

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**LPA No.388 of 2024 a/w FAO (OS)
No.1 of 2025 & FAO(OS) No.2 of
2025.**

Decided on: 09.07.2025

Vikas Sharma

....Appellant

Versus

Hemant Sharma & another

....Respondents

Coram

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice

The Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting?¹ Yes

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| For the Appellant | : | Mr. Neeraj Gupta, Senior Advocate with Mr. Ajeet Pal Singh Jaswal, Mr. Pranjal Munjal & Ms. Rinki Kashmiri, Advocates, for the appellant in LPA No.388 of 2024. |
| | : | Mr. R.K. Bawa, Senior Advocate with Mr. Nimish Gupta, Advocate, for the appellant-defendant, in FAO(OS) Nos.1 & 2 of 2025. |
| For the Respondents | : | Mr. R.K. Bawa, Senior Advocate with Mr. Nimish Gupta, Advocate, for the respondents in LPA No.388 of 2024. |
| | : | Mr. Neeraj Gupta, Senior Advocate with Mr. Ajeet Pal Singh Jaswal, Mr. Pranjal Munjal & Ms. Rinki Kashmiri, Advocates, for the respondents-plaintiffs, in FAO(OS) Nos.1 & 2 of 2025. |

¹ Whether reporters of Local Papers may be allowed to see the judgment?

G.S. Sandhawalia, Chief Justice (Oral).

The present judgment shall dispose of two FAOs(OS) Nos.1 and 2 of 2025 filed by the defendants in Civil Suit No.22 of 2023 titled as **Vikas Sharma Vs. Hemant Sharma and another**, in which they are aggrieved against the order dated 05.03.2024, whereby their applications bearing OMP No.370 of 2023 filed by defendant No.1 and OMP No.369 of 2023 filed by defendant No.2, under Order 7 Rule 11 of the Code of Civil Procedure ((hereinafter referred to as "CPC") for rejection of the plaint were dismissed by the learned Single Judge.

2. The Letters Patent Appeal No.388 of 2025 titled **Vikas Sharma Vs. Hemant Sharma & another** is on the other hand filed by the plaintiff- Vikas Sharma, aggrieved against the order dated 02.09.2024 in the same Civil Suit, whereby the injunction application filed by the plaintiff under Order 39 Rules 1 and 2 CPC, bearing OMP No.164 of 2023, restraining the no-applicants/defendants from encumbering, creating charge, selling and transferring the suit property, in any manner, was dismissed by the learned Single Judge. Accordingly, this judgment shall also dispose of the said Letters Patent Appeal along with the aforesaid two FAOs(OS), since both the orders are arising out of the same Civil Suit between the same parties and the

pleadings are common, therefore, it has been proposed to decide the said Appeals together for the sake of convenience and also to avoid multiplicity regarding the background of the case.

3. Essentially, a brief factual matrix, leading to the filing of the suit, which can be carved out from the plaint, can be summed up as follows.

4. It appears that the plaintiff filed a suit for recovery of Rs.3,97,75,000/- (Rs. Three Crore Ninety Seven lakhs and Seventy Five thousand) along with interest @12% per annum and 12% for *pendente lite* future interest along with Rs.50,00,000/- (Rs. Fifty lakhs) for damages, on account of mental harassment and agony on the ground that one Shri Vipin Khanna had agreed to sell the land comprised in Khata No. 670, Khatauni No. 106, Khasra No. 1286 and 1287 kita 2 measuring 171-00 Sq. meters situated at Chamba Town, Tehsil & District Chamba (HP) to the plaintiff. Since the plaintiff was willing to purchase the aforesaid property from Sh. Vipin Khanna, an agreement dated 18.05.2022 had been executed with him by the plaintiff for a sum of Rs.4,60,00,000/-, (Rs. Four Crore Sixty lakhs) out of which Rs.80,00,000/- (Rs. Eighty lakhs) had been paid on the date of execution of the agreement both in cash and RTGS transfer to the tune of Rs.30,00,000/-

(Rs. Thirty lakhs) and Rs. 50,00,000/- (Rs. Fifty lakhs) respectively.

