

Reserved On : 24/02/2026
Pronounced On : 13/04/2026

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL REVISION APPLICATION NO. 52 of 2021

With

R/CIVIL REVISION APPLICATION NO. 55 of 2021

With

R/CIVIL REVISION APPLICATION NO. 177 of 2023

With

R/CIVIL REVISION APPLICATION NO. 180 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

=====		
Approved for Reporting	Yes	No
	Yes	
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PATEL SURESHBHAI KANJIBHAI & ORS.

Versus

YASMINABANU ABDUL RAHIM W/O ABDUL RAJAK & ORS.

Appearance:

MR K B VIRVADIYA(11272) for the Applicant(s) No. 1

MR SHALIN MEHTA, SR. COUNSEL WITH MR. NISHIT P GANDHI(6946) for the Applicant(s) No. 1,2,3,4,5

MS. KRUTI M SHAH(2428) for the Opponent(s) No. 1,2,3,4,5,6,7,8,9

CORAM: HONOURABLE MR. JUSTICE J. C. DOSHI

CAV JUDGMENT

Rule. Learned advocate Ms.Shah appearing for the respondent waives service of rule.

1. I propose to decide captioned Revision Applications by common judgment, as facts and issue involved in the Revision Applications are analogous.

2. All the Revision Applications are filed under section 115 of the Code of Civil Procedure, 1908 (for short '**CPC**') against judgment and decree passed by the learned Trial Court rejecting application filed under Order 7 Rule 11 of the CPC to reject the plaint in respective suits.

3. In Civil Revision Application No.52 of 2021, subject matter is rejection of application at Exh.22 in Regular Civil Suit No.112 of 2016.

4. In Civil Revision Application No.55 of 2021, subject matter is rejection of application at Exh.14 in Regular Civil Suit No.110 of 2016.

5. In Civil Revision Application No.177 of 2023, subject matter is rejection of application at Exh.22 in Regular Civil Suit No.105 of 2016.

6. In Civil Revision Application No.180 of 2021, subject matter is rejection of application at Exh.10 in Regular Civil Suit No.111 of 2016.

7. With the consent and upon request of learned advocates for the parties, Civil Revision Application No.52 of 2021 is considered as lead matter. Facts are taken from Civil Revision Application No.52 of 2021 which essentially challenge order passed below Exh.22 in Regular civil Suit No.112 of 2016,

thereby facts of the case are taken from the pleading of Regular Civil Suit No.112 of 2016.

8. For convenience, the parties are referred as per their original status before the learned Trial Court.

9. Plaintiff – Yasminabanu and others filed Civil Suit for declaration, permanent injunction and partition against defendants mainly claiming relief to set aside and declare that mortgage deed dated 14.03.1969, consequent sale deed dated 04.12.1975, sale deed dated 14.06.2000, sale deed dated 30.10.2007, sale deed dated 29.02.2008, sale deed dated 12.03.2012 and sale deed dated 01.08.2015 executed by the defendants in favour of other defendants are not binding to the plaintiff as those were executed without consent of the plaintiff and defendant no.23/1, who are having share in the suit property. The plaintiffs further prayed to declare that the said sale deeds do not extinguish or affect the rights of the plaintiffs in the suit land. Second relief claimed by the plaintiff is that the suit property be partitioned amongst the legal heirs in accordance with the provisions of Mohammedan Law, by metes and bounds, and peaceful and vacant possession of the share falling to the plaintiffs and defendant No.23/1 be handed over to them. Thirdly, plaintiff prayed for perpetual injunction restraining defendants, their servants and agents from entering into possession of plaintiff's share in the suit land, particulars of which are stated in para 5 of the plaint.

10. Aforesaid reliefs are claimed by the plaintiff on the basis of averments that plaintiffs are Sunni Muslim and governed by Shariat Act. Plaintiffs claim that they are heirs of Shaikh Mohammad Jamalbhai, who was original owner of the suit property. It is stated that Shaikh Mohammad Jamalbhai was survived by his wife Ajubibi, who died in the year 1958; son Jamalbhai who died on 17.06.1973 and daughter Gulabibi who died on 15.06.1994. The plaintiffs claim that they are direct descendant of deceased Gulabibi daughter of Shaikh Mohammad Jamalbhai. According to plaintiff, Gulabibi was survived by her daughters viz. Subanbibi, who died on 16.07.2008, Rehamatbibi who died on 14.06.1996 and Mariyambibi who died on 31.08.2013. Plaintiff – Yasminabanu daughter of Mariyambibi along with her brothers has filed aforesaid suit. Husband of Mariyambibi expired on 17.09.1986. According to plaintiff, deceased Shaikh Mohammad Jamalbhai was owner and occupier of agricultural land of revenue survey no.70, 71,49,48 and 43 in the outskirts of Patan City precisely in village Sandesrapati (for short '**suit land**'). Promulgation entry No.74 was mutated in revenue record. Since mutation entry of revenue survey no.43 was left out, in said promulgation entry, another revenue entry was mutated vide Revenue Entry No.689 and thereby land of survey no.43 was added in the parcel of land.

11. Plaintiff further claims that since Shaikh Mohammed Jamalbhai was survived by wife Ajubibi, his son Jamalbhai and daughter Gulabibi, revenue authorities were bound to mutate revenue entry of all lineal descendant in revenue record of suit land but some error took place and thus name of Gulabibi was

not mutated. Plaintiff claims here right through Mariambibi daughter of Gulabibi i.e. grand mother of the plaintiff. Plaintiff pleaded that Mariambibi expired on 31.08.2013 and thereafter, plaintiff came to know that their names are not mutated in revenue record. Plaintiff through her power of attorney questioned revenue entry no.74 and No.689 but Mamlatdar, Patan declined to mutate their names and directed plaintiff to obtain necessary orders from learned Civil Court.

12. In the aforesaid factual background, plaintiff questions mortgage deed executed by Jamalbhai on 14.03.1969 and then sale deed of suit land on 04.12.1975 executed by Sakinabi (wife of Jamalbhai) and claimed that since suit land were ancestral properties, co-sharer has no whatsoever right to execute sale deed qua share of plaintiff's grand mother and consequently, her mother and that of plaintiff.

13. Some off-shot pleadings are that plaintiff had filed Regular Civil Suit No.136 of 2015 against defendant no.23/1 viz. Aminabibi questioning posting of revenue entry of suit land. In the said suit, both of them have compromised the dispute and decree was passed in Lok Adalat but said decree has been challenged by way of Special Civil Application No.9124 of 2016 by defendant. Plaintiff since has been served with notice of Special Civil Application, she came to know about various transaction took place in suit land behind her back, adversely affecting plaintiff's share in joint property. The plaintiff narrating the same as cause of action, instituted aforesaid suit.

14. In nutshell, the plaintiff claims relief that suit land belongs to Mohammad Jamalbhai and grand-mother of the plaintiff; plaintiff being grand-daughter of Gulabibi sister of Jamalbhai is entitle to claim right in the suit land on the basis that suit land is ancestral property and plaintiff's undivided share contain therein.

15. In the aforesaid suit, defendant since, served came out with application under Order 7 Rule 11 of CPC to reject plaint. Application having been hotly contested by plaintiff came to be partly allowed by learned Trial Court directing the plaintiff to declare market value of suit land and their share on affidavit, however, learned Trial Court declined relief of rejection of plaint. Hence, being aggrieved, the original defendants have preferred present Revision Applications.

16. In the aforesaid factual aspects, I have heard learned Senior Counsel Mr. Shalin Mehta along with learned advocate Mr. Nishit Gandhi for applicants – original defendants and learned advocate Ms. Kruti Shah for respondents – original plaintiff. Both of them have filed written arguments, which are taken on record.

16.1. Besides, learned Counsel for both sides argued orally.

17. Learned Senior Counsel Mr. Shalin Mehta submitted that learned Court below committed serious error in not rejecting

plaint which is hopelessly time barred. It is submitted that principle of ancestral property is completely foreign and alien to Muslim law. It is further submitted that under Muslim law, neither the right by birth nor the concept of ancestral property is recognized. Learned Senior counsel Mr.Mehta referred to the copy of the plaint and submitted that at least at five different places, the plaintiff has mentioned suit land as ancestral property. Therefore, the very foundation of the suit is erroneous and the plaint deserves to be rejected, however, the learned Trial Court committed an error in not rejecting the plaint.

17.1. It was further submitted that the plaintiff – Yasminabanu and her brothers – are claiming their rights through Gulabibi, who expired in the year 1994. It is submitted during her lifetime, neither Gulabibi nor her daughter Mariambibi claimed their share in the suit land. It was submitted that the heirs of the deceased Gulabibi never came forward to claim that they were not given their share. It is submitted that plaintiff filed suit through power of attorney and claimed share where sale deed of suit land were executed firstly in form of mortgage deed on 14.03.1969; sale deed on 04.12.1975; sale deed on 19.06.2000; sale deed on 30.10.2007; sale deed on 29.02.2008; sale deed on 12.03.2012 and sale deed on 01.08.2015 in favour of defendants. It is submitted that revenue entry were also mutated in favour of respective defendants without any hindrance. It was submitted that only after the price of the suit land escalated, the plaintiff filed the present suit for partition on a flimsy cause of action to disturb the title of the defendants. It was further submitted that the first revenue entry was mutated

in the year 1952 and it was known to all including the ancestors of the plaintiff, that the revenue entry was not recorded in the name of Gulabibi but only in the name of Mohammad Jamalbhai. It is submitted that Gulabibi or her heirs have never questioned promulgation entry no.74 at any point of time or others but the plaintiff. It is submitted that suit is nothing but to blackmail tactic adopted by the plaintiff to exert pressure on defendants and to grab money.

17.2. Learned Senior Counsel Mr. Mehta relied on judgment of this Court in case of **Yusufbhai Walibhai Patel v/s. Zubedaben Abbasbhai Patel [Civil Revision Application No.48 of 2023 with Appeal from Order No. 41 of 2024] dated 10.02.2026** and submitted that this Court has thoroughly examined and held that concept of ancestral property does not apply to Mohammedan law. It is submitted that Mohammedan Law does not have concept of joint or undivided family, coparcener etc., even if father and his son living together do not constitute joint family, in Muslim law father is master of his property and on death of master, succession would open. It is submitted that in the present case, succession was open on death of master – Mohammad Jamalbhai in the year 1952. Revenue entry No.74 was mutated and correction entry no.697 took place atleast more than 50 years back within open knowledge of the parties. It is submitted that Gulabibi or her daughter did not question about their share at any point of time, rather accepted the same, therefore, plaintiff has no right to say that sale deed which were executed in the year 1969 till 2015 are not binding to her.

