore, considering the averments in the plaint and the bundle of facts stated in the plaint, **we are of the opinion that by clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation**. Therefore, considering the decisions of this Court in the case of **T. Arivandandam (supra)** and others, as stated above, and **as the suit is clearly** barred by law of limitation, the plaint is required to be rejected in exercise of powers under Order 7 Rule 11 of the CPC.

7.1 At this stage, it is required to be noted that, as such, the plaintiff has never prayed for any declaration to set aside the gift deed. We are of the opinion that such a prayer is not asked cleverly. If such a prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Article 59 of the Limitation Act and, therefore, only a declaration is sought to get out of the provisions of the Limitation Act, more particularly, Article 59 of the Limitation Act. The aforesaid aspect has also not been considered by the High Court as well as the learned trial Court.

8. Now, so far as the application on behalf of the original plaintiff and even the observations made by the learned trial Court as well as the High Court that the question with respect to the limitation is a mixed question of law and facts, which can be decided only after the parties lead the evidence is concerned, as observed and held by this Court in the cases of Sham Lal alias Kuldip (supra); N.V. Srinivas Murthy (supra) as well as in the case of Ram Prakash Gupta (supra), considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11(d) of the CPC.

9. In view of above and for the reasons stated above, we are of the opinion that both the High Court as well as the learned trial Court have erred in not exercising the powers under Order 7 Rule 11 of the CPC and in not rejecting the plaint in exercise of powers under Order 7 Rule 11 of the CPC. For the reasons stated above, the impugned judgment and order passed by the High Court as well as the trial Court cannot be

<u>sustained and the same Consequently, the deserve to be quashed and set aside. impugned judgment and order passed by the High Court dated 12.03.2013 as well as the order passed by the Munsif, Danapur rejecting the Order 7 Rule 11 application filed by the original defendant are hereby set aside. Consequently, the application submitted by the appellant herein-original defendant to reject the plaint under Order 7 Rule 11 of the CPC is hereby allowed and the plaint, being Title Suit No. 19 of 2003 is hereby rejected. The present appeal is allowed accordingly in terms of the above. No costs</u>.

16. Per contra the learned advocate for plaintiff failed to argue upon the application.

17. From the perusal of case record it reveals that the plaintiff had filed certain documents along with list of document Exh. 3. Perused the same. That the plaintiff along with list of document Exh.3 had produced on record the photocopy of gift deed executed on 27.09.2020, the photocopy of envelop issued to defendant on March 2024 and the photocopy of Aadhar Card of plaintiffs.

18. Considered rival submissions made. Perused plaint, it reveals that <u>the present suit is filed by plaintiff on 18.07.2026 praying for</u>-:

1. Grant relief to plaintiff Nos. 1 & 2 by ordering the cancellation of the gift deed executed on 27.09.2020, registered

at Haveli No.22 before Joint Sub-Registrar bearing No. 8156, on the ground of undue influence exercised by the defendant.

2. Award restitution to the plaintiffs for the financial losses incurred as a result of the defendant's action.

3. Pass any other just and equitable orders deemed fit in the interest of justice.

19. It is the case of plaintiff in nutshell that, **the Plaintiff Nos. 1 and 2 are the father and mother of the Defendant, respectively. Initially, the Defendant, along with his parents and siblings, resided in a Hindu Joint Family in a home that the Plaintiffs gifted to the Defendant**. Over time, the siblings decided to move to another residence due to continuous quarrels instigated by the Defendant. **This left the Plaintiffs and the Defendant living together in their home located at Flat No. 14, Building No. "B," with a built-up area of 50.38 square meters, common areas and facilities known as Ankoor Park II Apartment (B wing and C wing), situated at Sub. Plot No. 1 (D), S.No. 698/1, Final Plot No. 417, Munjeri Gultekadi, Pune 411037**.

20. It is stated that, after the siblings moved out, the Defendant **continuously tried to influence the Plaintiffs** to execute a gift deed in his name. He emotionally influenced the Plaintiffs, giving them false assurances that **he would take care of them no matter what**. The Defendant even went as far as emotionally

blackmailing them, claiming that they were not giving him the property because they did not consider him as their son. **Plaintiff No. 1 is 80 years old, and Plaintiff No. 2 is above 70 years old, both suffering from poor health due to old age**. **In these circumstances, under this emotional pressure and false promises, the Plaintiffs executed a gift deed on 27/09/2020, registered at Haveli no. 22 before joint sub registrar bearing no. 8156, transferring the aforementioned property to the Defendant with the condition that he would maintain and care for them for the rest of their lives**.

21. It is stated that, initially, following the execution of the gift deed, the Defendant behaved normally and fulfilled his promise by taking care of the Plaintiffs. However, **Six months after the execution of the gift deed, the Defendant's behaviour changed dramatically**. **He stopped taking proper care of Plaintiff No. 1 and Plaintiff No. 2, ceased providing them with the necessary medical treatment, and failed to ensure their well-being. As a result of the Defendant's neglect and improper treatment, the Plaintiffs have been subjected to great mental distress**.

22. It is stated that, the Defendant began to ill-treat his parents, the Plaintiffs. The Defendant started shouting at them, unnecessarily blaming them, and targeting them for trivial

matters. On numerous occasions, the Defendant demanded that the Plaintiffs leave the house over minor issues, **ultimately resulting in him throwing the Plaintiffs out of their own home**. As a result, the **Plaintiffs are now living in a rental home** that is very small and lacks basic amenities, which is particularly challenging **given their old age**. **Due to their advanced age and limited resources, the Plaintiffs are unable to manage the rented accommodation on their own**. **Additionally, the Defendant exploited the Plaintiffs' trust and emptied their bank accounts, leaving them without any financial resources**. **The circumstances created by the Defendant have rendered the Plaintiffs incapable of sustaining themselves financially**. **This situation led the Plaintiffs to reconsider their decision of executing the gift deed and realize that the Defendant had influenced and pressured them into executing it**.

23. It is stated that, Plaintiff Nos. 1 and 2 are before the court seeking the cancellation of the gift deed dated 27/09/2020, registered at Haveli no. 22 before joint sub registrar bearing no.8156, **which was executed under the undue influence of the Defendant**. The Plaintiffs allege that, the Defendant **wrongfully allured** them into executing the gift deed in his favor under **false pretenses** and **then failed to honor his commitment to care for them as promised**. They are now seeking relief from the court due to the **Defendant's breach of the conditions** under which the

gift deed was executed. **Given that the gift deed was executed under undue influence and pressure, the Plaintiffs are requesting its cancellation**.

24. **Cause of Action**: - The **cause of action arose in 2021** from the day the Defendant started ill-treating and misbehaving with the Plaintiffs. However, because the Defendant is the son of Plaintiffs No. 1 and 2, they initially did not consider taking legal action against him. Over time, the Defendant's behavior worsened as he regularly argued with the Plaintiffs and taunted them, saying, "You are unnecessary tension and add expenses to me." The Plaintiffs, feeling helpless, tolerated the Defendant's mistreatment without complaint. In **March 2024**, the Plaintiffs sent a legal notice to the Defendant, which was returned with the memo "not claimed" on **10/04/2024**. The Plaintiffs then tried to contact the Defendant several times but received no response. Having no other option, the Plaintiffs have now appeared before the court seeking relief.

25. **It is stated that, grounds for cancellation of the gift deed executed under undue influence by the defendant**:

1. That under **Section 19 and 19A of the Indian Contract Act, 1872**, agreements executed without free consent due to coercion, undue influence, fraud, or misrepresentation are voidable. And it empowers the court to set aside a contract induced by undue

influence. Whereas, Given the **Plaintiffs' advanced age and deteriorating health, they were vulnerable to the Defendant's emotional blackmail and coercion**. **Plaintiff No. 1 is 80 years old, and Plaintiff No. 2 is above 70 years old, both suffering from poor health**. **The Plaintiffs executed the gift deed under the undue influence of the Defendant**. **He emotionally manipulated and pressured them, providing false assurances that he would care for them in their old age**.