5. In the interregnum, a fresh agreement dated 08.06.2022, to sell is stated to have been entered into between the plaintiff and Shri Vipin Khanna, whereby consideration amount was increased to Rs.4,70,00,000/- and full amount of consideration was paid by the plaintiff to said Shri Vipin Khanna by way of cheques and cash and thus in total a sum of Rs.4,70,00,000/- was paid by both modes, i.e., cash and cheques. It is averred that instead of registering sale deed, said Shri Vipin Khanna executed a General Power of Attorney on 09.06.2022 authorizing the plaintiff to look after, supervise, manage and control the affairs of the above mentioned property as said attorney deems fit and proper, i.e., to execute mortgage, agreement to sell, transfer of lease agreement, sale deed, lease deed, transfer of lease, gift deed, surrender of lease, exchange deed, partnership deed, give possession of the same to the above party and to execute sign, and present all kinds of suits, plaints, complaints, appeals review, etc. in the court of law, compromise and compound all the cases and also to withdraw the same under his own signatures .

6. After the execution of said attorney, the plaintiff is stated to have stepped into the shoes of the original owner Shri Vipin Khanna and as such, was competent to sell or do whatever he intends with the suit property. Since there was a tenant over the suit property, namely, Sh. Narinder, the plaintiff, in order to clear the encumbrances from the suit property, paid Rs.2,30,00,000/- to the tenant. It is submitted that litigation was pending between tenant and original owner Shri Vipin Khanna, which was also withdrawn by the said tenant.

7. Thereafter, an agreement was entered into between the plaintiff and defendant No.1 on 07.09.2022, for a consideration of Rs.8,60,00,000/-, whereby defendant No.1 paid Rs.1.00 crore to the plaintiff, i.e. Rs.50,00,000/- in cash and Rs.50,00,000/- through cheque bearing No. 477076 dated 09.09.2022 and plaintiff issued a receipt in which defendant No.1 also signed.

8. Yet, another agreement to sell dated 22.09.2022 was entered into between the plaintiff and defendant No.1 for sale of the property in question for a consideration of Rs.8,60,00,000/-(Eight Crore Sixty Lakh) in which it was mentioned that Rs.1.00 crore had already been paid to the plaintiff by the defendant No.1, i.e.,

Rs.50,00,000/- in cash, Rs. 50,00,000/- by way of cheque prior to this agreement and the factum of sale consideration of Rs.8,60,00,000/- was reiterated in the said agreement. Defendant No.1 is stated to have paid an additional amount of Rs.2.00 Crore to the plaintiff on the date of execution of the agreement, i.e., Rs.1.00 Crore in cash and Rs.1.00 Crore vide cheque No. 573796 dated 22.9.2022 and thus in total, the plaintiff is said to have paid Rs.3,00,00,000/- and Rs.5,60,00,000/- was to be paid by the defendant No.1 to the plaintiff at the time of execution of the sale deed. The stamp duty was agreed to be paid by the purchaser, i.e., defendant No.1. Since the defendant No. 1 had again paid Rs. 12,25,000/- by way of cheque. Thus, in total, defendant No. 1 is stated to have paid Rs. 3,12,25,000/-, to the plaintiff.

9. Resultantly, a sale deed was executed by the plaintiff in favour of defendants Nos. 1 and 2, as defendant No.2 was interested in purchasing 1/ 3rd of suit property in his favour and in order to save the stamp duty, plaintiff was told that they are registering the sale deed for a consideration of Rs.2,10,00,000/- and remaining amount, as per agreement dated 22.09.2022, was to be paid by them. Another sum of Rs.70,00,000/- was paid by

defendant No. 2 to the plaintiff. Therefore, in total plaintiff had received a sum of Rs. 3,82,25,000/-.

10. Defendant No. 1 transferred Rs. 32,00,000 on the date of registration of sale deed, though the defendants have not mentioned this amount in the sale deed just to avoid stamp duty and assured that the balance of the amount will be transferred immediately after registration of the sale deed. After the registration of sale deed, the plaintiff requested the defendants to pay the remaining amount and the defendant No. 1 transferred Rs. 30,00,000/- in the bank account of plaintiff through RTGS and rest of the amount, as per agreement, was agreed to be paid soon. Hence, the total amount paid by defendants to the plaintiff was Rs.4,44,25,000/-. On being time and again asked by the plaintiff to pay the balance amount and on issuance of threats, defendant No. 1 had paid Rs.18,00,000 only to the plaintiff and assured to pay the rest of the amount to the tune of Rs.3,97,75,000/- to the plaintiff.