17.3. Learned Senior Counsel Mr. Mehta relied on another judgment in the case of **Fatima d/o. Rasulbhai Kajubhai v/s. Mirza Akbarbhai Rasulbhai [2018 (0) AIJEL – HC- 239474]** to submit that in identical fact situation where daughter claimed right in property of her father claiming it to be ancestral property, this Court believed that claim of plaintiff is barred by law of limitation.

17.4. Learned Senior counsel Mr.Mehta also relied on following authorities :-

- (i) Prajapati Kodarbhai Kachrabhai v/s. Aanjana Valabhai Manabhai since died through Lhrs. [2024 (0) GUJHC 31542]
- (ii) Shri Mukund Bhavan Trust and Ors. v/s. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle [2024 SCC Online 3844].
- (iii) Uma Devi v/s. Anand Kumar [(2025) 5 SCC 198].
- (iv) Santosh Devi v/s. Sunder [2025 INSC 627].
- (v) Abedaben Isabbai Kureshi v/s. Ismailbhai Alibhai Kureshi [2025 (0) JX (Guj) 825.
- (vi) Laxmiben Mafatlal Patel v/s. Jayantibhai Mafatlal Patel [2018 (0) AIJEL HC 242910]
- (vii) Kalidas Vitthalbhai Mali v/s. Rashmikant Pannalal Patel [2025 (0) AIJEL HC 250648].

17.5. In premise of aforesaid arguments, learned Senior Counsel Mr.Mehta submitted to allow Revision Applications by quashing

and setting aside impugned order and to allow applications filed to reject the plaint and consequently, to reject the plaint.

18. Per contra, learned advocate Ms. Kruti Shah appearing for the respondents – original plaintiff, by way of written submissions running into 32 pages, mainly contended that as per Mohammedan Law, upon the death of Mohammad Jamalbhai, his son Jamalbhai and daughter Gulabibi inherited specific shares in the property, i.e. the son inherited two-thirds share whereas the daughter inherited one-third share. It was submitted that the pedigree of Jamalbhai, who expired in the year 1973, has remained undisputed. The property left by Jamalbhai includes the share of Gulabibi and her daughter, and since such share exists, the plaintiff, being one of the heirs of Gulabibi, is entitled to claim a share in the suit land. It was further submitted that unless the defendants prove specific date from which the plaintiff was ousted or her rights were denied, the period of limitation for filing the suit would not expire. Therefore, the contention raised by the defendants that the suit is barred by the law of limitation is wholly baseless. It is submitted where a sale deed of joint property is executed without the consent of a co-sharer, the purchaser cannot acquire a better title. It was further submitted that under Mohammedan Law, once a vested interest in a specific share accrues upon the death of Mohammad Jamalbhai, the heirs become entitled to their respective shares in the immovable property even in absence of administration of the property. It is submitted that such share cannot be denied merely on the basis of an erroneous mutation entry. In fact, the specific share devolves

upon the heirs and the shares are required to be determined upon each death. In support of her submission, learned advocate Ms.Shah has relied on judgment in the case of **Syedshah Gulam Ghouse Mohiuddin v/s. Syedshah Ahmed Mohiuddin Kasmisul Quadari [1971 AIR SC 2184]**. It is further submitted that cause of action for partition of joint property is said to be perpetually recurring one and would not be barred by principle of limitation unless it is proved that share is divided or partition took place between co-sharer. In nutshell, learned advocate Ms.Shah submits that on death of Mohammedan, his estate shall devolve upon his heirs, in specific share which itself shows that partition would take place on each death. Learned advocate Ms.Shah also relied on judgment in the case of **Gafurbhai Chhotabhi Mainyar v/s. Sugarabai Fakirmohammad [1995 (2) MH.L.J. 703]**. Learned advocate Ms. Shah to explain inheritance governed under Mohammedan Law relied on judgment in the case of **Mansoor Saheb (Dead) v/s. Salim (D) by Lrs. [2024 Law Suit (SC) 1183]**.

18.1. It is also argued by learned advocate Ms.Shah that Patan District was under governance of Gaikwad State till 31.07.1949. It is submitted that Gaikwad State merged in State of Bombay on 01.08.1949, promulgation of revenue record took place in the year 1952 and as per rule the revenue authorities concerned had visited village and residents were called in public meeting and oral request was made to mutate name of land owners which indicates that promulgation entry would not decide Gulabibi's right, title and interest derived on death of Mohammad Jamalbhai. It is submitted that revenue entry are only for fiscal

purpose to collect land revenue. It is submitted that since revenue entry are not creating any title but the learned Civil Court, plaintiff had filed Regular Civil Suit No.136 of 2015 as well as Regular Civil Suit No.112 of 2016 questioning legality and validity of the mortgage deed, thereafter execution of sale deed from the year 1975 to 2015. It is submitted that sale deeds are fraud and executed deliberately to exclude inherited rights of co-sharer i.e. Aminabi, daughter of Jamalbhai and therefore, there is no time limit to challenge said fraudulent transaction.

18.2. It is submitted by learned advocate Ms.Shah that RTS Case No.184 of 2015 was conducted between co-sharer Aminabi daughter of Jamalbhai and predecessors of the applicants, before Deputy Collector, whereby later on settlement deed dated 29.12.2014 was executed to confirm sale which was executed on 04.12.1975 which itself suggest that plaintiff's share exist in the said property and thus, plaintiff is entitled to claim such share. Reliance is placed on judgment in the case of **Dharamsingh v/s. Premsinh [(2019) 3 SCC 530]; Badrinarayan Singh v/s. Bageshwari Prasad Dubey [1951 AIR (Pat) 274] and Kantibhai Ishvarbhai Patel v/s. Chandrakant Ishvarbhai Patel [2005 (3) GLR 211]** to contend that if no dispute raised against revenue entry, it will not adversely affect the right of the plaintiff to challenge the said mutation entry at subsequent stage. It is also submitted that merely plaintiff has not challenged mutation entry on the ground of execution of sale deed, it would not debar from filing suit for partition.

18.3. It is submitted by learned advocate Ms.Shah that Shakinabi cannot bequeath more than her share i.e. 1/8th share in the suit property, being tenant in common and she could not confer better title than what she herself has. This argument has been made taking clue from judgment in the case of **Tikamchand Lunia v/s. Rahimkhan Ishakkhan [1971 AIR (MP) 23]**; **Umadevi Nambiar v/s. Thamaraseeri Roman Catholic Diocese [2022 (AIR) (SC 1640)]**; **P. Kishorekumar v/.s Vittal Patkar [2023 Law Suit (SC) 1123]**. It is further submitted that revisionists after 39 years, in the year 2014 realized the fact that title is not perfected through sale deed executed in the year 1975. It is submitted that therefore, in RTS proceedings initiated by Aminabi, the applicants herein have confirmed sale deed which took place in the year 1975, which demonstrate that plaintiff has share in suit land.

18.4. Mainly upon above submissions, learned advocate Ms.Shah submitted to dismiss Revision Application by confirming judgment and order.

18.5. Some other judgments are also relied by learned advocate Ms.Shah. Firstly judgment of Hon'ble Apex Court in the case of **Suhrid Singh @ Sardool Singh v/s. Randhir Singh [2010 Live Law (SC) 104]** to submit that if sale deed is executed without consent of coparcener, there is no necessity to challenge legality of such sale deed. Another judgment is also relied upon in the case of **S.K.Golam Lalchand v/s. Nandulal @ Nandu Lal Bayers [2024 Law Suit (SC) 801]**.

18.6. So far as submission that partition is a recurring cause of action, learned advocate Ms.Shah has relied upon judgment in the case of **Srinivas and Ors. v/s. M.C.Narayanswamy and Ors. [2024 Lawsuit (Kar.) 506]; Tara Kishore Das v/s. Beharu Barman and Ors. [1956 Law Suit (Gau) 58].**

18.7. Argument of approbate and reprobate is also made by learned advocate Ms.Shah relying on the judgment in the case of **Their Workmen Through Joint Secretary (Welfare), Food Corporation of India Executive Staff Union v/s. Employer in Relation to Management of Food Corporation of India [2023 Law Suit (SC) 638].**

18.8. Following judgments are also relied by learned advocate Ms. Shah.

- (i) Md. Mohammad All v/s. Sri Jagdish Kalita [2003 Law Suit (SC) 970].
- (ii) P. Kumarakurubaran v/s. P. Narayanan [2025 Law Suit (SC) 628].
- (iii) Abdul Vahed v/s. Mohan Bashi sAha [1929 Law Suit (Cal) 149.
- (iv) Baini Prasad (D) Thr. Lrs. v/s. Durga Devi [2023 Lawsuit (SC) 88].

18.9. On the principle of governing Order VII Rule 11 of Code of Civil Procedure, learned advocate Ms.Shah relied on judgment in

the case of **Karam Singh v/s. Amarjit Singh [2025 Lawsuit (SC) 1380]**; **G.Nagaraj v/s. B.P.Mruthunjayanna [2023 Livelaw (SC) 311]**; **Prem Kishore v/s. Brahm Prakash [2023 Livesuit (SC) 322]**; **Shrihari Hanumandas Totala v/s. Hemant Vithal Kamat [2021 Law Suit (SC) 408]** and **Civil Revision Application No.48 of 2023 of Gujarat High Court [Yusufbhai Walibhai Patel v/s. Zubedaben Abbasbhai Patel]**.

18.10. It is thus submitted that several disputed questions are involved in the matter which requires trial. Hence, plaint deserves no rejection at threshold.

18.11. Upon above arguments, it is submitted by learned advocate Ms.Shah to dismiss the Revision Applications.

19. At the outset, having heard learned advocates for both the sides, certain undisputed facts required to be noted are as under :-

19.1. The plaintiff has filed suit for partition, permanent injunction and declaration. There is vast difference between suit for partition and suit for administration. The plaintiff filed suit through Power of Attorney. None of the plaintiffs, though residing in City of Patan, came forward to file suit. Previously, the plaintiff filed Regular Civil Suit No.136 of 2015 against defendant no.23/1. In the present suit, plaintiff and defendant no.23/1 are hand in glove and claiming relief. Regular Civil Suit No.136 of 2015 was decreed on compromise living behind other defendants to be party to the suit. Special Civil Application

No.9124 of 2016 was filed by the defendants of the suit, whereby, this Court stayed implementation and operation of compromise decree. When Regular Civil Suit No.136 of 2015 was filed, revenue entry of suit land was not standing in the name of plaintiff or defendant nos.23/1, yet they have filed compromise purshis before the learned Civil Court. At that time, only revenue entry no.74 and 689 were placed before the learned Civil Court. The plaintiff though was well aware of revenue entry, did not produce the same in earlier suit or in the suit which includes names of the defendants.