2. That the gift deed was executed with the **defendant giving fake promises and condition that the Defendant would maintain and care for the Plaintiffs for the rest of their lives**. The Defendant breached this condition by failing to provide proper care and medical treatment, and by subjecting the Plaintiffs to neglect and improper treatment, leading to their great mental distress.

3. That the defendant **coerced plaintiff no. 1 & 2 by taunting them, stating, "you are unnecessary tension & you add expenses to me," which shows a clear intent to manipulate and influence their decisions**.

4. That Plaintiff no. 1 & 2, being helpless and vulnerable, succumbed to the defendant's pressure and influence without any complaint, leading to the execution of the gift deed in favour of the defendant.

5. That the defendant further escalated the situation by asking plaintiff no. 1 & 2 to leave his home and find alternative shelter or an old-age home, showing a lack of concern and care towards

his parents. **The defendant, through continuous taunting and bad behaviour, coerced the plaintiffs into taking on rental accommodation, causing them financial strain**. Due to their old age and limited resources, the plaintiffs are unable to manage the rented accommodation on their own. **Additionally, the defendant exploited the plaintiffs' trust and emptied their bank accounts, leaving them without any financial resources**. The circumstances created by the defendant have rendered the plaintiffs incapable of sustaining themselves financially.

6. That the actions of the defendant forced plaintiff no. 1 & 2 to re-evaluate their decision of executing the gift deed and made them realise that the defendant had manipulated and influenced them to do so for his benefit.

7. That **it is evident that the gift deed was executed under duress and undue influence exerted by the defendant on plaintiff no. 1 & 2, depriving them of their free will and decision-making capability**.

8. That the **Defendant's behavior towards the Plaintiffs deteriorated significantly after six months of the gift deed's execution**. **He began to ill-treat his parents, shouting at them, unnecessarily blaming them, and targeting them for trivial matters. The Defendant's actions included demanding that the Plaintiffs leave their own home and eventually throwing them out, forcing them to live in a small rental accommodation with inadequate amenities**.

9. That **the Defendant exploited the Plaintiffs' trust by emptying their bank accounts, leaving them without any financial resources. Due to their advanced age and limited resources, the Plaintiffs are unable to manage their rented accommodation on their own and are financially incapable of sustaining themselves.**

10. That **in March 2024, the Plaintiffs sent a legal notice to the** Defendant, which was returned with the memo "not claimed on **10/04/2024**. Which itself shows that the defendant is well aware of their actions and he intentionally avoided receiving the notice sent by the defendant, not claiming it. The Plaintiffs then attempted to contact the Defendant multiple times, but received no response. With no other options available, the Plaintiffs have now sought relief from the court.

11. That the Plaintiffs respectfully submit that the gift deed was executed under undue influence and coercion by the Defendant. The Defendant's failure to honor the conditions attached to the gift deed, along with his subsequent ill-treatment and financial exploitation of the Plaintiffs, justify the cancellation of the gift deed. The Plaintiffs seek relief from the court to revoke the gift deed and restore their rights and dignity.

26. **Limitation**: **The plaintiff sent legal notice to defendant in march, 2024 which is returned unclaimed on 10/04/2024, hence this suit is well within limitation**.

27. Considering the controversy between the parties it is settled that, while dealing with an application under Order 7 Rule 11 of C.P.C. the provisions of Order 7 Rule 11 of CPC are mandatory, if the plaint is found to be defective and the case is covered by rule 11, it goes to the root of matter and the court has no option and the plaint has to be rejected. An application by the opposite party is not necessary. **The question as to the maintainability of suit is to be decided considering the materials/averments in the plaint and the documents referred in the plaint or annexed to the plaint and nothing else as held by Hon'ble Supreme Court in the case of Keshav Sood Vs. Kirti Pradeep Sood & Ors. MANU/SC/1188/2023** and that the power under Rule 11 can be exercised at any stage of the suit.

28. It is also settled that a **plaint cannot be rejected in part and retained in part**. **It is also settled that even if one relief in the plaint survives the plaint cannot be rejected and if the court is of the view that one relief in the plaint is not barred by law but is of the view that another relief in the plaint is barred by law, the court must not make any observations to the effect that the another relief is barred by law and must leave that issue undecided in an order under O.7 R. 11 of Code of Civil Procedure 1908 this is because if the court cannot reject a plaint partially, then by the same logic, it ought not to make any adverse observations against another relief as held by Hon'ble Supreme**

Court in the case of Central Bank of India and Ors. Vs. Smt. Prabha Jain and Ors. Civil Appeal No.1876/2016 dated 09.01.2025.

29. Further, it is also settled that, if the plaint survives against certain defendants or property Order 7 Rule 11 will have no application at all and the suit as whole must than proceed to trial. **It is also settled that in an application under O. 7 R, 11 the defendant cannot travel beyond and /or rely on something outside the plaint to based their application under the said provision and the defence raised by the defendant in the suit is irrelevant to the enquiry under O.7 Rule 11.** In the case of **Sopan Sukhdeo Sabale Vs. Assistant Charity Commissioner and Ors. (2004) 3 SCC 137** it is observed by Hon'ble Supreme Court that R.11. **It is also settled that since the power conferred on the court to terminate civil action at the threshold is drastic, the conditions enumerated under O. 7 R. 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to**.

30. **That the plaint can only be rejected on the grounds contemplated under O. 7 R. 11 and the plaint is required to be read as a whole. It is also settled that the test for exercising the power under O.7 R. 11 is that if the averments made in the plaint are taken into its entirety, in conjunction with the documents relied upon would the same result in a decree being passed**. **It is**

also settled that, at the stage of Order 7 Rule 11 of CPC, the court is required to proceed on the assumption that the averments made in the plaint are correct and truthful in their entirety without embarking upon an enquiry into their veracity. If upon such an assumption the pleadings disclosed a right in favour of the plaintiff to seek a share in the suit properties, the existence is a cause of action for maintaining the suit stands duly established.

31. That, it is also well established position that **cause of action** may be described as **"a bundle of essential facts, which it is necessary for the plaintiff to prove before he can succeed".** A cause of action is the foundation of a suit. It must be antecedent to the institution of a suit and on the basis of it the suit must have been filed. If a plaint does not disclose a cause of action, a court will reject such plaint.

32. In the case of **Coke Vs. Gill (1873) LR 8 CP 107** it was held that

> Cause of action means every fact which would be necessary for the plaintiff to prove if traversed to support his right to the judgment of the court in his favour.

33. The phrase '**cause of action'** has been defined in **P. Ramanatha Aiyar's Advanced Law Lexicon, 3rd Edition, Volume I, as follows**:

> ""Cause of action' has been defined as meaning simply a factual situation the existence of which entitles one

> person to obtain from the Court a remedy against another person. The phrase has been held from earliest time to include every fact which is material to be proved to entitle the plaintiff to succeed, and every fact which a defendant would have a right to traverse. "Cause of action" has also been taken to mean that particular act on the part of the defendant which gives the plaintiff his cause of complaint, or the subject matter of the grievance founding the action, not merely the technical cause of action."

34. In the case of **Sopan Sukhdeo Sabale Vs. Assistant Charity Commissioner and Ors. (2004) 3 SCC 137** it is observed by Hon'ble Supreme Court that

> 12. The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting 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 Code. (**See T. Arivandandam v. T.V. Satyapal (1977 4 SCC 467)**.
> 13. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in **Roop Lal Sathi v. Nachhattar Singh Gill (1982) 3 SCC 487)** only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.
> 14. In **Raptakos Brett & Co. Ltd. v. Ganesh Property ((1998) 7 SCC 184** it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order 7 was

applicable.

15. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities.