11. The defendants, in order to save stamp duty and registration fee, had prepared the sale deed for a lesser amount. The plaintiff also averred violation of Section 118 of Himachal Pradesh Tenancy and Land Reforms Act.

12. The plaintiff asked the defendants to make payment of remaining sale consideration of Rs.3,97,75,000/- ,i.e.,Rs.8,60,00,000/-minus Rs.4,62,25,000/-, but it did not yield any result. The plaintiff has also claimed an amount of Rs. 50,00,000/- on account of damages from the defendants. Thus, the cause of the action was stated to have arisen firstly on 22.09.2022 when the second agreement had been entered between the parties and when the sale deed was executed on 27.12.2022. Hence the suit had been filed on 23.04.2023 for claiming the said amount.

Filing of Application before the learned Single Judge.

13. On 25.07.2023, defendant No. 1 filed OMP No. 370 of 2023 and defendant No. 2 filed OMP No. 369 of 2023, under Order 7 Rule 11 of the Code of Civil Procedure, for rejection of the plaint.

14. In the application OMP No.370 of 2023, filed by defendant No.1, the plea taken was that the General Power of Attorney was revoked by original owner-Vipin Khanna on 09.06.2022 and the agreement dated 22.09.2022 had been entered into with the plaintiff and defendant No.1 only on the strength of the attorney and therefore, he had no *locus standi* to file and maintain the said suit as the said Vipin

Khanna was the actual owner of the property. Accordingly, in the absence of any balance of convenience no right, title and interest accrued in favour of the plaintiff as he was only an agent from whom the defendants had purchased the property. It was further pleaded that the agreement to sell has lost its sanctity and the sale deed had been acted upon and the plaintiff was a part of the sale deed and therefore, there was no cause of action in favour of the plaintiff to file and maintain the suit. The execution of sale deed did not create any cause of action in favour of the plaintiff since the same was not under challenge.

15. The plaintiff had replied to the application filed by defendant No. 1 under Order 7 Rule 11 of the CPC, that new General Power of Attorney (GPA) was issued in his favour by Vipin Khanna on 17.10.2022 and appended the same as **Annexure R-1**. The sale consideration had been mentioned in the agreement and the consideration as such had been paid to the plaintiff and not to Vipin Khanna and in terms of the sale agreement, the defendant was required to pay the balance consideration amount. The sale deed had also been executed on the basis of all assurances made to make the balance payment after the sale and the plaintiff had *locus standi* to file and maintain the suit and Vipin Khanna had transferred all his rights to

the plaintiff by the second agreement dated 08.06.2022 and specially in view of Clauses 1 & 3 of the agreement which gave all further rights also regarding the filing of Civil Suits etc., as per Clause 7. The cause of action as such was apparent and the defendants had only taken advantage of the unregistered documents.

16. Similarly, in the application filed by defendant No.2 (OMP No. 369/2023) for rejection of plaint, it was averred that he was not party to the said agreement and no cause of action accrued against him and he had purchased 1/ 3rd share measuring 57 square yards out of the 171 square yards and the full amount of Rs.70,00,000/- (Rs. Seventy Lakhs) had been received from him. It was also admitted that the Power of Attorney dated 17.10.2022 as such was executed by Vipin Khanna, on the basis of which sale deed had been executed. The prior transactions between plaintiff and defendant No.1 had no concern with the said defendant No.2 and similar plea was taken that the plaintiff had only a Power of Attorney as such and the said agreement dated 22.09.2022 (was not a registered document) had merged into the sale deed and therefore, it was hit by the Indian Registration Act. Similarly, the sale deed as such executed did not give the plaintiff cause of action. In both the applications, the stand of the

defendants was that plaintiff had filed the suit without any cause of action. In all, almost similar stand has been taken by both the defendants in the application for rejection of plaint.