19.2. Suit land was owned by deceased Shaikh Mohammadbhai Jamalbhai who died in the year 1952. He was survived by son Mahammadbhai Jamalbhai and daughter Gulabibi. On death of Shaikh Mohammadbhai Jamalbhai, suit land was mutated in name of his son i.e. Jamalbhai Mohammadbhai. Gulabibi real daughter did not object to mutation of name of Jamalbhai as sole owner of the suit land. Son Jamalbhai Mohammadbhai died in the year 1973. On his death, revenue entry of the suit land was mutated in favour of his wife Sakinabi and daughter Aminabi, at that time also Gulabibi did not object. In life time of Gulabibi, mortgage deed was executed in the year 1969. Again, at that time, she did not object. Sale deed was executed in the year 1971, again Gulabibi did not object. Gulabibi died on 15.06.1994. In her lifetime, deceased Gulabibi did not object any of the transaction qua suit land carried out either by deceased Mohmadbhai Jamalbhai or his wife Sakinabi. Alike neither husband of Gulabibi, nor her three daughters objected transaction / transfer of property. Suit land admittedly changed

hands firstly on 14.03.1969 by registered mortgage deed, then by registered sale deed dated 04.12.1975, sale deed dated 19.06.2000, sale deed dated 30.10.2007, sale deed dated 12.03.2012 and sale deed dated 01.08.2015 followed by successful posting of mutation of revenue entry in favour of third party. At the time of filing suit, besides defendants, interest of third parties are created.

20. In premise of aforesaid aspects, firstly let refer Order 7 Rule 11 of CPC. It reads as under :-

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

- (a) where it does not disclose a cause of action;*
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;*
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;*
- (d) where the suit appears from the statement in the plaint to be barred by any law;*
- (e) where it is not filed in duplicate;*
- [(f) where the plaintiff fails to comply with the provisions of rule*

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

21. Order VII Rule 11 of the C.P.C. casts a duty upon the Court to reject the plaint if the circumstances indicates therein are found to be existing. It cannot be the law that this power of the Court would be curtailed in any manner even if the Court proceeds with the suit to some length, without application of mind, on this point. In fact the word 'shall' used in Order 7 Rule 11 of CPC makes it mandatory upon the Court to examine that whether statement made in the plaint are hit by any provision of law or cause of action at first blush is found to be genuine. The rule itself does not indicate anywhere that the power is to be exercised upon an application or, if such an application is filed, it should be at a particular stage. Any action under Order VII Rule 11 of the C.P.C. does not await an application by any party. It is the duty of the Court to reject the plaint if reasons, are found to be existing from a reading of the plaint itself and other documents relied upon by the plaintiff and annexed with the plaint. Scope and ambit of Order 7 Rule 11 of CPC is considered by the Hon'ble Apex Court in the case of **Sopan Sukhdeo Sable vs. Asstt. Charity Commissioner, (2004) 3 SCC 137**, wherein, the Hon'ble Apex Court held as under :-

"10. In Saleem Bhai v. State of Maharashtra ((2003) 1 SCC 557) : (AIR 2003 SC 759) it was held with reference to Order 7 Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order 7 Rule 11 of the Code, the averments in the plaint are germane: the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage."

22. Above judgment in case of Sopan Sukhdeo Sable (supra) has been referred by Hon'ble Apex Court in the case of **Popat and Kotecha Property v/s. State Bank of India Staff Association [(2005) 7 SCC 510]**. In the said judgment, Hon'ble Apex Court has held that real object of Order VII, Rule 11 of the Code is to keep out of courts irresponsible suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7, Rule 11 of the Code can be exercised.

23. In the case of **Balasaria Construction (P) Ltd. v. Hanuman Seva Trust, (2006) 5 SCC 658**, the Hon'ble Apex Court has considered the question whether words "... barred by law...." in Rule 11(d) would also include bar by the law of limitation. Hon'ble Apex Court after referring various judgments and conflict of views, held as under:

"4. This case was argued at length on 30.8.2005. Counsel appearing for the appellant had relied upon a judgment of this Court in N.V. Srinivasa Murthy v. Mariyamma (2005) 5 SCC 548 : (AIR 2005 SC 2897) for the proposition that a plaint could be rejected if the suit is ex facie barred by limitation. As against this, counsel for the respondents relied upon a later judgment of this Court in Popat and Kotecha Property v. SBI Staff Assn.(2005) 7 SCC 510. in respect of the proposition that Order 7, Rule 11(d) was not applicable in a case where a question has to be decided on the basis of fact that the suit was barred by limitation. The point as to

whether the words barred by law occurring in Order 7 Rule 11(d) CPC would include the suit being barred by limitation was not specifically dealt with in either of these two judgments, cited above. But this point has been specifically dealt with by the different High Courts in Mohan Lal Sukhadia University v. Priya Soloman AIR 1999 Raj 102, Khaja Quthubullah v. Govt. of A.P. AIR 1995 AP 43, Vedapalli Suryanarayana v. Poosarla Venkata Sanker Suryanarayana (1980) 1 An LT 488 : (1980) 1 APLJ 173 (HC), Arjan Singh v. Union of India AIR 1987 Del 165, wherein it has been held that the plaint under Order 7 Rule 11(d) cannot be rejected on the ground that it is barred by limitation. According to these judgments the suit has to be barred by a provision of law to come within the meaning of Order 7 Rule 11 CPC. A contrary view has been taken in Jugolinija Rajia Jugoslavija v. Fab Leathers Ltd. AIR 1985 Cal 193, National Insurance Co. Ltd. v. Navrom Constantza AIR 1988 Cal 155, J. Patel and Co. v. National Federation of Industrial Co.op.Ltd. AIR 1996 Cal 25 and State Bank of India Staff Assn. v. Popat and Kotecha Property (2001) 2 Cal LT 34. The last judgment was the subjectmatter of challenge in Popat and Kotecha Property v. SBI Staff Assn.(2005) 7 SCC 510. This Court set aside the judgment and held in para 25 as under: (SCC P.517)

“25. When the averments in the plaint are considered in the background of the principles set out in Sopan Sukhdeo case (2004) 3 SCC 137 : (AIR 2004 SC 1801) the inevitable conclusion is that the Division Bench was not right in holding that Order 7, Rule 11, CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the nonexecution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years needs evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11. This is not so in the present case.”

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

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

24. The Hon’ble Apex Court in the case of **T. Arivandandam v. T.V. Satyapal, [1977 (4) SCC 467]** has observed something very important in strong words which should not be lost sight of while deciding a matter arising under the provisions of Order VII Rule 11 of the C.P.C. Relevant observations of Hon’ble Apex Court are 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 unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif’s Court Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful not formal reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O. VII R. 11, C. P. C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O. X. C.P.C. An

activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi.

"It is dangerous to be too good."

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

25. Thus, meaningful – not formal reading of the plaint, if plaint is found manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Trial Court should exercise its power under Order VII Rule 11, C.P.C. taking care to see that the grounds mentioned therein is fulfilled. If a clever drafting creates the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the C.P.C.

26. In the case of Laxmiben Mafatlal Patel (supra), Co-ordinate Bench of this Court has held in para 26,27 and 28 as under :-

"26 It is a settled rule of law that the plea of rejection of plaint is founded on the "PLEA OF DEMURRER". A person raising such plea in law has to take the facts as stated by the opponent as correct. Despite tentative admission of such correctness, the plaint does not disclose a complete or even partial cause of action or the relief claimed is barred by law

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

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

"It is well settled that a cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support the right to a judgment in his favour. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the tenant. Negatively it does not comprise the evidence necessary to prove the bundle of facts and equally has no relation whatsoever to the defence, which may be set up by the defendant nor does it depend on the character of the relief prayed for by the plaintiff."

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

27. Incontrovertible aspects which this Court has noticed and narrated herein-above, the plaintiff at no point of time, until filing of Regular Civil Suit No.136 of 2015 and suit on hand filed claimed her share in suit land as heirs of Gulabibi, however, she did not question transaction of property to third party. Since there is sudden escalation in price of land, the plaintiff claims that they have undivided share in the immovable property. Apt to note that in promulgation Entry No.74, at no point of time, name of Gulabibi appears as title holder, yet she did not question about it, her daughters also did not question but the grand daughters. The question arises whether grand daughters on maternal side can claim any relief. In order to claim relief, the plaintiff pleaded that property is ancestral and word 'ancestral' appears atleast three times in the plaint pleadings. The plaintiff is claiming share on the basis of vested inheritance in the suit land which is concept derived on the touch stone of right by birth. The plaintiff on the one hand claims that suit land is ancestral property and has share in ancestral property, whereas

on the other hand, claims the same on the basis of principle of Mohammedan Law citing some judgments in the pleadings saying that inheritance is bound on the death of mother. The plaintiff under clever drafting avoided promulgation entry no.74 and entry no.689 on realizing that those were undisputed entries as these entries were never challenged. Moreover, the plaintiff is silent on the aspect that in life time Gulabibi or her daughters, why they have not asked for their share despite transaction of suit land took place in front of their eyes. These issues being stark require explanation from the plaintiff to come out from operation of limitation as all these transaction have expressly oust plaintiff from claiming share in the suit land.

28. It is undisputed fact that all the transactions took place through registered documents and it is deemed that plaintiff has knowledge of such transaction. Section 3 of the Transfer of Property Act say so.

28.1. It is mandatory that in order to get relief, the plaintiff has to aver all material facts. In other words, it is necessary for the plaintiff to aver and prove in order to succeed in the suit. 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, a bundle of facts is necessary for the plaintiff to prove in order to succeed in the suit. Hon'ble Apex Court in the case of T. Arivandandam (supra) held that 'It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or materials to sue, it is

the duty of the trial Judge to exercise his power under Order VII, Rule 11. If clever drafting has created the illusion of a cause of action, as observed by Hon'ble Apex Court, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code."

29. As observed in precedent para plaintiff's grand mother - Gulabibi did not assert her right, nor her daughters; the plaintiff was not even born when promulgation entry and subsequent revenue entry qua suit land was made in presence and knowledge of Gulabibi. She did not raise any claim. Thus, it can be said that Gulabibi or her daughters never questioned sale of disputed property in favour of defendants that too by way of registered sale deed, principle of waiver applies..