16. Submission of the learned counsel for Respondent No. 2 Trust was that requirement of law being reading the plaint in its totality, the appellants cannot take the plea that they would give up or relinquish some of the reliefs sought for. That would not be permissible. The plea clearly overlooks the basic distinction between statements of the facts disclosing cause of action and the reliefs sought for. The reliefs claimed do not constitute the cause of action. On the contrary, they constitute the entitlement, if any, on the basis of pleaded facts. As indicated above, Order 6 Rule 2 requires that pleadings shall contain and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim. If the plea of Mr Savant, learned counsel for the respondent Trust is accepted, the distinction between the statement of material facts and the reliance on them for the claim shall be obliterated. <u>What is required in law is not the piecemeal reading of the plaint but in its entirety. Whether the reliefs</u>

would be granted on the pleaded facts and the evidence adduced is totally different from the relief claimed. All the reliefs claimed may not be allowed to a party on the pleadings and the evidence adduced. Whether part of the relief cannot be granted by the civil court is a different matter from saying that because of a combined claim of reliefs, the jurisdiction is ousted or no cause of action is disclosed. Considering the reliefs claimed vis-a-vis the pleadings would not mean compartmentalization or segregation, in that sense. The plea raised by the respondent Trust is therefore clearly unacceptable.

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

35. In the case of **Kusum Ingots & Alloys Ltd. Vs. Union of India and another (2004)6 SCC 254** it is observed by Hon'ble Supreme Court that,

Cause of action implies a right to sue. The material facts which are imperative for the suitor to allege and prove constitutes the cause of action. Cause of action is not defined in any statute. It has, however, been judicially interpreted inter alia to mean that every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Negatively put, it would mean that everything which, if not proved, gives the

> defendant an immediate right to judgment, would be part of cause of action. Its importance is beyond any doubt. For every action, there has to be a cause of action, if not, the plaint or the writ petition, as the case may be, shall be rejected summarily.

36. In the case of **Swamy Atmanand Vs. Sri. Ramakrishna Tapovanam AIR 2005 SC 2392** para 24 it is observed by Hon'ble Court that,

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

37. In the case of **Yrooj Ahamed Lords Enterprises Vs. Preethi Kitchen appliances Pvt. Ltd. 2013 (6) CTC 247**, Para 5 (a) (ii) it is observed that,

> A cause of action would constitute bundle of facts. It implies a right to sue. There is a difference between a non-disclosure of cause of action and a defective cause of action. There is no difficulty in appreciating the position of law that an application under section Order VII Rule 11 CPC would govern a case of non-disclosure of a cause of action. However, it does not govern a defective cause of action.

38. <u>**It is held by Hon'ble Supreme Court in the case of Dahiben Vs. Arvindbhai Kalyanji Bhanushali (Gajra) (2020) 7 SCC 366**</u> that the underline object of O. 7 R. 11 (a) is that

> if in a suit, no cause of action is disclosed, or the **suit is barred by limitation under Rule 11(d), the court would not permit the plaintiff to unnecessary protract the proceedings in the suit. In such a case it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted. It is further observed that, under O. 7 R. 11 duties cast on the court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint read in conjunction with the documents relied upon, would the same result in a decree being passed.** This test was laid down in the case of **Liverpool and London S.P. & I Assn.Ltd. Vs. M.V. Sea Success I & Anr. (2004) 9 SCC 512** which reads as :
> 139. Whether <u>a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed</u>.
>
> In **Hardesh Ores (P.) Ltd. Vs. Hede & Co. (2007) 5 SCC 614** the court further held that, it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. **If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact (D.Ramachandran V. R.V. Janakiraman (1999) 3 SCC 267; see also Vijay Pratap Singh Vs.**

> **Dukh Haran Nath Singh, AIR 1962 SC 941**).
>
> It is further observed that, **"Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit**.
>
> It is further observed that, Subsequently, in **I.T.C. Ltd. v. Debt Recovery Appellate Tribunal, (1998) 2 SCC 170** this Court held that <u>law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.</u>
>
> If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in **Madanuri Sri Ramachandra Murthy v. Syed Jalal (2017) 13 SCC 174** held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

39. **Vinod Infra Developers Ltd. Vs. Mahaveer Lunia and Ors. Civil Appeal No.7109 of 2025 judgment dated 23.05.2025**. It is observed by Hon'ble Supreme Court while dealing with Order 7 Rule 11 of Code of Civil Procedure and held that,

> The appellant relies on the decision of this court in **Central Bank of India Vs. Prabha Jain 2025 INSC 95** which holds that if even one cause of action in a plaint survives, the entire plaint must be tried. The doctrine of severance does not apply to reject an entire plaint based on a partial defect.
>
> It is further observed that, however, the High Court

erred in treating the second cause of action-pertaining to the sale deeds registered on 19.07.2022-as merely academic and proceeded to reject the plaint in its entirety without undertaking a judicial examination of this distinct issue. This 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**. In this context, we may place reliance on the judgment in **Central Bank of India (supra),** wherein, **this Court while examining the jurisdiction of civil courts in disputes involving immovable property and proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, held 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 relevant paragraphs are extracted below:

The plaintiff in her suit has prayed for 3 reliefs:

a) The first relief is in relation to a sale deed executed by Sumer Chand Jain in favour of Parmeshwar Das Prajapati

b) The second relief is in relation to a mortgage deed executed by Parmeshwar Das Prajapati in favour of the bank

c) The third relief is for being handed over the possession of the suit property.

Even if we would have been persuaded to take the view that the third relief is barred by Section 17(3) of the SARFAESI Act, still the plaint must survive because there cannot be a partial rejection of the plaint under Order VII, Rule 11 of the CPC. Hence, even if one relief survives, the plaint cannot

be rejected under Order VII, Rule 11 of the CPC In the case on hand, the first and second reliefs as prayed for are clearly not barred by Section 34 of the SARFAESI ACT and are within the civil court's jurisdiction. Hence, the plaint cannot be rejected under Order VII Rule 11 of the CPC.

If the civil court is of the view that one relief (say relief A) is not barred by law but is of the view that Relief B is barred by law, the civil court must not make any observations to the effect that relief B is barred by law and must leave that issue undecided in an Order VII, Rule 11 application. This is because if the civil court cannot reject a plaint partially, then by the same logic, it ought not to make any adverse observations against relief B."

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 an improper application of Order VII Rule 11 CPC.

40. The Hon'ble Supreme Court in the under mentioned case had observed with respect to Order VII Rule 11 of CPC as :- **Ramesh B. Desai and others Vs. Bipin Vadilal Mehata and others 2006 (5) SCC 638** it is observed by Their Lordships while dealing with Order 7 Rule 11 (d) that,

"The Clause (d) of Order 7 Rule 11 speaks of suit as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order 7 Rule 11 of CPC. Clause (d) of Rule 11 Order 7 applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force. **It is further observed that the statement in the plaint without addition or subtraction must show that it is barred by any law to attract application under Order 7 Rule 11 of CPC. The principle is therefore well settled that in order to examine whether the plaint is barred by any law as contemplated by sub rule (d) of Order 7 Rule 11 of CPC, the averments made in the plaint alone have to be seen and they have to be assumed to be correct. It is not permissible to look into the pleas raised in the written statement or to any piece of evidence.**

41. The Hon'ble Supreme Court in the case of **Shri. Mukund Bhavan Trust and Ors. Vs. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle & Ors. (2024) 15 SCC 675** observed while dealing with Order 7 Rule 11 (a) and (d) that,

> Respondent 1-plaintiff filed the present civil suit (in 2008) against the appellants and the State concerned, inter alia for the following reliefs:
> (a) to declare that the plaintiff was the absolute owner of the suit lands;
> (b) to declare that other than the plaintiff, no other person was entitled to deal with, alienate and create any third-party interest in respect of the suit lands;
> (c) to restrain the appellant-defendants permanently, from in any manner holding themselves as owners or representing themselves as owners of the suit lands;
> (d) to declare that the compromise decrees passed in earlier civil suits (filed in 1951 and 1988) and appeal (filed in 2001), were void ab initio, null and void, and therefore, to set aside the same; and
> (e) to direct the appellant-defendants to vacate and hand over the possession of the suit lands to the plaintiff.
> During pendency of the Instant suit, the appellants

moved an application under Order 7 Rule 11(d) CPC read with Articles 58, 59 and 65 of the Limitation Act, 1963, seeking rejection of the plaint as the reliefs sought in the suit were barred by Limitation. **<u>The trial court rejected that application, observing inter-alia that the issue of limitation was a mixed question of law and facts, for which, the parties would have to lead evidence. Challenging that order, the appellants preferred a civil revision petition before the High Court, which was dismissed. Hence, the present appeal</u>**.