17. In the reply filed by the plaintiff to the said application filed by defendant No.2, it is stated that on account of the agreement dated 08.06.2022, Vipin Khanna had transferred all his rights to the plaintiffs and given the right to defend his cases with respect to the suit land and the sale deed had been executed in pursuance to the earlier agreement to sell and the sale consideration had already been settled in the said agreement. Apart from that, the consideration amount had been paid to the plaintiff and not to Vipin Khanna and therefore, defendant No.2 was also liable to pay the balance consideration amount as per the agreement, as he is the beneficiary of the agreement made between the plaintiff and the defendant No.1, who was aware of the said fact at the time of the execution of the sale deed.

18. In reply to the stay application bearing OMP No.164 of 2023, referred to supra, defendant No.1 as such had pleaded that the actual owner was Vipin Khanna and the suit was liable to be dismissed and the Power of the Attorney had been revoked on 10.10.2022 by a registered

document and there was no balance of convenience in favour of the applicant.

19. Similarly, in reply to the stay application (OMP No.164 of 2023), defendant No.2 had also pleaded that the suit was not maintainable in the eyes of law and the entire sale consideration had been paid at the time of the sale deed and no relief was sought for the cancellation of the same by the plaintiff.

20. In the written statement, filed by defendant No.1, pleas have been taken that there was no privity of contract between the plaintiff and the defendant and the plaint filed by him is only by a General Power of Attorney. An admission had also been made regarding paying of Rs.1,00,00,000/- (Rupees One Crore) out of which Rs.50,00,000/- (Rupees Fifty lakhs) was paid by way of cash and Rs.50,00,000/- (Rupees Fifty lakhs) by Cheque bearing No.477076 dated 09.09.2022. It is pleaded that plaintiff approached the defendant for sale of 1/3rd share out of the property for a consideration of Rs.2,86,67,000/- along with the complete structure to be raised and finished by the plaintiff and all formalities in respect of construction of said property, including various NOC's to be obtained by the plaintiff. It was further pleaded that the amount of Rs.8,60,00,000/- (Rupees Eight Crore Sixty lakhs) would be

inclusive of the aforesaid constructions and the share of the plaintiff was only one-third and the rest of the property was to be purchased by the other persons. The involvement of answering defendant No.2 was only on account of the fact that the plaintiff had offered an amount of Rs.70,00,000/- (Rupees Seventy lakhs) to the said defendant for purchase of one-third share of the property and the share of the answering defendant only came to Rs.1,40,00,000/- (Rupees One Crore Fourty lakhs).

21. It is pleaded that the answering plaintiff as such had never acted upon the agreement itself initially entered into and the sale deed had been executed on the basis of the subsequent transactions and understanding between the parties. The pleadings as such regarding violation of Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 and damage aspect were denied.

22. Similarly, defendant No.2 had also filed the written statement on 18.09.2023 and took the plea that he was not a party to the agreement dated 22.09.2022 and had admitted that the plaintiff had approached him on the basis of the second Power of Attorney dated 17.10.2022 and asked him to purchase one-third of the share for a consideration of Rs.70,00,000/- (Rupees Seventy lakhs)

which had been duly paid and the sale deed had been executed to the extent of one-third in his favour. The sale deed executed was upon the actual sale to the tune of Rs.2,10,00,000/- (Rupees Two Crore Ten lakhs), out of which, he had paid one-third share and nothing was left to be paid.

23. The cheating and the factum of embezzling the stamp duty was also denied rather it has been pleaded that the plaintiff had taken the General Power of Attorney (GPA) from Vipin Khanna, the original owner, instead of executing the sale deed.

Reasoning for dismissing of application under Order 7 Rule 11 of the Code of Civil Procedure (CPC) by the learned Single Judge.

24. The reasoning of the learned Single Judge regarding the order seeking rejection of plaint on 05.03.2024 was that the cause of action as such is a bundle of facts which would be clear from the fact that the sale deed had been executed and payment had not been made as per the agreement dated 22.09.2022. The said sale deed was in favour of the defendant No.2 also. Therefore keeping in view the general principle that if the cause of action is disclosed, as such under the provisions of Order 7 Rule 11 of the Code of Civil Procedure (CPC) and

the plaint was disclosing right to sue, the rejection as such could not be done.