30. At this stage, worthy reference can be made to judgment in the case of **Shri Mukund Bhavan Trust v/s. Shrimant Chhatrapti Udayan Raje Pratapsinh Maharaj Bhonsle and Anr. [2024 SCC Online SC 3844]**. Hon'ble Apex Court in para 14, 15 and 16 has held as under :-

"14. The plaintiff, in our wisdom, cannot assert or deny something which was whether within the knowledge of his predecessor or not, when he was not even born. Irrespective of the above, the fact that the predecessors of the Respondent No.1/plaintiff, never challenged the sale of property to the Defendant No.1/appellant 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. There is also a presumption

in law that a registered document is validly executed and is valid until it is declared as illegal. In this regard, this Court in Prem Singh v. Birbal (2006 (5) SCC 353), held as under:

“27. There is a presumption that a registered document is validly executed. A registered document, therefore, prima facie would be valid in law. The onus of proof, thus, would be on a person who leads evidence to rebut the presumption. In the instant case, Respondent 1 has not been able to rebut the said presumption.”

15. At this juncture, it would be relevant to refer to relevant portion of [Section 3](#) of the Transfer of Property Act, 1882, which reads as under:

“3. Interpretation clause..... “a person is said to have notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immoveable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of, or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, where the property is not all situated in one sub-district, or where the registered instrument has been registered under sub-section (2) of [section 30](#) of the Indian Registration Act, 1908 (16 of 1908), from the earliest date on which any memorandum of such registered instrument has been filed by any Sub-Registrar within whose sub-district any part of the property which is being acquired, or of the property wherein a share or interest is being acquired, is situated:

Provided that—(1) the instrument has been registered and its registration completed in the manner prescribed by the [Indian Registration Act, 1908](#) (16 of 1908), and the rules made thereunder, (2) the instrument or memorandum has been duly entered or filed, as the case may be, in books kept under section 51 of that Act, and(3)the particulars regarding the transaction to which the instrument relates have been

correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud.”

16. 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. This Court in [R.K. Mohd. Ubaidullah v. Hajee C. Abdul Wahab](#) (2000 (6) SCC 402), held as follows:

“15. Notice is defined in [Section 3](#) of the Transfer of Property Act. It may be actual where the party has actual knowledge of the fact or constructive. “A person is said to have notice” of a fact when he actually knows that fact, or when, but for wilful abstention from an inquiry or search which he ought to have made, or gross negligence, he would have known it. Explanation II of said [Section 3](#) reads:

“Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.” [Section 3](#) was amended by the Amendment Act of 1929 in relation to the definition of “notice”. The definition has been amended and supplemented by three explanations, which settle the law in several matters of great importance. For the

immediate purpose Explanation II is relevant. It states that actual possession is notice of the title of the person in possession. Prior to the amendment there had been some uncertainty because of divergent views expressed by various High Courts in relation to the actual possession as notice of title. A person may enter the property in one capacity and having a kind of interest. But subsequently while continuing in possession of the property his capacity or interest may change. A person entering the property as tenant later may become usufructuary mortgagee or may be agreement holder to purchase the same property or may be some other interest is created in his favour subsequently. Hence with reference to subsequent purchaser it is essential that he should make an inquiry as to the title or interest of the person in actual possession as on the date when the sale transaction was made in his favour. The actual possession of a person itself is deemed or constructive notice of the title if any, of a person who is for the time being in actual possession thereof. A subsequent purchaser has to make inquiry as to further interest, nature of possession and title under which the person was continuing in possession on the date of purchase of the property. In the case on hand Defendants 2 to 4 contended that they were already aware of the nature of possession of the plaintiff over the suit property as a tenant and as such there was no need to make any inquiry. At one stage they also contended that they purchased the property after contacting the plaintiff, of course, which contention was negated by the learned trial court as well as the High Court. Even otherwise the said contention is self-contradictory. In view of [Section 19\(b\)](#) of the Specific Relief Act and definition of “notice” given in [Section 3](#) of the Transfer of Property Act read along with Explanation II, it is rightly held by the trial court as well as by the High Court that Defendants 2 to 5 were not bona fide purchasers in good faith for value without notice of the original contract.”

31. Transfer of suit property started from the year 1969 by registered sale deed and continued upto the year 2015 in favour of defendants. All these transactions took place prior to filing of

the suit. In view of section 3 of the Transfer of Property Act, presumably plaintiff has constructive notice of transaction from date of registration of the deed. The plaintiff claims relief under section 31 of the Specific Relief Act that these transactions are affecting his right in the suit land, hence, they are not binding. The plaintiff has filed suit in the year 2016 challenging first transaction which took place in the year 1969. Therefore, suit is filed after 47 years. The suit land has been changed so many hands since the year 1969 and therefore, suit filed by the plaintiff even prima facie is barred by law of limitation.

32. Learned Trial Court dismissed the application filed under Order 7 Rule 11 of CPC on the ground that question of limitation is mixed question of law and facts, but in the present case, plaintiff who has constructive notice of sale deed, by clever drafting pleaded cause of action without specifying any particular date which indicate that when right to sue accrue first time. It starts from the first transaction. Successive transaction would give rise to fresh cause of action which is suffice to indicate that suit of plaintiff is time barred. At this stage, reference is made to para 18,19,19.1, 23 and 25 of the judgment in the case of Shri Mukund Bhavan Trust (supra), wherein, the Hon'ble Apex Court has held as under :-

“18. Continuing further with the plea of limitation, the Courts below have held that the question of the suit being barred by limitation can be decided at the time of trial as the question of limitation is a mixed question of law and facts. Though the question of limitation generally is mixed question of law and facts, when upon meaningful reading of the plaint, the court can come to a conclusion that under the

given circumstances, after dissecting the vices of clever drafting creating an illusion of cause of action, the suit is hopelessly barred and the plaint can be rejected under Order VII Rule 11. In the present case, we have already held that 02.03.2007 is a fictional date. It is not a case where a fraudulent document was created by the appellant or his predecessors. The title of the suit property as observed by us 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, the prayer (a) made in the suit relates to declaration to the effect that the Respondent No. 1 is the owner of the suit properties.

19. 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 undisputably 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, we do not think that the document is void, but rather, according to us, it can only be treated as voidable. The claim of the plaintiff that the grant is only a revenue grant and not a soil grant, has not been accepted by the State which entered into a compromise. In paragraph 14 of the plaint, there is an averment that the original sanad was lost and a new sanad was given to the effect that the inam was a revenue grant based on the report of the Inam Commissioner. Again, specific dates are not mentioned in the plaint. In paragraph 25, the plaintiff alleges that third party rights were created by the Gosavi family without any right. Here also, the details are vague. It can be inferred that such rights ultimately culminated into court auction, in which, the property was sold to the appellant. Since the original Sanad was lost, the plaintiff had initiated a suit against the State which was compromised. It is not in dispute that there was a grant. There is only a dispute with regard to the contents of the Sanad, which was lost. In the absence of the original Sanad, it is not possible for any court to determine the contents of the same. The alleged misrepresentation is neither to the character nor is there any allegation of forgery or fabrication. It is also settled law that a document is void only if there is a misrepresentation on its character and when there is a misrepresentation in the contents, it is only

voidable. In the present case, 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. It will be useful to refer to the judgment of this Court in [Ningawwa v. Byrappa Shiddappa Hireknrabar](#)²⁴, wherein it was held as under:

“5. The legal position will be different if there is a fraudulent misrepresentation not merely as to the contents of the document but as to its character. The authorities 24 1968 SCC OnLine SC 206 : (1968) 2 SCR 797 : (1968) 2 SCJ 555 : AIR 1968 SC 956 make a clear distinction between fraudulent misrepresentation as to the character of the document and fraudulent misrepresentation as to the contents thereof. With reference to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable. In *Foster v. Mackinnon* [(1869) 4 CP 704] the action was by the endorsee of a bill of exchange. The defendant pleaded that he endorsed the bill on a fraudulent representation by the acceptor that he was signing a guarantee. In holding that such a plea was admissible, the Court observed:

“It (signature) is invalid not merely on the ground of fraud, where fraud exists, but on the ground that the mind of the signer did not accompany the signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which his name is appended.... The defendant never intended to sign that contract or any such contract. He never intended to put his name to any instrument that then was or thereafter might become negotiable. He was deceived, not merely as to the legal effect, but as to the ‘actual contents’ of the instrument.” This decision has been followed by the Indian courts [Sanni Bibi v. Siddik Hossain](#) [AIR 1919 Cal 728], and *Brindaban v. Dhurba Charan* [AIR 1929 Cal 606]. It is not the contention of the appellant in the present case that there was any fraudulent misrepresentation as to the character of the gift deed but Shiddappa fraudulently included in the gift deed plots 91 and 92 of Lingadahalli village without her knowledge. We are accordingly of the opinion that the transaction of gift was voidable and not void and the suit

must be brought within the time prescribed under [Article 95](#) of the [Limitation Act](#).” 19.1. 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, we 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, we feel that 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. 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.

23. Further, in the aforesaid suit, the Respondent No.1 also sought possession of the suit properties based on title. 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. 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 the Defendant No.1 and it can be safely said that at least for a century, the 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. We have 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.

25. Regarding the averments made in the plaint relating to fraud played on the plaintiff by the defendants in relation to the compromise decrees obtained in their favour, we are of the view that they are vague and general, besides baseless and unsubstantiated. Rather, no case can be culled out from the averments made in the plaint in this regard. The plea of fraud is intrinsically connected with the nature of Inam. We have already discussed the plea of fraud in the preceding paragraphs. We are also of the view that the plea has been raised only to overcome the period of limitation. Admittedly the Plaintiff is a stranger to the suits which ended in compromise. Therefore, in view of the direct bar under [Order XXIII Rule 3A of CPC](#), he cannot seek a declaration 'that the compromise decrees passed in Spl. Civil Suit Nos.152/1951 and 1622/1988 and Civil Appeal No.787/2001, Pune are void ab initio, null and void and the same are liable to be set aside'. The law on this point is also already settled by this Court in [Triloki Nath Singh v. Anirudh Singh](#)²⁸. The bar under [Order XXIII Rule 3A of CPC](#) is applicable to third parties as well and the only remedy available to them would be to approach the same court. In the present case, such an exercise is also not possible in view of the bar of limitation. Hence, we find the suit to be unsustainable."