The appellant-defendants submitted that (1) Defendant 1 Trust had purchased 3/4th share of the suit lands in an auction sale conducted by the civil court in the year 1938 and the same was duly registered, and they had also purchased the remaining 1/4th share in the suit lands in the year 1952 by another registered sale deed; (11) till then, the subject lands were in possession of the Government;

(iii) thereafter, Defendant 1 Trust became entitled to the suit lands in pursuance o the compromise decree dated S-1-1990 passed in Civil Suit No. 1622 of 1988, and they entered into several agreements with third parties, who constructed buildings in the suit lands: (iv) while so, without any right, title and Interest, Respondent No. 1 preferred the present suit claiming declaration and possession over the suit lands:

(v) by the instant suit, Respondent No. 1 attempted to question the correctness of various orders passed by several courts;

(vi) this exercise was done with an oblique motive to set at naught the orders which had attained finality decades ago, and therefore in these circumstances, (vii) Respondent 1-plaintiff and its predecessors having slept over these orders, which conclusively affirmed the title and ownership of the appellant Trust over the suit lands, could not now be permitted by virtue of the present suit to overturn the effect of the said orders in the guise of there being a fresh cause of action.

Allowing the appeal, the Hon'ble Supreme Court Held:

As settled in law, when an application to reject the plaint is filed, the averments in the plaint and the documents annexed therewith alone are germane. The averments in the application can be taken into account only to consider whether the case falls within any of the sub-rules of Order 7 Rule 11 CPC by considering the averments in the plaint. The court cannot look into the written statement or the documents filed by the defendants. The civil courts including the Supreme Court cannot go into the rival contentions at this stage. In the present case, the averments in the plaint disclose that even prior to the alleged Government Resolution dated 28-2-1980 (by virtue of which the plaintiff is alleged to have acquired the title over the suit properties), a major portion of the suit property (3/4th share) has been conveyed as early as in 1938 through a court auction and the remaining portion (1/4th share) has been conveyed in 1952 by a registered sale deed. **The statements in the plaint imply that the plaintiff was not even born when the property was sold**. **What also remains undisputed is the fact that the plaintiff's predecessors had not challenged the sale in 1938 and 1952. By the time, the alleged resolution was passed, the property had already been conveyed. The resolution can convey any right only over the properties which have not been conveyed**.

It is further observed that,

The plaintiff has narrated many facts in the plaint which are adverse to his claim of title. **They are baseless and vague statements, cleverly crafted to create a cause of action**. The plaintiff himself avers that a suit was filed by the appellant-1st defendant claiming his title based on the auction purchase against the Government. The averment does not even disclose that it has come to his knowledge only recently. It is strange for the plaintiff to plead in the plaint that he was not Impleaded as a party in the 1951 suit, compromised in 1953, when he was not even born. The plaintiff cannot assert or deny something which was whether within the knowledge of his predecessor or not, when he was not even born. It is further observed that,

There is a presumption in law that a registered document is validly executed and is valid until it is declared as illegal. **Prem Singh v. Birbal, (2006) 5 SCC 353, followed**

When a portion of the property has been conveyed by court auction and registered in the first instance and when another portion has been conveyed by a registered sale deed in 1952, there is a constructive notice from the date of registration and **the presumption under Section 3 of the Transfer of Property Act, comes into operation**. The possession, in the present case, also has been rested with the appellant before several decades, which operates as notice of title. The fact that the predecessors of Respondent 1-plaintiff, never challenged the sale of property to appellant-Defendant 1 by court auction and the subsequent registration of the deeds, despite constructive notice, would imply that they had acceded to the title of the appellant, which cannot now be questioned by the plaintiff after such long time. **R.K. Mohd. Ubaidullah v. Hajee C. Abdul Wahab, (2000) 6 SCC 402, followed**

It is further observed that,

The present one is not a case where a fraudulent document was created by the appellant or his predecessors. The title of the suit property as observed earlier was conveyed in 1938 and 1952, and

what transpired later by way of compromise was only an affirmative assertion by the State. While so, Prayer (a) made in the suit relates to declaration to the effect that Respondent 1 is the owner of the suit properties. As per Section 31 of the Specific Relief Act, 1963, a declaration to adjudge the documents as void or voidable must be sought if it causes a serious injury. In the present case, the sale deeds indisputably stand adverse to the interest and right of the plaintiff and hence, a relief to declare them as invalid must have been sought. Though the plaintiff has pleaded the documents to be void and sought to ignore the documents, it is not that the document is void, but rather, it can only be treated as voidable. The averments in the plaint make out only a case for voidable transaction and not a void transaction. Fraud is merely pleaded without any specific attributes but based on surmises and conjectures. The plea has been raised only to overcome the period of limitation. **Ningawwa v. Byrappa Shiddappa Hireknrabar, 1968 SCC Online SC 206, followed Foster v. Mackinnun, (1069) LR4 CP 704, relied on Sanni Bibi v. Siddik Husain Munshi, 1918 SCC OnLine Cal 126; Brindaban v. Dhurba Charan, AIR 1929 Cal 606, affirmed**
It is further observed that,

In the present case, the right to sue had first accrued to the predecessors of the plaintiff, when the properties were brought for sale by the court. No challenge was made to the court auction or to the conveyance in 1952. At this length of time, one can only assume that the predecessors of the plaintiff had not initiated any proceedings as according to them, either it was a grant of soil or during that period, the rights had not resumed. The plaintiff had become a major by 1984. By virtue of Article 60 of the Limitation Act, 1963, the plaintiff has a right to seek a declaration that the alienation of a property in which he had a right, was void within 3 years. Though the article prima facie looks to be applicable only to cases, where there was an alienation by the guardian, the period of limitation would be applicable even when a third party had alienated the share or property of a minor. Even otherwise, Article 58 would come into operation and the plaintiff ought to have filed the suit within three years from the date when he became a major to seek any declaratory relief, as it is the date on which his right to sue first is deemed to have been accrued.

It is further observed that,

The plaintiff has asserted that by Government Resolutions in 1980 and 1984 he has acquired the title over the properties. Therefore, as a prudent man, he ought to have initiated necessary steps to protect his interest. **Having failed to do so and created a fictional date for cause of action, the plaintiff is liable to be non-suited on the ground of limitation**.

It is further observed that,

The court auction was held in 1938 and sale deed was registered in the year 1952 in favour of Defendant 1 in respect of the suit properties, whereas the suit was filed only in the year 2008, though Respondent 1-plaintiff and his predecessors were aware of the existence of the said registered sale deed of the suit properties. In fact, there is no averment in the plaint to the effect that the predecessors were not aware of the transactions. **The limitation period for setting aside the sale deed would start running from the date of registration of the same and as per Article 59 of the Imitation Act, 1963, after three years of the registration, the plaintiff is barred from seeking cancellation of the said registered sale deed or the decree that was passed before 50 years and the consequential judgments. The plaintiff has miserably failed to ascertain the existence of the fact by being diligent.** **Dilboo v. Dhanraji, (2000) 7 SCC 702; Mohd. Noorul Hoda v. Bibi Raifunnisa, (1996) 7 SCC**

767: Prem Singh v. Birbal. (2006) 5 SCC 353: Ningawwa v.Byrappa Shiddappa Hireknrabar, 1968 SCC OnLine SC 206, followed Unni v. Kunchi Amma, 1890 SCC OnLine Mad 5; Sheo Shankar Gir v. Ram Shewak Chowdhri, ILR (1897) 24 Cal 77, affirmed

It is further observed that,

<u>As per Article 65 of the Limitation Act, 1963, the possession of immovable property or any interest therein, based on title can be sought within twelve years</u>. From the records, it is evident that the possession of the subject properties was Initially with the Government of Maharashtra, then with the Gonsavis and thereafter with Defendant No. 1 and it can be safely said that at least for a century, Respondent No. 1 nor his predecessors have been in possession of the properties after the grant of Inam. The plaintiff has failed to sue the appellant-defendant or the State for possession within twelve years. It is already held that the title claim of the plaintiff is barred by limitation and therefore, the claim for possession is also barred and consequently, the relief of recovery of possession is also hopelessly barred by limitation.