25. Reliance was placed upon the judgments of the Apex Court passed in ***Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others*** (2004) 3 SCC 137, ***Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal*** (2017) 13 SCC and ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra)*** (2020) 7 SCC 366, that the plaint has to be construed as it stands without addition or subtraction of it and the Court cannot embark upon inquiry.

Reasons for dismissal of Injunction Application.

26. The reasoning of the another learned Single Judge as such, while dismissing the application of injunction (OMP No. 164/2023) filed by the plaintiff on 02.09.2024 was that the General Power of Attorney (GPA) cannot be a substitute for the regular sale deed, while placing reliance upon the judgment of the Apex Court in ***Suraj Lamp & Industries (P) Ltd. (2) Vs. State of Haryana***, (2012) 1 SCC 656 and that the sale deed had been executed not for the actual consideration but by reducing the consideration to avoid the payment of stamp duty as per the plaint itself while referring to the provisions of Chapter VII of the Indian Stamp Act, 1899. Similarly,

reference was made to Section 23 of the Indian Contract Act, 1872 that the agreement which is forbidden by law or defeats the provisions of law is itself void.

27. The fact that the plaintiff himself have put the signatures on the document on which the adequate stamp duty was not paid, would make out a punishable offence and he was a party to the said illegality. The restitution could not be claimed when both plaintiff and defendants were parties to the illegal agreement, while placing reliance upon the judgment of the Apex Court in ***Loop Telecom & Trading Ltd. Vs. Union of India*** (2022) 6 SCC 762.

28. The sale deed had also been perused and it was noticed that the signatures on the sale deed had been put as a General Power of Attorney (GPA) and the fact that Section 320 of the Indian Contract Act, 1872 provided that the agent could neither personally enforce the contracts entered into by him on behalf of the principal nor he was personally bound by them. Resultantly, it was held that the principal had never intended to authorize the General Power of Attorney (GPA) to act in his own name and *prima facie*, the suit filed was not maintainable and therefore, the plaintiff was not entitled to the relief of injunction.

Arguments of counsel(s) before us:

29. Mr. R.K. Bawa, learned Senior Counsel appearing for the appellant-defendant, in FAO(OS) Nos.1 & 2 of 2025 and for the respondents in LPA No.388 of 2024 had picked up the threads of arguments from the reasoning of learned Single Judge while declining the relief under Order 39 Rules 1 & 2 CPC and further submitted that under Section 24 of the Indian Contract Act, the agreement itself was void as the Stamp Duty as such was being saved. As per the pleadings itself, 50% of the consideration had been in cash and it is further argued that the principal had also died in the meantime, and thus contended that under the provisions of Order 7, Rule 11 sub Clause (d) of the Code of Civil Procedure (CPC), the plaint itself was liable to be rejected.

30. It was further argued that the learned Single Judge vide order dated 05.03.2024 had failed to exercise the jurisdiction vested in it by the law and the plaint should have been rejected.

31. He has further submitted that the question of grant of stay did not arise as such as the balance of convenience was not in favour of the plaintiff on account of the fact that the plaintiff himself had submitted that the

parties had avoided the stamp duty. Thus, as noticed by the learned Single Judge, while declining the injunction once the plaintiff had acted illegally, he now cannot turn around and seek protection from the Court for the illegal acts as he was party to the same sale deed itself on behalf of the principal.

32. Mr. Neeraj Gupta, learned senior counsel appearing for the appellant in LPA No.388 of 2024 and for the respondents-plaintiffs, in FAO(OS) Nos.1 & 2 of 2025, on the other hand, submitted that there is no issue of title and the capacity of the plaintiff was on the strength of the agreement dated 22.09.2022 on the basis of the Power of Attorney given by the then owner. The sale deed had been executed on 27.12.2022 on the basis of the power of attorney in the favour of the defendant and thus, the cause of action had arisen from the said bundle of facts.