33. Worthy reference is also made to judgment of Hon'ble Apex Court in the case of **Mohd. Noorul Hoda v/s. Bibi Raifunnisa [1996 (7) SCC 767]**, whereby, Hon'ble Apex Court referred to effect of willful abstention from making enquires and laid down following :-

"5. [Section 55\(1\)](#) of the Transfer of Property Act, 1882 regulates rights and liabilities of the buyer and seller. The seller is bound to disclose to the buyer any material defect in the property or in the seller's title thereto of which the seller is, and the buyer is not, aware, and which the buyer could not with ordinary care discover. The seller is to answer, to

the best of his information, all relevant questions put to him by the buyer in respect of the property or the title thereto. The seller shall be deemed to contract with the buyer that the interest which the seller professes to transfer to the buyer subsists and that he has power to transfer the same. [Section 3](#) provides that "a person is said to have a notice of a fact when he actually knows the fact, or when but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it". Explanation II amplifies that "any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof". Constructive notice in equity treats a man who ought to have known a fact, as if he actually knows it. Generally speaking, 25 (2000) 7 SCC 702 26 (1996) 7 SCC 767 constructive notice may not be inferred unless some specific circumstances can be shown as a starting point of enquiry which if pursued would have led to the discovery of the fact. As a fact it is found that Rafique filed the sale deed dated 1-12-1959 executed in his favour by Mahangu, in Title Suit No. 220 of 1969 for which the petitioner claims to have derivative title through Rafique. Rafique had full knowledge that despite the purported sale, Bibi Raifunnisa got the preliminary decree passed in 1973 and in 1974 under the final decree the right, title and interest in the suit property passed on to her. Under Section 55 when second sale deed dated 6-9-1980 was got executed by the petitioner from Rafique, it is imputable that Rafique had conveyed all the knowledge of the defects in title and he no longer had title to the property. It is also a finding of fact recorded by the appellate court and affirmed by the High Court that the petitioner was in know of full facts of the preliminary decree and the final decree passed and execution thereof. In other words, the finding is that he had full knowledge, from the inception of Title Suit No. 220 of 1969 from his benamidar. Having had that knowledge, he got the second sale deed executed and registered on 6-9-1980. Oblivious to these facts, he did not produce the second original sale deed nor is an attempt made to produce secondary evidence on proof of the loss of original sale deed.

6. The question, therefore, is as to whether [Article 59](#) or [Article 113](#) of the [Schedule to the Act](#) is applicable to the

facts in this case. [Article 59](#) of the Schedule to the Limitation Act, 1908 had provided *inter alia* for suits to set aside decree obtained by fraud. There was no specific article to set aside a decree on any other ground. In such a case, the residuary [Article 120](#) in Schedule III was attracted. The present [Article 59](#) of the [Schedule to the Act](#) will govern any suit to set aside a decree either on fraud or any other ground. Therefore, [Article 59](#) would be applicable to any suit to set aside a decree either on fraud or any other ground. It is true that [Article 59](#) would be applicable if a person affected is a party to a decree or an instrument or a contract. There is no dispute that [Article 59](#) would apply to set aside the instrument, decree or contract between the inter se parties. The question is whether in case of person claiming title through the party to the decree or instrument or having knowledge of the instrument or decree or contract and seeking to avoid the decree by a specific declaration, whether [Article 59](#) gets attracted? As stated earlier, [Article 59](#) is a general provision. In a suit to set aside or cancel an instrument, a contract or a decree on the ground of fraud, [Article 59](#) is attracted. The starting point of limitation is the date of knowledge of the alleged fraud. When the plaintiff seeks to establish his title to the property which cannot be established without avoiding the decree or an instrument that stands as an insurmountable obstacle in his way which otherwise binds him, though not a party, the plaintiff necessarily has to seek a declaration and have that decree, instrument or contract cancelled or set aside or rescinded. [Section 31](#) of the Specific Relief Act, 1963 regulates suits for cancellation of an instrument which lays down that any person against whom a written instrument is void or voidable and who has a reasonable apprehension that such instrument, if left outstanding, may cause him serious injury, can sue to have it adjudged void or voidable and the court may in its discretion so adjudge it and order it to be delivered or cancelled. It would thus be clear that the word 'person' in [Section 31](#) of the Specific Relief Act is wide enough to encompass a person seeking derivative title from his seller. It would, therefore, be clear that if he seeks avoidance of the instrument, decree or contract and seeks a declaration to have the decrees set aside or cancelled he is necessarily bound to lay the suit within three years from the date when the facts entitling the plaintiff to have the decree

set aside, first became known to him.

7. The question, therefore, is as to when the facts of granting preliminary and final decrees touching upon the suit land first became known to him. As seen, when he claimed title to the property as owner and Rafique to be his benamidar, as admitted by Rafique, the title deed dated 1-12-1959 was filed in Title Suit No. 220 of 1969. Thereby Rafique had first known about the passing of the preliminary decree in 1973 and final decree in 1974 as referred to earlier. Under all these circumstances, [Article 113](#) is inapplicable to the facts on hand. Since the petitioner claimed derivative title from him but for his wilful abstention from making enquiry or his omission to file the second sale deed dated 6-9-1980, an irresistible inference was rightly drawn by the courts below that the petitioner had full knowledge of the fact right from the beginning; in other words right from the date when title deed was filed in Title Suit No. 220 of 1969 and preliminary decree was passed on 2-1-1973 and final decree was passed on 5-2-1974. Admittedly, the suit was filed in 1981 beyond three years from the date of knowledge. Thereby, the suit is hopelessly barred by limitation. The decree of the appellate court and the order of the High Court, therefore, are not illegal warranting interference.”

34. In the present case, it is not case of plaintiff that deceased Mohammadbhai Jamalbhai played fraud at any point of time or his heirs have played fraud. It is case where, on death of Mohammadbhai Jamalbhai, entry of his son i.e. Jamalbhai was mutated, it was promulgation entry and then another entry to correct promulgation entry, however, none of them were objected by real sister – Gulabibi, even her first generation did not object during their life time. Suit land was transferred to third party, whereby, third party's possession was created since the year 1969. The plaintiff firstly filed collusive suit No.136 of 2015 specifying revenue entries on record, however, did not refer latest revenue entry. The plaintiff though had constructive notice of

subsequent sale and mutation of entries, played fraud with the Court and got compromise decree and tried to place it before the revenue authorities unsuccessfully. Defendants of the present suit filed Special Civil Application No.9124 of 2016 before this Court challenging compromise decree. Co-ordinate Bench on 13.06.2016 while staying operation of compromise decree which took place in Regular Civil Suit No.136 of 2015 held as under :-

“2. It is relevant to note that respondent No.10 – original defendant Aminabi also executed one registered declaration, wherein she confirmed all the previous sale transactions and said confirmation deed was executed by her along with her three daughters on 29.12.2014. Respondent Nos.1 to 9 – original plaintiffs filed the above suit claiming their right as legal heirs and representative of deceased Rahematbibi Gulam Haider, Mariambibi Abdul Rahim and Subanbibi Amirmiya, who are daughters of Gulabbibi Limbabhai.

3. Surprisingly, though respondent No.10-original defendant executed registered declaration in the year 2014, wherein she confirmed all the previous sale transactions and yet respondent No.10 by suppressing all above relevant facts invited consent decree in the Lok Adalat, which prima facie, appears to be collusive in nature. On the top of it, one Mr. Krunal B. Patel for and on behalf of the original plaintiffs got registered lis pendens of above Regular Civil Suit No.136 of 2015 on 16.5.2016 i.e. after disposal of the above suit on 12.3.2016 and therefore, present petition deserves consideration.”

35. The object and purpose of suit of plaintiff is thus clear as crystal reading aforesaid order. Plaintiff firstly filed Regular Civil Suit No.136 of 2015 against defendant no.23/1 and got compromise decree and then tried to take away title of the suit land to exert pressure and to bitter the title of suit land. Co-ordinate Bench of this Court in the case of **Jaman Shamji**

Fadadu v/s. Sadik Mahmad Sidik [2023 (3) GLH 441] noticed growing tendency of filing of suits by descendants on the purported ground of discovery of documents, knowledge acquired through their friends and relatives, so on, and so forth. Possibly the reasons behind either are rise in the price of the land, rivalry, sponsored litigation, to name a few. In para 33 and 34, Co-ordinate Bench has held as under :-

“33. Pertinently, there is a growing tendency of filing of suits by the descendants on the purported ground of discovery of documents, knowledge acquired through their friends and relatives, so on, and so forth. Possibly the reasons behind either are rise in the price of the land, rivalry, sponsored litigation, to name a few. Although the ancestors for decades don’t take any steps and the heirs, waking up from the slumber, files the suit claiming their so called right over the immovable properties more particularly the lands, couching the prayers in such a manner, so as to bring the cause within the limitation. Securing the defence in an application, that may be filed under Order VII Rule 11 of the Code, that the limitation, is a mixed question of facts and law and requires the trial. On the other hand, consider the predicament of the party who purchases the property by the registered transaction and continues to be in possession and enjoyment and all of a sudden, after a decade or so, receives a notice from the court of the suit with respect to the so called rights cropped up of the heirs over the property. Burdening a person with the rigours of litigation in such facts and circumstances would be both harsh and unjustified. Such attempt therefore on the part of the heirs are required to be nipped in the bud. However, it must be borne in mind that these considerations apply to genuine legal transactions and cases.

34. The present is one of such cases, where, the heir of Musa Pira discovers documents from the house, which remained unnoticed by the great grandfather, grandfather and the father. The heir that is the plaintiff without disclosing as to when, from where and how the plaintiff had

discovered the document files the suit. As aforesaid this raises a question in the mind that if all the family members are residing in the very same house, since decades, why the documents were not within the knowledge of the other family members, or the ancestors and the plaintiff being the fourth generation was lucky enough to get those documents. The theory put forward to say the least is unbelievable.”

Tone and tenure of the suit filed by plaintiff is matching with the observation and finding extracted herein above. Plaintiff's suit filed through power of attorney appears to be a sponsored litigation to cloud title of suit land.