It is further observed that,

Moreover, the plaintiff has not produced any documentary evidence to show that he is entitled for the relief of declaration of ownership of the suit properties except by way of reliance on the resolutions of the government, which has lost its force in view of the decree of the civil court and subsequent compromise decrees. The decrees had also attained finality as neither the plaintiff nor his ancestors have challenged the same in time. It is also evident on the face of record that the plaintiff is a stranger to the suit properties; on the contrary, the defendants are the owners of the suit properties. It is a settled principle of law that the owners cannot be restrained from dealing with their own properties at the instance of a stranger. The said relief is again a consequential relief to the claim of title, which has been non-suited on the ground of limitation. Hence, Prayer (c) made in the plaint is not maintainable.

It is further observed that,

Although limitation is a mixed question of fact and law and the question of rejecting the plaint on that score has to be decided after weighing the evidence on record, in cases like the present one, where it is glaring from the plaint averments that the suit is hopelessly barred by limitation, the courts should not be hesitant in granting the relief and drive the parties back to the trial court. This is not a case where any forgery or fabrication is committed which had recently come to the knowledge of the plaintiff. Rather, the plaintiff and his predecessors did not take any steps to assert their title and rights in time. The alleged cause of action is also found to be creation of fiction. On a reading of the plaint averments, It is clear that the plaintiff has not approached the Court with clean hands. There is no hesitation to hold that 2-3-2007, is a fictional date, created only for the purpose of this suit. Therefore, the plaint is liable to be rejected at the threshold. **The spirit and intention of Order 7 Rule 11(d) CPC is only for the courts to nip at its bud when any litigation ex facie appears to be a clear abuse of process**. The courts by being reluctant only cause more harm to the defendants by forcing them to undergo the ordeal of leading evidence.

42. The Hon'ble Supreme Court in the case of **Rajpal Singh Vs. Saroj (deceased) Through LR's and Anrs. 2022 SCC Online SC 638**.

It observed by Hon'ble Supreme Court that

26. Therefore, the subsequent present suit filed by the original plaintiff in Civil Suit No. 419/2007 can be said to be clearly barred by the law of limitation. **The suit seeking cancellation of the sale deed was required to be filed within a period of three years from the date of the knowledge of the sale deed. Therefore, when the name of the appellant herein-original defendant No. 1 was mutated in the revenue records in the year 1996 on the basis of the registered Sale Deed dated 19.04.1996 and when he was found to be in possession and cultivating the land since then, the suit was required to be filed by the original plaintiff within a period of three years from 1996. The submission on behalf of the original plaintiff (now represented through her heirs) that the prayer in the suit was also for recovery of the possession and therefore the said suit was filed within the period of twelve years and therefore the suit has been filed within the period of limitation, cannot be accepted. Relief for possession is a consequential prayer and the substantive prayer was of cancellation of the Sale Deed dated 19.04.1996 and therefore, the limitation period is required to be considered with respect to the substantive relief claimed and not the consequential relief**. **When a composite suit is filed for cancellation of the sale deed as well as for recovery of the possession, the limitation period is required to be considered with respect to the substantive relief of cancellation of the sale deed, which would be three years from the date of the knowledge of the sale deed sought to be cancelled. Therefore, the suit, which was filed by the original plaintiff for cancellation of the sale deed, can be said to be a substantive therefore the same was clearly barred by limitation**. Hence, the learned Trial Court ought to have dismissed the suit on the ground that the suit was barred by limitation. As such the learned First Appellate Court was justified and right in setting aside the judgment and decree

passed by the learned Trial Court and consequently dismissing the suit. The High Court has committed a grave error in quashing and setting aside a well-reasoned and a detailed judgment and order passed by the First Appellate Court dismissing the suit and consequently restoring the judgment and decree passed by the Trial Court.

43. The Hon'ble Delhi High Court in the case of **Rajinder Kumar Kapur and another Vs. Madan Mohan Lal Kapur and another 2019 SCC Online Del 9472**. It is observed by Hon'ble High Court that,

14. **The further argument of the Plaintiff is that the question of limitation is a mixed question of fact and law. This proposition is not an absolute proposition, inasmuch as limitation, when it is evident on the facts, does not become a mixed question, in all circumstances. It is only if evidence is required to decide the question of limitation, that it becomes a mixed question of fact and law**. In the present case, the ownership of the suit property by the late grandfather is not disputed. The execution of the GPAs has been clearly established on record and the same are registered. The Plaintiff and his father, during his lifetime, have never enjoyed any rights in the suit property after the execution of the registered GPAs and the registered relinquishment deed. **These facts not being in dispute, the question of limitation does not remain a mixed question of fact and law**. In view of the long delay in the filing of the present suit, it is held to be barred by limitation as the Plaintiff had knowledge of the fact that Defendant No. 1 claims exclusive rights in the suit property for several years and in fact for the last several decades. There is no reason why a challenge could not have been raised

> earlier. There has to be a finality to such documents once they are executed and registered, failing which, parties would be litigating forever. The documents placed on record clearly show that the Plaintiff does not have any case and does not have even a feeble challenge to any of the documents. Under these circumstances, the application under Order VII Rule 11 CPC is allowed and the suit is rejected for lack of a cause of action and for being barred by limitation.

44. The **Hon'ble Supreme Court in the case of Ram Prakash Gupta Vs. Rajiv Kumar Gupta and ors. (2007) 10 SCC 59. It is observed by Hon'ble Supreme Court** while dealing with O. 7 R. 11 (d) **<u>Rejection of plaint on ground of limitation</u>** that,

> The appellant was a handicapped person. In the year 1957, the father of the appellant purchased a piece of land in the name of and for the benefit of the appellant, who was minor at that time. The father of the appellant died in the year 1965 and at the time of his death, the plot underneath the house in question was lying vacant. Since the appellant was actively engaged in business, in the year 1966 he raised a full-fledged three-storeyed house on the said plot with his funds. After constructing the house, the first floor of the building was let out to one S. The respondents herein were the sons of the appellant's elder brother who died in the year 1986. Since relations between the said two brothers were cordial, on request of the respondents' father, the appellant allowed him to use the second floor of the house as a licensee. In the year 1974, the respondents' father played a fraud and filed two suits in the name of his sons i.e. the respondents for declaration and possession of the ground/first floor. There was no dispute of ownership of the appellant as far as the second and third floors of the house were concerned.

It is further observed that,

In September 1986, after the death of their father, the respondents claimed the possession of the first floor of the building on the basis that they had obtained some decree from the court, the particulars of which were not disclosed. In spite of best efforts, the appellant could not obtain the details of the case, therefore, no action could be taken. S, who was paying rent to the appellant, stopped payment of rent and in the year 1989, S filed an interpleader suit alleging therein that there was a bonafide dispute about the person(s) to whom the rent was payable. In that suit, the details of the decree obtained fraudulently in the year 1976 was disclosed. On 7-2-1990, the appellant filed a suit praying for his declaration as absolute and exclusive owner of the house in question. Prayer was also made to declare the decrees passed in the suits filed by the respondents' father to be null and void. Grant of decree for possession of the second floor of the said house in favour of the appellant was also prayed for. Written statement was filed by the respondents herein in which they had taken the plea that the appellant had appeared in the said suits and as such he had full knowledge of those cases. Issues including the one relating to limitation were framed. Evidence by way of affidavit of the plaintiff (the appellant herein) was filed on which cross-examination of the appellant was closed. In the cross-examination, no question on limitation was asked by the respondents. At this stage, **the respondents moved an application under Order 7 Rule 11(d) CPC for rejection of the plaint on the ground of the suit being barred by law of limitation**. **The trial court dismissed the suit of the appellant merely on the basis of the limitation holding that since partial rejection of the plaint was not permitted in law, the entire plaint had to be rejected. Aggrieved by the order of the trial court, the**

appellant preferred an appeal. before the High Court. The High Court dismissed the said appeal. Being aggrieved by the said order, the present appeal was filed.