33. The tenant-Narinder, who was in the property, had been evicted and had vacated the premises on account of the payment of money to him. Thus, there was second power of attorney dated 17.10.2022 on account of the revocation done on 10.10.2022. Section 230 was sought to be distinguished as such while referring to Section 226 of the Indian Contract Act, 1872, that the Agent as such could have enforced his obligations arising

from the acts done and on the contract entered with him as if the contract had been entered into by the principal in person. It is submitted that the Agent further had a duty as such if the agency had been terminated by the principal dying, he is bound to take reasonable steps for the protection of the representative of the said principal for the preservation of the vested interest to him, while referring to Section 209 of the Indian Contract Act, 1872.

34. The provisions of Order 7 Rule 11 of the Code of Civil Procedure (CPC) read 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 written 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.

¹*(e) where it is not filed in duplicate;]*

²*(f) where the plaintiff fails to comply with the provisions of rule 9;]*

³*[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 for 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.]”*

35. Counsel for the defendants had sought to bring the suit as such within the provisions of sub-Clause (d)

being barred by law, whereas the counsel for the plaintiff has sought to defend that there is a cause of action, since there is an agreement as such dated 22.09.2022 which is on the record. *Inter se* defendant No.1 and defendant No.2 had purchased the property to the extent of one-third share and the sale deed had also been executed with defendant Nos. 1 and 2 on 27.12.2022 and therefore, it is a mixed question of facts and law which will have to be decided by the Court. It is accordingly, argued that the power of rejection as such is an extreme power and the suit should not be thrown out at the initial stage as apparently the valuable rights as such of the plaintiff of recovery of sale consideration are involved and therefore, it is submitted that rather injunction should be granted against the defendants from alienating the property during the pendency of the suit.

Reasoning to dismiss the present appeals.

36. The learned Single Judge while declining to reject the plaint has already referred to the case law which are referred above, i.e., ***Sopan Sukhdeo Sable, Madanuri Suri Rama Chandra Murthy, Dahiben,*** case (supra) and therefore, we do not further wish to multiply the reasoning on that aspect. In fact, the suit is based on the agreement

as such *inter se* defendant No.1 and apparently defendant No.2 had also purchased a share as per the sale deed in question dated 27.12.2022.

37. Strictly speaking, the plaint is to be examined but if one is to look at even the replies filed to the applications under Order 7 Rule 11 of the CPC, there is no denial also to the fact by the defendant Nos.1 and 2 that the sale deed had been executed in their favour by the plaintiff. The issue only is whether any advantage can be taken of the unregistered documents as such. Similarly, the defendant No.2 admits that he is the beneficiary of the said sale deed.

38. It has been noticed by the learned Single Judge while deciding the application under Order 39, Rules 1 and 2 of the CPC that the sale deed had also been executed by the Power of Attorney of the original owner-Vipin Khanna, who is the plaintiff.

39. It is thus apparent that the plaintiff is not a stranger as such and has also placed on record the agreement on the strength of which the suit has been filed. The factum of the agreement had also been admitted by the defendant No.1. In the application filed for rejection of the plaint, only a distinction has been made that the agreement itself was executed with the plaintiff but only as

an agent of the actual owner. It was further pleaded that the agreement has lost its sanctity, once the sale deed had been acted upon.

40. In such circumstances, apparently the cause of action as such on the sale deed has been rightly relied upon by the learned Single Judge.

41. The Apex Court has held that the exercise of power under Order 7 Rule 11 of the CPC is an extreme power and has to be exercised with certain care and circumspection and disputed questions of facts cannot be decided at the time of considering an application under the said provisions.

42. Reliance can be placed upon the law laid down by the Apex Court in a Three Judge Bench judgment in ***M/s Popat And Kotecha Property Vs. Ashim Kumar Dey***, (2005) 3 Civil court Cases 350, wherein it was held that only if it is *prima facie* view that the suit is an abuse of the process, the said power has to be exercised and resultantly, the order of the Division Bench rejecting the plaint, while setting aside the order of the learned Single Judge, had been set aside and the suit was ordered to continue.

43. In ***Church of Christ Charitable Trust & Educational Charitable Society, represented by its***

Chairman Vs. M/s Ponnamman Educationaly Trust represented by its Chairperson/Managing Trustee

(2012) 8 SCC 706, the Apex Court has held that the Court is only to see the plaint which shows cause of action and only in the absence of the same, the power has to be exercised. As noticed above, there is an agreement *inter se* the defendant No.1 and apparently acted upon in the form of sale deed and the interest of defendant No.2 had also come into play who had purchased one-third of the property which was the subject matter of the agreement.