37. Article 110 of the Limitation Act, 1963 provides limitation to enforce right to share in joint family property and time begins to run when exclusion becomes known to the plaintiff. In the case on hand, plaintiff claims that Gulabibi has been denied her share and they being grand-daughters are entitled to claim their share in suit property. Gulabibi did not assert her share nor claimed that her share has been fraudulently excluded from joint property, in fact at no point of time, she questioned mutation entries in the name of her real brother i.e. Jamalbhai. Gulabibi even did not questioned or challenged mutation entry in favour of widow of deceased Jamalbhai. Gulabibi did not even challenge sale deed which took place in the year 1969 and subsequent sale deeds. The plaintiff thus cannot claim what Gulabibi did not claim. The plaintiff is silent on this aspect. The plaintiff filed suit to declare that sale deed executed since the year 1975 is not binding to her. Article 58 of the Limitation Act, 1963 provides three years of limitation to obtain any other declaration and time begins to run when the right to sue first accrues. Article 59 of

Limitation Act, 1963 provides limitation of three years to cancel or set aside an instrument or decree or for the rescission of contract and time begins to run 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.

38. Principle of constructive notice as discussed herein-above, is clearly applicable to the facts of the present case, as suit of the plaintiff challenges mortgage deed executed in the year 1969 or sale deed executed in the year 1975 is clearly barred by law of limitation. Series of registered sale deed executed in favour of third party as noted herein-above are challenged after 47 years of its execution. In the case of **Fatima d/o. Rasulbhai Kajubhai (supra)** in identical fact situation, Co-ordinate Bench upheld Appellate Court's finding, it was case where by learned Appellate Court while answering issue no.1 and 2 of that suit was pleased to held that concept of ancestral property or joint property etc. are alien to the principle of Mohammedan Law and also decided that filing of cross objection under Order 41 Rule 22 of CPC is obligatory only when certain findings against respondent is needed to be challenged. Co-ordinate Bench extracted finding of Appellate Court in para 9 which is reproduced herein under :-

“9. The first appellate Court explained the concept of family settlement in context of the Mohammedan Law and took the view that the trial Court ought not to have declared the properties to be ancestral as there is no concept of devolution of ancestral property in Mohammedan Law. To put it in other words, the parties are Muslims, they would be governed by their personal law. The first appellate Court while dismissing the appeal mainly concentrating on the

issue of limitation held as under:

ISSUE NO. 1 AND 2 :

17) It is admitted position that Ld. Trial Court in manifest words reached to the conclusion that suit property are ancestral property whereby plaintiffs and defendant No.1 have right upon it. Ld. Trial Court has also believed that this suit property was unlawfully sold by the mother of the plaintiffs and defendant No.1 by producing forged pedigree, to defendant No.2, 3 and 4. Plaintiffs have also come out with the case that the suit property is ancestral property (see para3 of the plaint). Plaintiffs have also averred that on death of grandfather Kajubhai Mirza, the father of plaintiffs Rasulbhai Kajubhai Mirza, on principle of inheritance, acquired suit property and since then, plaintiffs and defendant No.1 hold share by birth in the said property (see para3 of the plaint). So, the base and pivot of plaintiffs claim is depend and hinge upon concept and noun of the suit property as ancestral property. It is true that Ld. Trial Court has also believed that suit property is ancestral property and against such finding of Issue No.1, respondents have not preferred separate memorandum of appeal, but, as per the argument of Ld. Advocate for the respondents by way of oral cross objection, respondent No.3 and 4 are challenging the finding of Issue No.1 and 2 framed by the Ld. Trial Court. So, it is right time to refer Order41, Rule22 of C.P. Code, which is reproduced herein under Order41, R22 of C.P.C.

"22. Upon hearing, respondent may object to decree as if he had preferred separate appeal.

(1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree [but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross objection] to the decree which he could have taken by way of appeal, provided he has filed such objection in the Appellate Court within one month from the date of service on him or his pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

(2) Form of objection and provisions applicable thereto Such crossobjection shall be in the form of a memorandum, and

*the provisions of rule], so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto. [***] Subrule (3) omitted by the Code of CPC (Amendment) Act, 1999, S. 31 (vii)*

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to pauper appeals shall, so far as they can be made applicable, apply to an objection under this rule."

17.1) In case of Nalini Vs. Padmanabhan Krishnan; AIR 1994 Kerala 14, Hon'ble Kerala High Court held that "even in second appeal, defendant can challenge the finding of particular issue although he had filed no appeal or cross objection in the first Appellate Court."

18) Before Hon'ble Supreme Court in case of S. Nazer Ahmed Vs. State Bank of Mysore; AIR 2007 S.C. 989, the issue was, "when an appeal is filed, the respondent can file cross objection. But the real question is whether the respondent without filing a cross objection can assail the finding on any issue by the lower Court.

The Hon'ble Supreme Court held that the respondent in an appeal is entitled to support the decree of the trial Court even by challenging any of the findings that might have been rendered by the trial Court against him. For supporting the decree passed by the trial Court, it is not necessary for a respondent in the appeal to file a memorandum of crossobjections challenging a particular finding that is rendered by the trial Court against him when the ultimate decree itself is in his favour. A memorandum of cross objections is needed only if the respondent claims any relief which had been negatived to him by the trial Court and in addition to what he has already been given by the decree under challenge."

19) Keeping in mind the law laid down by and on touch stone of Order41, Rule22 of C.P. Code, it is not obligatory for respondent to file memorandum of cross objection to challenge finding of a particular issue which is adverse to him. He can even by oral argument challenge that finding

while supporting the legitimate decree when it is in his favour. If defendant/respondent has filed counter suit before the Ld. Trial Court and made prayer for a specific relief against the plaintiff and if such relief is negated by the Ld. Trial Court and made prayer if defendant wants that relief is to be in his favour. In appeal filled by unsuccessful plaintiffs, he needs to file memorandum of crossobjection.

20) So, in present case, although respondent No.3 and 4 have not filed memorandum of cross objection, his arguments qua finding of Issue No.1 and 2, which runs against them, can be considered under the concept of cross objection.

21) As noted earlier, undeniably parties are governed by Mohammedan Law. Their rule of succession is also governed by specific provision made thereunder Mohammedan Law.

22) Section 122 of the Mohammedan Law penned by B.R. Verma published by Law Publishers (India) Pvt. Ltd., 7th Edition reads as: "Sec. 122. Rights of the heirs arise on the date of a person's death. — The right of an heir comes into existence only on the death of the person of whom he or she is an heir."

23) Thus, in Mohammedan Law, inheritance descends and not ascends. In so far as claiming any property as an ancestral property is concerned, one has to claim right by birth. This idea or custom is not recognized by the tenet of Mohammedan Law. According to Mohammedan Law, no one can have any share in the inheritance of another till after his death. The right of each heir is several and distinct and arises immediately on the death of the person of whom he is an heir. (See Amir Dulhin v. Baij Nath Singh, I.L.R.21 Cal.311 at p.316). The right of an heir apparent or a presumptive heir who is entitled to succeed on the death of a person does not arise till the death of such person. In Muslim Law, his right to succeed is nothing more than a mere spes successions, that is, a mere chance of succession.

23.1) The principle nemo est heirs viventis (a living person has no heir) applies to Mohammedans law. Unlike the case of Hindu co parceners or recognized a son or daughter cannot claim any interest in the properties of a Muslim in his lifetime.

24) So, the concept of ancestral property is alien and foreign

to the tenets of the Mohammedan Law. No one in Muslim can claim that a particular property is ancestral property and it received in the hand of their father from grandfather and as being a ancestral property, they have right in the property of their father. Looking to this very basic and fundamental concept of Mohammedan Law, I am of the opinion that Ld. Trial Court has completely misguided itself that the plaintiffs as the daughters of deceased Rasulbhai Kajubhai has received the suit property from his father, the plaintiffs have right in this ancestral property.

25) Now, if we go through the pleadings itself, it speaks voluminous. According to plaintiffs, deceased Rasulbhai Kajubhai died on 27.6.1960 and mutation entry qua suit property took place on 3.10.1961. Some of the property went in share of Baxanben, whereas some of them have gone in share of Baxanben as well as defendant No.1 and all the three properties came to be sold by registered sale deed on 31.12.1963, 2.8.1967 and 6.12.1969.

26) Concept of Family Settlement is also recognized in the Mohammedan Law. It is well settled that a family arrangement among the Mohammedan governed by the personal Law of the Muslims is binding between the parties inter se, the same way an arrangement binds the Hindus since the principles governing such family settlement is the same. Reference may be made to the case of Md. Amin V. Fhakhir Ahmed; AIR 1952 SC 358. In this case it was a question about the validity of the transfer of interest in the property of a minor by a de facto guardian. The Hon'ble Supreme Court held that such a transfer is void yet Hon'ble Supreme Court recognized the as a family settlement.

26.1) Normally, a family settlement may be effected to allay disputes existing or apprehended in the interest of harmony in the family or the preservation of property. However, it is not always necessary that there should be existence of dispute or possibility of dispute in future. It would be sufficient if it is shown that there were actual or possible claim and counter claim by parties. Oral family settlement is also recognized.

27) Before appreciating this issue, it is worth to refer deposition of plaintiff Fatima, wife of Fatesang Ghori produced at Ex60. In cross examination, she accepted that

she does not know, whether her mother and father have any immovable property. She admitted that at the relevant time, she was married and after the marriage, she never went to her parental house. She has also admitted that she does not know any particulars of property for which she claims relief. At one instance, she admitted that these three agricultural fields are not sold to any one and they still running in the name of their father in revenue record. On second instance, she said that these suit properties are sold. She also admitted that she does not know whether her mother had sole any of the property and she has no knowledge up till the date. She admitted that she has not gone to collect the particulars and papers from Government Office qua this suit property. She has also admitted that she does not know that agricultural land of which Survey Number is sold to whom, but, according to her, it was informed to her by one Ahmedbhai Imambhai. She has also admitted that the suit/plaint is prepared by his advocate. She has just put the thumb impression upon it. She has also admitted that she has preferred this suit because the prices of this agricultural land is now sky rocketing and therefore, she thinks to get share from this suit property. She has also admitted that she had never preferred any litigation before revenue office challenging the revenue entries. She has also admitted that she had never claimed any share qua suit property before any revenue office. She has also admitted that she knows that these suit properties are sold out 40 to 50 years before.

28) According to above factual aspects, it can be estimated that on the death of deceased Rasulbhai Kajubhai, whereat, all the three plaintiffs were married, or family settlement took place between Baxanben and defendant No.1, by which, out of three, two agricultural lands fell in share of bai Baxan and one fell in share of defendant No.1 and such fact is appearing from mutation entries that took place wayback in the year 1961, not being objected till date by the plaintiffs. So, this estimation is substantiated and is presumed that the present plaintiffs have accepted the family settlement and therefore, they never think for filing of challenge to mutation entry till the filing of suit, which also ignited at the hand of Mr. Ahmedbhai Imambhai, said to have been relative of plaintiffs, for the purpose of getting money as the prices of suit property goes sky rocketing. So, there is no substance in the suit. The family settlement took

place on the death of Rasulbhai Kajubhai. The suit property fell in share of plaintiffs as well as defendant No.1. They encash them wayback by selling precisely 40 to 50 years ago. Now, plaintiffs came as to extort the money from defendant and the title owner of the suit property.