It is further observed that,

The appellant submitted that the approach of the High Court was against the settled principle of law that when there were numerous causes of action joined in one claim, it was not permissible to reject the claim under Order 7 Rule 11 CPC if it was possible to give a decree for some of the cause of action. He also submitted that the application of the respondents under Order 7 Rule 11(d) CPC was filed after 15 years of institution of the suit and that too after filing of written statement, framing of issues and cross-examination of the plaintiff-appellant. He further submitted that the said application was allowed by reading one para in isolation and Ignoring other relevant paras of the plaint which specifically dealt with the date of knowledge of the fraudulent decree obtained by the respondents on the basis of which ownership rights in the property were claimed. It was argued that the point of limitation being a mixed question of law and fact should have been decided after appreciation of evidence already on record and not summarily under Order 7 Rule 11 CPC.

Allowing the appeal, the Supreme Court Held:

Order 7 Rule 11(d) CPC makes it clear that if the plaint does not contain necessary averments relating to limitation, the same is liable to be rejected. For the said purpose, it is the duty of the person who files such an application to satisfy the court that the plaint does not disclose how the same is in time. In order to answer the said question, it is incumbent on the part of the court to verify the entire plaint. Before passing an order in an application filed for rejection of the plaint under Order 7 Rule 11(d) CPC it is but

proper to verify the entire plaint averments. While deciding the application under Order 7 Rule 11 CPC, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. **Saleem Bhai v. State of Maharashtra, (2003) 1 SCC 557; I.T.C. Ltd. v. Debts Recovery Appellate Tribunal, (1998) 2 SCC 70; T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467; Roop Lal Sathi v. Nachhattar Singh Gill, (1982) 3 SCC 487; Raptakos Brett & Co. Ltd. v. Ganesh Property, (1998) 7 SCC 184; Sopan Sukhdeo Sable v. Asstt. Charity Commr., (2004) 3 SCC 137, relied on.**

It is further observed that,

Inasmuch as the trial Judge rejected the plaint only on the ground of limitation, it is useful to refer the averments relating to the same. The materials clearly show that the decree passed in Suit No. 183 of 1974 (filed by the respondents' father) came to the knowledge of the plaintiff when S filed the interpleader suit in which a copy of the earlier decree was placed on record. Thereafter the appellant took steps at the earliest and filed the suit for declaration and in the alternative for possession. **As per Article 59 of the Limitation Act, 1963, the suit ought to have been filed within a period of three years from the date of the knowledge. The knowledge mentioned in the plaint cannot be termed as inadequate and incomplete as observed by the High Court. Both the trial court as well as the High Court failed to advert to the relevant averments as stated in the plaint**.

It is further observed that, apart, after filing of the written statement, framing of the issues including on limitation, evidence was led, the plaintiff was cross-examined, thereafter before conclusion of the trial, the application under Order 7 Rule 11 CPC was filed for rejection of the plaint. There was not even a

suggestion to the plaintiff-appellant to the effect that the suit filed by him is barred by limitation.
It is further observed that,

On going through the entire plaint averments, it is held that the trial court has committed an error in rejecting the same at the belated stage that too without adverting to all the materials which are available in the plaint. The High Court has also committed the same error in affirming the order of the trial court. It is further observed that, Civil Procedure Code, 1908 Or. 7 Rule 11 & 12 Rejection of plaint Recording of reasons for, is mandated by Or. 7 R. 12 CPC.

45. The **Hon'ble Supreme Court in the case of N. V. Shrinivasa Murthy and Ors. Vs. Mariyamma (Dead) by LR's and Ors. (2005) 5 SCC 548** <u>**while dealing with O. 2 Rule 2, O. 7 R. 7, 8, 11 (d) Rejection of plaint on ground of limitation and Section 34 of Specific Relief Act that**</u>,

The present suit was filed on 26-8-1996. In the prayer clause, the reliefs claimed in the suit were (a) declaration that the plaintiffs were absolute owners of the suit lands, and (b) permanent injunction restraining the defendants from wrongfully entering the scheduled property and from interfering with the peaceful possession and enjoyment of scheduled lands by the plaintiffs. Dismissing the appeals with exemplary costs and costs throughout, the Supreme Court held:
As seen from the pleadings it is clear that foundation of the suit is that the registered sale deed dated 5-5-1953 was, in fact, only a loan transaction executed to secure the amount borrowed by the plaintiffs predecessor. Hence, relief of declaring the registered

sale deed dated 5-5-1953 to be a loan transaction and second relief of specific performance of oral agreement of reconveyance of the property by registered instrument ought to have been claimed in the suit. These have been deliberately omitted from the relief clause. A suit merely for declaration that the plaintiffs are absolute owners of the suit lands could not have been claimed without seeking declaration that the registered sale deed dated 5-5-1953 was a loan transaction and not a real sale. The cause of action for seeking such a declaration and for obtaining reconveyance deed according to the plaintiff's own averments in para 9 of the plaint, arose on 25-3-1987 when the plaintiffs claimed to have paid back the entire loan amount and obtained a promise from the defendants to reconvey the property by registered deed. Reckoning the cause of action from 25-3-1987, the suit filed on 26-8-1996, was hopelessly barred by time.

It is further observed that, **the averments in para 12 of the plaint concerning the mutation proceedings in respect of the suit property before the Revenue Authorities did not furnish any fresh cause of action for the suit and they appear to have been made as a camouflage to get over the bar of limitation**.

It is further observed that,

In para 11 of the plaint, the plaintiffs have stated that they had earlier Instituted Original Suit No. 557 of 1990 seeking permanent Injunction against the defendants and the said suit was pending when the present suit was filed. Whatever relief the petitioners desired to claim from the civil court on the basis of averment with regard to the registered sale deed of 1953 could and ought to have been claimed in Original Civil Suit No. 557 of 1990 which was pending at that time. The second suit claiming Indirectly relief of declaration and injunction is barred by Order 2 Rule 2 CPC.

> It is further observed that, the suit as framed is prima facie barred by the law of limitation, provisions of the Specific Relief Act, 1963 as also under Order 2 Rule 2 CPC. The plaint has been very cleverly drafted with a view to get over the bar of limitation and payment of ad valorem court fee. The plaint was rightly held to be liable to rejection if not on the alleged ground of non-disclosure of any cause of action but on the ground covered by Order 7 Rule 11(d) CPC. This is a fit case not only for rejecting the plaint but imposing exemplary costs on the appellant. In the result, the appeal fails with costs incurred throughout by the respondents to be paid by the appellants. Further costs in the sum of Rs. 10,000/- (Rupees ten thousand only) are imposed on the appellant to be paid to the respondents for prosecuting and prolonging litigation up to the Supreme Court in a hopelessly barred suit.