44. Resultantly, it cannot be said that the power can be exercised for rejection of the plaint as cause of action is a bundle of facts. The rejection is thus, only to be done where the suit as such was vexatious. Reliance can be placed upon ***Mayar (H.K.) Ltd. & Ors. Vs. Owners & Parties, Vessel M.V. Fortune Express & Ors*** (2006) 3 SCC 100.

45. ***In Dahiben Vs. Arvinbhai Kalyanji Bhanusali (Gajra)*** (2020) 7 SCC 366, it was held that the power under Order 7 Rule 11 of CPC can be exercised at any stage even if the suit is barred by law and there is no disclosure of cause of action.

46. In the present case, as noticed, that plaintiff is seeking recovery of a huge amount of money to the tune of

Rs.3,97,75,00,000/- (Rupees Three Crore Ninety lakh Seventy Five thousand) along with interest, apart from the damages on account of mental harassment and agony and on the basis that the full amount have not been paid as per the agreement to sell which had been apparently acted upon by defendant No.1 also involving defendant No.2 to the extent of part of the sale of property on 27.12.2022.

47. In such circumstances, it cannot be said that the suit is totally vexatious as noticed in the admission regarding the sale deed and the fact that the explanations have been given that the sale deed was on the basis of subsequent understanding between the parties. The same would be a mixed question of law and fact and cannot be gone into at this stage as it is a settled principle that the rejection of plaint can only be done to give quietus to the sham litigation as has been held in ***Eldeco Housing & Industries Ltd. Vs. Ashok Vidyarthi*** (2023) SCC OnLine SC 1612. Therefore, no fault as such can be found in the order of the learned Single Judge dated 05.03.2024 rejecting the application under Order 7 Rule 11 of the CPC.

On the issue of grant of injunction:

48. Similarly the grant of injunction as such against the defendants has been rightly denied by the learned Single Judge while noting that it was the pleaded case of

the plaintiff himself that the sale deed had been entered into at a lesser consideration than the agreement which had been entered into by defendant No.1. The learned Single Judge had rightly adverted to various provisions of the Stamp Act to point out that it would be an offence and that the parties cannot come to Court and get an injunction for their own illegalities.

49. The amount, if found to be liable to be paid by the defendants, can only be sought to be recovered as such by way of resorting to the proper procedure in accordance with law, but at this stage the balance of convenience as such, does not lie in favour of the plaintiff, keeping in view the fact that the suit itself is based on the pleadings that both the parties have knowingly violated the law. The Courts as such are meant to do justice *inter se* the parties and protect those who respect the law rather than one's who have openly violated the law for their financial gain.

50. Time and again, it is noticed by the Courts that most of the time is spent in dealing with false and fictitious litigation, whereby parties have themselves resorted to falsity and then coming to Court to protect their alleged rights at the cost of the genuine litigant.

51. In such circumstances, the findings arrived at by the learned Single Judge while declining the injunction vide order dated 02.09.2024, are not liable to be interfered with. The irreparable loss and injury would thus be caused to the defendants, if any such injunction is granted at the hands of plaintiff, who himself is guilty as per the provisions of law while entering into another agreement to alienate the property, on the basis of Power of Attorney thus, while avoiding Stamp Duty not only at first instance but even at the second instance, while registering the sale deed on a much lower value than what had been agreed to.

52. In such circumstances, balance of convenience is also not in favour of the plaintiff and therefore, the order passed by the learned Single Judge declining to grant the injunction is not liable to be interfered with.

53. Keeping in view the above, both the first appeals filed by the defendants against the rejection of the plaint are dismissed and similarly the Letters Patent Appeal filed by the plaintiff seeking injunction during the pendency of the suit is also dismissed, while upholding the orders of the learned Single Judge(s).

54. All pending application(s), if any, shall stands disposed of. A copy of this order be placed in the other files and in the main suit.

(G.S. Sandhawalia)
Chief Justice

(Ranjan Sharma)
Judge

9th July, 2025
(cm Thakur)