29) It is deemed that each one came to know about transaction as sale took place and registered with subregistrar office. In present case, all three sale deeds were came to be registered wayback in 1963, 1967 and 1969. Mutation entry on the basis of this registered sale deed also took place in revenue records and for years together, their purchasers are enjoying the suit property. Plaintiffs have not averred that these deeds are obtained by fraud and they came to know about the fraud only before filing of the suit. It is very clear case of the plaintiffs that these registered sale deeds were got registered wayback in the year 1963, 1967 and 1969 respectively. At that time, these sale deeds were executed by the person, whose name was entered into the revenue record, which never got challenged by the plaintiffs and therefore, as per the Article 59 of the Indian Limitation Act, such suits have to be filed within three years when the facts entitling the plaintiffs to have the instruments or decree cancelled or set aside or the contract rescinded first become known to him. Here, by illusion, cherima as well as jugglary of words, plaintiffs tried to bring the suit within prescribed limitation, but, it was hopeless and rightly been believed by the Ld. Trial Court that suit is time barred.

30) The authorities upon which Ld. Advocate Mr. Pandya relied upon are distinguishable on the facts of those cases. In case of Kedar Prasad (supra), Hon'ble Allahabad High Court held that if property of joint family sold by one member to any of the third party, other members though not party to the instruments can bring suit for cancellation of sale deed as their interests would be seriously injured if the sale deed is left unchallenged in the present case, as discussed herein above, case belongs to Mohammedan Community, where by concept of joint family is alien and therefore, this authority has no applicability.

33.1) Having gone through the plaint of the present case, this Court does not find that present plaintiffs are deceived by the purchaser and fraud was played upon them. It was

plaintiffs case that they have right in the suit property as it is termed as ancestral property and without their consent, suit property is sold. So, facts of both the case have clench on factual scenario and therefore, this case is not applicable.

35) In case on hand, respondent/ defendant No.3 and 4, by filing written statement, have vociferously and vehemently objected on the issue of limitation and which Ld. Trial Court has decided kneecap of Issue No.3. Thus, the ratio flowing from this Judgment is also not applicable to the facts of the case on hand.

36) In nutshell, for above reasons, the finding of the Ld. Trial Court qua Issue No.1 and 2 does not survive and accordingly, they are upturned under Order 41, Rule 22 C.P.C. and Issue No. 1 and 2 framed by the Ld. Trial Court is answered in Negative, whereas, finding qua limitation delivered by the Ld. Trial Court subsists and accordingly, it is upheld.”

38.1. In the case of **Fatima d/o. Rasulbhai Kajubhai (supra)**, Co-ordinate Bench in para 14 has held as under :-

“14. Having heard Mr. Bhatt, the learned counsel appearing for the appellants and having gone through the two judgments of the courts below, I am of the view that none of the questions formulated in the memorandum of the Second Appeal could be termed as substantial questions of law. Indisputably, the suit came to be filed almost after more than 50 years from the date of the registration of the sale deeds. I am not impressed by the submission of Mr. Bhatt that as the sale transactions are void, the period of limitation would not apply and the suit filed by the plaintiffs was well within time. I am also not impressed by the submission of Mr. Bhatt as regards the findings of the first appellate Court so far as the issues nos.1 and 2 are concerned.”

39. At this stage, let refer Section 115 of the Mohammedan Law, 13th Edition by B.R. Verma, which states how the Estate of a deceased Mohammedan is to be administered, it reads as

under:-

“Sec. 115. How the estate of a deceased Mohammedan is to be administered.-The estate of a deceased Mohammedan shall be applied for satisfaction of claims in the following order:

(1) *reasonable funeral expenses and death-bed charges, including fees for medical attendance and board and lodging for one month previous to his death;*

(2) *expenses of obtaining probate or letters of administration and other expenses on judicial proceedings necessary in administering the estate;*

(3) *wages due from services rendered within three months of the death of the deceased by any labourer; artisan or domestic servant;*

(4) *debts due from the deceased according to their respective priorities, if any;*

(5) *legacies to the extent to which they are valid under Chapter XIII;*

(6) *distribution among the heirs of the residue, if any, according to the provisions of Chapters X to XII.”*

40. Plaintiff avoided relief of administration of deceased property, but rather asked for partition claiming that suit property is ancestral property and she has right by inheritance meaning thereby, she has right by birth.

41. In para 11.7 to 11.19 in the case of Yusufbhai Walibhai Patel (supra), this Court addressed the issue that whether Muslim law recognize right by birth. Relevant observations are

as under :-

“11.7 Let me firstly refer Section 122 of the Mohammedan Law, 13th Edition by B.R. Verma, which states that:-

‘Sec. 122. Rights of the heirs arise on the date of a person's death.’ The right of an heir comes into existence only on the death of the person of whom he or she is an heir.’

11.8 The Mohammedan Law recognizes the Principle or Latin phrase ‘Nemo est heres viventis - A living person has no heir’. An heir apparent or presumptive has no such reversionary interest as would enable him to object to any sale or gift made by the owner in possession.

11.9 In Mohammedan Law, inheritance descends and not ascends, unlike Hindu Law, plaintiff in the case on hand, firstly claimed that the immovable properties in Lot-3A is joint family property and in Lot-3B, she claims that those immovable properties are purchased from selling of the ancestral property.

11.10 In so far as claiming any property as an ancestral property is concerned, one has to claim right by birth, this idea or custom is not recognized by the tenets of the Mohammedan Law. As observed hereinabove, according to Mohammedan law, no one can have any share in the inheritance of another till after his death, the right of which are several and distinct and arises immediately on the death of the person of whom he is an heir (See **Amir Dulhin v. Baij Nath Singh, I.L.R. 2021 Calcutta 311 at Page 316**)

11.11 The right of an heir apparent or a presumptive heir, who is entitled to succeed on the death of a person does not arise until on the death of such person. In the Mohammedan Law, right to succeed is nothing more than a mere spes i.e. mere chance of succession.

11.12 *The Principle of 'Nemo est heres viventis - A living person has no heir' applies to Muslims. Thus, Muslim cannot claim any right by birth, unlike Hindu Coparceners. Thus, there is no any interest in the properties in the lifetime of the father claiming it to be by birth.*

11.13 *Thus, the concept of ancestral properties is wholly foreign to the principle of Mohammedan Law as the Mohammedan Law does not recognize right by birth, but recognizes that a living person has no heirs. Likewise, the concept of 'joint family' is foreign to the Mohammedan Law. The concept of 'joint family' implies only to a group of members of many to one nuclear family together and not to a group of people living separately. Thus, the Mohammedan Law does not recognize the 'joint family' as a legal entity and does not provide any rule applicable to the concept of joint family property, as such. (See **Shukrullah v. Zahura Bibi**, reported in **AIR 1932 ALL. 512**)*

11.14 *The relationship between the members of the Mohammedan family is distinct from that of the members of the Hindu family. The presumption of the Hindu Law regarding the joint family, joint family property or joint family funds has got to be completely forgotten in deciding cases between the parties who are Mohammedans. To make out a case that the property is joint family property and to set up a case of partition, the plaintiff needed to show by sufficient material on record that it is a case either of partnership by express terms or by implication on account of the conduct of the parties or that there was a relationship of principal and agent or any fiduciary relationship between the parties.*

11.15 *Had the plaintiff made out, such a case of partnership or agency or fiduciary relationship, he/she can take advantage of the provisions of the Indian Trusts Act and provisions arising out of the relationship of partners or principal or agent to claim the share in the property. There may be cases where often, the family remains undivided for some time after the death of the deceased, but there is no such thing in Mohammedan law, recognizing the concept of undivided joint hindu family or joint family property in sense*

of terms as used in Hindu Law (See **Suddurtonnessa v. Majada, I.L.R. 3 Calcutta 694** or **Abdul Rashid v. Sirajuddin, AIR 1993 ALL. 206 at page 209**).

11.16 Apt to note that, Mohammedan succession is individual succession, it necessarily follows that there is no presumption, as in the case of a joint Hindu family, that any property has been purchased out of joint undivided property. It must be remembered that when the members of the Muslim family live in Commensality, they do not form a joint family in the sense in which that expression is used with regard to the Hindus, and in Mohammedan Law there is not, as there is in Hindu Law, any presumption that the acquisitions of the several members are made for the benefit of the joint family. The acquisition of the property by some members will not be deemed to be for the benefit of all of them jointly.

11.17 It is well recognized principle of Mohammedan Law that at the moment of death of Mohammedan, the estate of a deceased Mohammedan devolves on his heirs and they take the estate as tenants-in-common in specific shares. The theory of representation, as available under the Hindus, is not recognised under the Mohammedan Law and the interest of each heir is separate and distinct. (See: **Abdul Huck v. Seetamsetti Narayan Naidu**, reported in **AIR 1928 Madras 14**).

11.18 Children in a Mohammedan family are not co-owners in the sense that what is purchased by one person ensures for the benefit of the others as the theory of representation is unknown to Mohammedan Law, and nay, there is no presumption that acquisition of one or more of the family are to be presumed to be for the benefit of the family, unless there is proof to the contrary. (See **Mohd. Ibrahim v. Syed Muhammed Abbu Bakker**, reported in **AIR 1976 Madras 84**).

11.19 The Apex Court in the case of **Mansoor Saheb (Dead) & Ors. v. Salima (D) By Lrs. & Ors.**, reported in **2024 SCC OnLine SC 3809** in regards to concept of joint or undivided family, coparcener, etc. among Muslim, in para

14, 15, 17 and 18 held as under:-

“14. Tahir Mahmood, in his book ‘The Muslim Law of India’, 2nd Edition, Chapter 12 (Law of Inheritance) Para II, has provided for various concepts related to succession in Muslim Law which distinguish it from other personal laws:

‘1. The Muslim law of succession is basically different from the parallel indigenous systems of India. The doctrine of janmswatavada (right by birth), which constitutes the foundation of the Mitakshara law of succession, is wholly unknown to Muslim law. The law of inheritance in Islam is relatively close to the classical Dayabhaga law, though it differs also from that on several fundamental points. The modern Hindu law of succession (as laid down in the Hindu Succession Act, 1956) is, however, much different from both the aforesaid classical systems; it has a remarkable proximity, in certain respects, to the Muslim law of inheritance.