46. The **Hon'ble Supreme Court in the case of Nikhil Divyang Mehta & Anr. Vs. Hitesh P. Sanghvi & Ors. Civil Appeal No. S.L.P. (c) No. 13459 of 2024 decided on 15.04.2025. It is observed by Hon'ble Supreme Court** while dealing with Section 3 of Limitation Act and O. 7 R. 11 (d) **Rejection of plaint on ground of limitation** that,

> 25. Section 3 of the Act contemplates that every suit instituted after the period prescribed under the Act shall be dismissed even if limitation has not been set up as a defence. The aforesaid provision is of a mandatory nature and cannot be ignored by the courts even if not pleaded or argued by the defence. It is obligatory upon the court to dismiss the suit if it is, on the face of it, barred by limitation. The aforesaid provision has been enacted for public good and to

> **<u>give quietus to a remedy after lapse of a particular period, as a matter of public policy, though without extinguishing the right in certain cases. Therefore, once a limitation prescribed for instituting a cause of action expires and even if limitation is not set up as a defence, it obliges the court to dismiss the suit as barred by limitation</u>.**
> It is further observed that,
> 29. Lastly, the first appellate Court has ruled that in the suit, the plaintiff has claimed different reliefs and even if the plaint is barred by limitation in respect of one of the reliefs, it cannot be rejected in toto. The aforesaid submission is also without substance as upon the plain reading of the prayers made in the plaint, it is apparent that the primary relief claimed therein is to declare the Will and the Codicil to be null and void and also all subsequent proceedings thereto. In addition to it, the plaintiff has claimed permanent injunction. The other reliefs are dependent upon the first relief and cannot be granted until and unless the plaintiff succeeds in the first relief. Therefore, once the plaint or the suit in respect of the main relief stands barred by time, the other ancillary relief claimed therein also falls down.

47. The **Hon'ble Supreme Court in the case of Popat and Kotecha Property Vs. State Bank of India Staff Association 2005 (4) CTC 489 (SC). It is observed by Hon'ble Supreme Court** while dealing with O. 7 R. 11 (d) of CPC **<u>Rejection of plaint on ground of limitation</u>** that,

> Clause (d) of Order VII Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. **<u>Disputed questions cannot be decided at the time of considering an application filed under</u>**

> Order VII Rule 11 CPC. Clause (d) of Rule 11 of Order VII applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.

48. **The Hon'ble Madras High Court in the case of Dega Jayalakshmi & Ors. Vs. Kapoor Enterprises Rep. By its Managing Partner R.M. Lakshman Dass & Ors. 2010 (1) Mh.L.J. 1167 (Mad). It is observed by Hon'ble High Court in para 25**

> The language of Order VII Rule 11 CPC is quite clear and unambiguous. The plaint can be rejected on the ground of limitation only where the suit appears from the statement in the plaint to be barred by any law. Law within the meaning of clause (d) of Order VII Rule 11 must include the law of limitation as well.

49. Considering the aforesaid settled position of law with respect to Order 7 Rule 11 of CPC it is observed that it is the main ground raised by the defendant that the plaint does not disclose cause of action to file the present suit and the cause of action is illusory to bring suit within limitation and the suit is vexatious, meritless and it is to be shot down at the earliest stage.

50. From the perusal of plaintiff it is the specific case of plaintiffs that they were owners of the suit property and they have executed gift deed on 27.09.2020 bearing registration no.8156 transferring the suit property in favour of the defendant

son. That it is the further specific case of plaintiffs that, the property is transferred with condition that defendant would maintain and care for them for the rest of their lives. That the copy of said registered gift deed is produced on record. That from the perusal of recitals in the said gift deed it reveals that, the donors/plaintiffs have gifted the said property premises out of natural love and affection but no such condition as pleaded by the plaintiff is mention in the said registered gift deed. Thus, the said registered gift deed appears to be unconditional one and executed only out of natural love and affection. That from the further perusal of plaint it reveals that, the plaintiffs have failed to plead the date as to when they were thrown out of their own house and it is only pleaded that, after the execution of said gift deed after the period of six months the defendant behavior towards them deteriorated but the plaintiffs failed to show any action taken by them after six months period. It is further observed that, it is the specific case of plaintiffs that they are now living in rented house however, no such rent agreement is produced on record by them. It is also observed that, there is also no medical documents of plaintiffs filed on record to show the fact that due to old age they are suffering from poor health.

51. From the further perusal of plaint it reveals that, the plaintiffs have taken stand that the said gift deed was executed by exercise of undue influence, coercion and pressure by defendant

over them. That considering said fact it is observed that, the plaintiffs failed to plead the details of said undue influence, coercion in their plaint, the details as to when the undue influence or coercion was exercised and the pleading lacks the necessary details. That to prove undue influence it must be demonstrated that a trusted or dominant party exploited their position to subvert the plaintiff's free Will. That considering the fact that the gift deed is registered document and also the fact that the age of plaintiffs, the plaintiffs failed to show documentation in support of their contention about their physical and mental condition to prove that they were susceptible to being manipulated at the time of execution of registered gift deed.

52. It is further observed that, the plaintiff in plaint had made averment in para 5 that a legal notice was served upon the defendant but they same was returned as unclaimed. That upon the perusal of list of document Exh.3 it reveals that, the office copy of said notice is not filed on record. Further no postal receipts or tacking report is annexed with the plaint. It is also observed that, it is necessary to see as to whether issuance of legal notice amounts to creation of cause of action in favour of plaintiffs. That it is settled position of law that, sending a legal notice does not create a fresh cause of action in a suit for the cancellation of a registered gift deed. **The Hon'ble Supreme Court have consistently ruled that, successive violations, mere denial of**

rights or the issuance of legal notices cannot revive a time barred claim and the cause of action begins to run from the date the document is executed or the suit must be filed within three years from the date when the facts entitling the plaintiffs to have the instruments cancelled first became known to them. **Thus, the clock starts ticking from the first date of knowledge and sending a legal notice and demanding cancellation years later does not reset this three year window**. Therefore, it is observed that, the cause of action pleaded by the plaintiffs in their plaint in para 5 about issuance of legal notice in the month of March 2024 and it was returned with the memo 'unclaimed on 10.04.2024' does not create cause of action in favour of plaintiffs and hence, it is observed the cause of action as pleaded by plaintiffs is illusory, clever drafting in nature and an unsuccessful attempt to bring the suit within limitation. Therefore, it is observed that, the plaint does not disclose valid cause of action.

53. Now, it is the another objection raised by defendant about the suit being barred by limitation. That from the perusal of plaint it reveals that, the suit is filed on 18.07.2026 and the gift deed is executed on 27.09.2020. That the plaintiffs themselves executed the said registered gift deed in favour of defendant. That the suit is filed for cancellation of said registered gift deed. That the limitation is provided under part IV of the Limitation Act, 1963 which is reproduced as under:

Part IV – Suits relating to decrees and Instruments:

Description of suit	Period of limitation	Time from which period begins to run
59. **To cancel** or set aside **an instrument** or decree or for the rescission of a contract.	**Three years**	When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

54. Thus, from the above provision it is clear that, to cancel an instrument the period of limitation is three years which begins to run from the date when the facts entitling the plaintiff to have the instrument cancelled. That it is the specific case of plaintiff that after the execution of registered gift deed on 27.09.2020 after 6 months the defendant behavior was changed. Thus, it is observed that, within the said 6 months period when everything was fine and the plaintiffs were happy they didn't took any objection about execution of said registered gift deed under undue influence, coercion or pressure. It is also observed that, after the said 6 months till the date of filing present suit on 18.07.2026 the plaintiffs had not taken any action against the defendant with respect to said registered gift deed. It is also observed that, no police complaint was made against the defendant with respect to the said registered gift deed or the

exploitation by defendant about the plaintiff's trust by emptying their bank accounts. Thus, it is observed that, the three years limitation period begin to run from 27.09.2020 and it got expired on 27.09.2023 and therefore the present suit is filed after the delay of 2 years, 9 months and 21 days. It is also observed that, there is no any specific claim in the plaint as to when plaintiff became aware of the stated coercion or undue influence at a later date. Thus, in the absence of any claim the limitation period deemed to begin from the date of execution of gift deed itself. Thus, in such facts and circumstances of the case it is crystal clear that, the suit as filed by the plaintiffs is clearly barred by limitation.