2. The division of heritage (daya) into sapratibandh (‘obstructed’) and apratibandh (‘unobstructed’)-self-acquired and ancestral- is equally foreign to Muslim law. Whatever property one inherits (whether from his ancestors or from others) is, at Muslim law, one's absolute property whether that person is a man or a woman.

3. In Muslim law, so long as a person is alive he or she is the absolute owner of his or her property; nobody else (including a son) has any right, whatsoever, in it. It is only when the owner dies and never before that the legal rights of the heirs accrue. There is, therefore, no question of a would be heir dealing in any way with his future right to inherit.

4. The Indian legal concepts of ‘joint’ or ‘undivided’ family, ‘coparcenary’, karta, ‘survivorship’, and ‘partition’, etc., have no place in the law of Islam. A father and his son living together do not constitute a

'joint family'; the father is the master of his property; the son (even if a minor) of his, if he has any. The same is the position of brothers or others living together.

5. Unlike the classical Indian law, female sex is no bar to inherit property. No woman is excluded from inheritance only on the basis of sex. Women have, like men, right to inherit property independently, not merely to receive maintenance or hold property 'in lieu of maintenance'. Moreover, every woman who inherits some property is, like a man, its absolute owner; there is no concept of either stridhan or a woman's 'limited estate' reverting to others upon her death.

6. The same scheme of succession applies whether the deceased was male or a female. This is one of those salient features of Muslim law of succession which distinguish it from modern Hindu law of inheritance.' (Emphasis supplied)

15. The position on devolution of property under Mohammedan Law has been succinctly captured in Chapter 22- Law of Succession and Inheritance of Mulla on Mohammedan Law 5th Edition in the following terms: "all properties devolve by succession, so the rights of heirs come into existence only on the death of the ancestor. The whole property vests in them." The Mohammedan Law has well-defined rules of inheritance that come into effect upon the death of the ancestor, and its policy has been to restrain the owner from interfering in such well-defined rules. Transfer of property if required to be made during the lifetime of a person, they may do so primarily by way of gift (hiba). Other methods include the writing of a will but even therein certain restrictions have been postulated.

16. Prior to looking to the above said sources, a general understanding of partition would also be instructive. Advanced Law Lexicon defined partition as a separation between joint owners or tenants in common

of their respective interests in land, and setting apart such interest, so that they may enjoy and possess the same in severalty. In Shub Karan Bubna v. Sita Saran Bubna, partition was defined as under:

‘5. “Partition” is a redistribution or adjustment of pre-existing rights, among co-owners/coparceners, resulting in a division of lands or other properties jointly held by them into different lots or portions and delivery thereof to the respective allottees. The effect of such division is that the joint ownership is terminated and the respective shares vest in them in severalty.

6. A partition of a property can be only among those having a share or interest in it. A person who does not have a share in such property cannot obviously be a party to a partition. “Separation of share” is a species of “partition”. When all co-owners get separated, it is a partition. Separation of share(s) refers to a division where only one or only a few among several co-owners/coparceners get separated, and others continue to be joint or continue to hold the remaining property jointly without division by metes and bounds. For example, where four brothers owning a property divide it among themselves by metes and bounds, it is a partition. But if only one brother wants to get his share separated and other three brothers continue to remain joint, there is only a separation of the share of one brother.’ (Emphasis supplied)

17. Let us now turn to the position as it is under Mohammedan Law. The right of an heir-apparent comes into existence for the first time on the death of the ancestor, and he is not entitled until then to any interest in the property to which he would succeed as an heir if he survived the ancestor [See: Mulla Principles of Mahomedan Law, 22nd Edition, Chapter 6; Abdul Wahid Khan v. Mussumat Noran Bibi & Ors.]. Reference may also be made to the decision of this case in Gulam Abbas v. Haji Kayyum Ali & Ors. wherein a bench of three learned judges observed albeit in connection with renunciation of inheritance as

under:

‘7. Sir Roland Wilson, in his “Anglo Mohamadan Law” (p. 260, para 208) states the position thus:

*‘For the sake of those readers who are familiar with the joint ownership of father and son according to the most widely prevalent school of Hindu Law, it is perhaps desirable to state explicitly that in Mohammedan, as in Roman and English Law, *emo est heres viventis*.....a living person has no heir. An heir apparent or presumptive has no such reversionary interest as would enable him to object to any sale or gift made by the owner in possession; See Abdul Wdhid, L.P. 12 I.A., 91, and 11 Cal 597 (1885) which was followed in Hasan Ali, 11 All 456, (1889). The converse is also true: a renunciation by an expectant heir in the lifetime of his ancestor is not valid, or enforceable against him after the vesting of the inheritance.’ (Emphasis supplied)*

It is also important to note that the doctrine of partial partition does not apply to Mohammedan Law as the heirs therein are tenants-in-common. Succession is to a definite fraction of the estate in question. A.N. Ray, J. as his Lordship then was wrote in Syed Shah Ghulam Ghouse Mohiuddin v. Syed Shah Ahmed Mohiuddin Kamisul Quadri, as follows:

‘20. ... In Mohammedan law the doctrine of partial partition is not applicable because the heirs are tenants-in-common and the heirs of the deceased Muslim succeed to the definite fraction of every part of his estate. The shares of heirs under Mohammedan law are definite and known before actual partition. Therefore on partition of properties belonging to a deceased Muslim there is division by metes and bounds in accordance with the specific share of each heir being already determined by the law.’ ”

42. In view of above, it appears that the plaintiff has suppressed material facts under clever drafting and as price of the land escalated, plaintiff with a view to exert pressure upon the defendants filed suit with flimsy and superficial cause of action, which is expressly barred by law of limitation and is incapable of drawing decree. It is just one more attempt by the plaintiff to dilute and fracture defendants title over suit land. There is no gain saying that purpose of filing suit under illusory cause of action is wholly mala fide. Suit is rather a speculative attempt by plaintiff to disturb the title of suit land taking recourse of Courts process, which is no less than abuse of process of law, hence deserve to be nipped in bud.

43. At the cost of repetition it can be said that registered document provides a complete account of transaction to any party interested in the property. Hon'ble Apex Court in the case of Uma Devi (supra), in para 13,14,15 and 17 held as under :-

“13. A registered document provides a complete account of a transaction to any party interested in the property. This Court in the case of Suraj Lamp Industries Pvt. Ltd. v. State of Haryana & Anr. (2012) 1 SCC 656 held as under:

“Registration of a document gives notice to the world that such a document has been executed. Registration provides safety and security to transactions relating to immovable property, even if the document is lost or destroyed. It gives publicity and public exposure to documents thereby preventing forgeries and frauds in regard to transactions and execution of documents. Registration provides information to people who may deal with a property, as to the nature and extent of the rights which persons may have, affecting that property. In other words, it enables people to

find out whether any particular property with which they are concerned, has been subjected to any legal obligation or liability and who is or are the person(s) presently having right, title, and interest in the property. It gives solemnity of form and perpetuate documents which are of legal importance or relevance by recording them, where people may see the record and enquire and ascertain what the particulars are and as far as land is concerned what obligations exist with regard to them. It ensures that every person dealing with immovable property can rely with confidence upon the statements contained in the registers (maintained under the said Act) as a full and complete account of all transactions by which the title to the property may be affected and secure extracts/copies duly certified”.

14. Applying this settled principle of law, it can safely be assumed that the predecessors of the plaintiffs had notice of the registered sale deeds (executed in 1978), flowing from the partition that took place way back in 1968, by virtue of them being registered documents. In the lifetime of Mangalamma, these sale deeds have not been challenged, neither has partition been sought. Thus, the suit (filed in the year 2023) of the plaintiffs was *prima facie* barred by law. The plaintiffs cannot reignite their rights after sleeping on them for 45 years.

15. The learned senior counsel for the defendants/appellants, Mr. Sundaram, relied upon the decision of this Court in *Shri Mukund Bhavan Trust & Ors. v. Shrimant Chhatrapati Udayan Raje Pratapsinh Maharaj Bhonsle & Anr.* (2024 SCC OnLine SC 3844) to substantiate the contention that the suit was barred by limitation. It was observed as follows:

“22. 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.

23-24. XXX

25. Continuing further with the plea of limitation, the Courts below have held that the question of the suit being barred by limitation can be decided at the time of trial as the question of limitation is a mixed question of law and facts. Though the question of limitation generally is mixed question of law and facts, when upon meaningful reading of the plaint, the court can come to a conclusion that under the given circumstances, after dissecting the vices of clever drafting creating an illusion of cause of action, the suit is hopelessly barred and the plaint can be rejected under Order VII Rule 11”.

17. In Dahiben v. Arvindbhai Kalyanji Bhanusali (2020) 7 SCC 366, it is stated as under – “The underlying object of Order VII Rule 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 unnecessarily 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”.

44. In considered opinion of this Court, learned Trial Court committed serious error much less understanding provisions of law. Learned Trial Court did not notice that at no point of time, Gulabibi asserted her right or objected transactions and plaintiff having constructive knowledge did not challenge the same in prescribed time period. Plaintiff filed collusive suit in form of Regular Civil Suit No.136 of 2015 to disturb title of defendants and thereby filed suit vexatiously under clever drafting. Therefore, it was duty of the learned Trial Court to nip in bud such suit at threshold.

45. Considering facts of the present case, the judgments cited by learned advocate Ms.Shah for the respondent would not render any assistance to her case.

46. In aforesaid premises, it is held that suit filed by the plaintiff is barred by law of limitation. Consequently, all the Revision Applications are allowed. Impugned orders are quashed and set aside. Applications filed under Order 7 Rule 11 of CPC to reject plaint is allowed. Consequently, the plaints are rejected.

Learned Trial Court is directed to pass consequent order below Exh.1 in suit proceedings. Rule is made absolute to the aforesaid term in each matter.

Registry to maintain copy of this order in each matter.

(J. C. DOSHI,J)

After pronouncement of judgment, learned advocate Ms.Shah for the respondent requests to stay the execution and implementation of the present judgment for four weeks. Considering aforesaid reasons, the request is rejected.

(J. C. DOSHI,J)

SATISH

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SATISH CHANDRAMOHAN VEMULLA(HC00206), Principal Pvt Secretary, at High Court of Gujarat on 13/04/2026 18:42:29