55. It is the specific contention of the defendant that plaint is under valued and is insufficiently stand. It is the case of defendants that, a suit for cancellation of any instruments requires payment of advalorem court fee under Section 6 (iv)(d) read with Section 6(iv)(ha) of the Maharashtra Court Fees Act, 1959. Considering said submission from the perusal of plaint it reveals that, the plaintiffs had failed to plead the valuation and court fee clause in the plaint. That from the perusal of CIS Portal it reveals that, plaintiff has valued the suit at Rs.1,000/- and paid the Court fee of Rs.200/- as per Section 6(iv)(j) of Maharashtra Court Fees Act, 1959. <u>That the law with respect to payment of court fees on the relief of cancellation of registered gift deed is</u>

laid down by Hon'ble Bombay High Court in the case of **Vasant Kisan Idhol vs. Smt. Manjurabai Kisanrao Idhol, Civil Revision Application No. 23 of 2016, Decided on 20.02.2017 by Hon'ble Bombay High Court Nagpur Bench**. It is observed and held by Hon'ble High Court that,

> 08. As per the averments in the plaint, it has been pleaded that the entire suit property was in cultivating possession of the plaintiff. On 29th June, 2012, **the defendant had got executed a Gift-Deed from her without her consent and by playing fraud. On that basis, suit came to be filed seeking declaration that the Gift-Deed was null and void and that the plaintiff was, in fact, the lawful owner and possessor of the suit field. A decree for permanent injunction seeking to protect her possession and from creating any third party rights was also sought. The claim was valued under provisions of Section 6 (iv) (j) of the said Act**.
>
> 09. Under provisions of Section 6 (iv) (d) of the said Act, if a declaration in respect of ownership or nature of tenancy, title etc. of immovable property is sought, then 1/4th of the ad valorem fee leviable for a suit for possession on the basis of title has to be paid. As per the third proviso, when any consequential relief other than possession is sought, then the amount of fee would be half of the ad valorem fee. **Under provisions of Section 6 (iv) (j) of the said Act, where declaration is sought with or without injunction or other consequential relief and the subject matter in dispute is not susceptible to**

monetary evaluation and which is not otherwise provided for under the said Act, the court fee payable is Rs.1,000/-.

10. As noted above, the averments in the plaint indicate that the non-applicant is not seeking possession of suit property. The relief sought by her is for declaration that the Gift-Deed dated 29th June, 2012 was null and void. What has to be seen while considering the question of appropriate valuation is the "subject matter in dispute". In the present case, the subject matter in dispute is the alleged fraudulent execution of the Gift-Deed dated 29th June, 2012. There is no consideration passed for execution of said Gift-Deed. The expression "subject matter" would mean the bundle of facts that have to be proved in order to entitle the plaintiff to the relief claimed as observed in Vallabh Das Vs. Madanlal & others [AIR 1970 SC 987].

In the judgment of the Gujrat High Court in Sanatkumar Bhikhabai Patel (supra], the suit therein was filed to avoid a Gift-Deed. The submission that the subject matter of the suit was not immovable property but the transaction of the Gift-Deed itself was accepted. It was held that the valuation of the suit would be under provisions of Section 6 (iv) (j) of the Act.

11. In Pushparaj Surajprasad Modh [supra], the plaintiffs had sought declaration that they were the owners of the suit property. On that basis, it was held that the valuation was required to be made as per Section 6 (iv) (d) of the said Act. Similarly, in G.V. Iyengar &

another [supra], a declaration was sought that the plaintiff was in possession as a legal heir of the deceased allottee and was also a member of the Society. It was found that the declaration sought was as a legal heir and it was, in fact, a declaration of ownership. The said decision is, therefore, clearly distinguishable and not applicable to the facts of the present case.

12. In Balgonda Appanna Vs. Ramgonda Shivgonda [1970 Mh. L.J. 641], a somewhat identical issue was considered. The plaintiff, who claimed to be in possession of the suit lands as tenant, filed suit challenging the sale-deed executed by some family members with regard to the suit land. It was held that the plaintiff had not sought declaration of his ownership but was agitating his right to continue in possession by challenging the sale-deed. It was held that if the subject matter of dispute was the right to continue in possession by challenging the sale-deed, the said right would not be capable of monetary evaluation. It was, therefore, held that the provisions of Section 6 (iv) (d) of the said Act would not apply.

13. In view of aforesaid discussion, I find that the trial Court has rightly considered the nature of relief sought by original plaintiff. The valuation of the suit is proper. There is no jurisdictional error committed by the trial Court while passing the impugned order. The Civil Revision Application is, therefore, dismissed with no order as to costs."

56. Thus, considering the aforesaid position of law it is observed that, from the pleadings made by plaintiffs it is clear that, the plaintiffs are not in possession of the suit property however, they have not sought the relief of possession and by way of clever drafting and to avoid rigors of Court Fees Act the Simplicitor relief of cancellation is prayed. That the subject matter in dispute gift deed is without any consideration and no consequential relief of possession and injunction is prayed and therefore, the case of plaintiff falls within the ambit and scope of Section 6(iv)(j) and not Section 6(iv)(d) or Section 6(iv)(ha) of the Maharashtra Court Fees Act as contended by the defendant and hence, it is observed that suit is properly valued for purposes of court fee and proper court fee stamp is affixed thereon and hence, the ground as raised by the defendant sans legal merit and force and it is hereby rejected.

57. Thus, it is observed that the plaintiff in present suit by way of clever drafting had tried to create illusion of cause of action and had tried to bring the present time barred suit within limitation. That, the suit is hopelessly barred by law of limitation and it does not disclose cause of action. That the suit of plaintiff appears to be manifestly meritless, not disclosing a clear right to sue. That, the plaintiff on the basis of baseless and vague statement, clever drafting has created a illusion of cause of action which is nothing but creation of fiction.

58. It is also observed that, there are disputes regarding the property of plaintiff and partition suit RCS 2090/23 is pending in court. The present suit appears to have been filed only to harass and pressurize defendant as contended by the defendant. The present suit appears to be an afterthought influenced by family disputes between brothers. It is also observed that, the Gift Deed clearly records that the document was drafted as per the instructions of the executant. The thumb impression and signatures of the Plaintiffs are present on the Gift Deed. It is further observed that the signatures of the Plaintiffs appearing on the Gift Deed are not similar to the signatures appearing on the plaint and the documents annexed thereto.

59. It is settled principle that the pleadings in the suit has to be construed as its stands and it is the duty upon the court to keep out of court irresponsible and bogus law suits which are nothing but abuse of process of court. The spirit and intention of O. 7 Rule 11 (d) of CPC is only for the courts to nip at its bud when any litigation ex-facie appears to be a clear abuse of process. That the plaint does not disclose cause of action and it is cleverly drafted with a view to get over the bar of limitation. That upon a meaningful reading of the plaint, it appears to be manifestly vexatious and meritless, inasmuch as it does not disclose a clear right to sue and is barred by limitation. Thus,

with the above observations and discussions made the plaint deserves to be rejected as per O. 7 R. 11 (a) and (d) of CPC. Hence, I answer point no. 1 in the partly affirmative and proceed to pass following order as per point no. 2 in the interest of justice:

ORDER

1. The application Exh.14 is hereby partly allowed.
2. The plaint is hereby rejected as per Order VII Rule 11 (a) and (d) of CPC.
3. No order as to cost.
4. Decree be drawn accordingly.

Digitally signed by JAYESH MADHUKAR AMBODKAR
Date: 2026.07.20 18:34:51 +0530

(J. M. Ambodkar)
6th Jt. Civil Judge (S.D.)
Pune.

Date: 20.07.2026.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are same, word to word, as per the original Judgment.

Name of the Stenographer	M. C. Atnure (Stenographer Grade-III)
Name of the Court	**J. M. Ambodkar,** **6th Jt. C.J.S.D. Pune.**
Date of dictation	20.07.2026
Judgment signed by the P.O. on	20.07.2026
Judgment uploaded on	20.07.2026