

RAGHWENDRA SHARAN SINGH

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v.

RAM PRASANNA SINGH (DEAD) BY LRS

(Civil Appeal No.2960 of 2019)

MARCH 13, 2019

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[L. NAGESWARA RAO AND M. R. SHAH, JJ.]

Code of Civil Procedure, 1908 – Or.7, r.11 – Father of the appellant (original plaintiff) and his brother jointly purchased the land in question and executed registered gift deed dtd. 06.03.1981 in favour of the appellant – Appellant instituted partition suit in 2001 against his brothers and others for partition of the joint Hindu family properties – Original plaintiff was joined as defendant no.10 in the 2001 suit – Original plaintiff filed Title Suit in 2003 against the appellant inter alia for declaration that the gift deed executed in favour of the appellant is sham – Appellant filed application u/Or.7 r.11 for rejection of the plaint inter alia on the ground that the suit is barred by limitation – Rejected – Appellant filed revision application before the High Court – Dismissed – On appeal, held: It is not disputed that the gift deed, a registered gift deed was executed by the original plaintiff himself along with his brother – Till 2003, for approximately 22 years, neither the plaintiff nor his brother (who died on 15.12.2002) during his lifetime claimed at any point of time that the gift deed was showy deed of gift – It is the appellant who instituted the partition suit in the year 2001 against his brothers to which even the plaintiff was a party as defendant no.10 – Summon and the copy of the plaint in the said suit was served upon the plaintiff in 2001 itself – Despite the same, he instituted the present suit in the year 2003 – By clever drafting, the plaintiff tried to bring the suit within the period of limitation which, otherwise, was barred by limitation – Plaintiff never prayed to set aside the gift deed – Such a prayer was not asked cleverly – If such prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Art.59, Limitation Act and, therefore, only a declaration was sought to get out of the provisions of the Limitation Act – Judgment passed by the High Court and the trial Court set aside – Application by the appellant u/Or.7 r.11 of the CPC to reject the plaint, allowed – Limitation Act, 1963 – Art.59.

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A Allowing the appeal, the Court

- HELD:** 1.1 The plaintiff has specifically admitted that the plaintiff and his brother executed the gift deed on 06.03.1981. It is admitted that the gift deed is a registered gift deed. It also emerges from the plaint that till 2003, neither the plaintiff nor his brother (during his lifetime) challenged the gift deed dated 06.03.1981 nor, at any point of time, claimed that the gift deed dated 06.03.1981 was a showy deed of gift. In fact, it is the defendant-appellant herein who instituted the suit in the year 2001 against his brothers to which even the plaintiff was a party as defendant No. 10 and that was a partition suit filed by the appellant herein-original defendant. It appears that the summon and the copy of the plaint – T.S. (Partition) Suit No. 203 of 2001 – was served upon the plaintiff in the year 2001 itself. Still, the plaintiff averred in the plaint that it came to the knowledge of the plaintiff with respect to the gift deed on 10.04.2003. Thus, it is born out from the averments in the plaint that, till 2003, the plaintiff never disputed the gift deed and/or never claimed that the gift deed dated 06.03.1981 was a showy deed of gift. [Para 6.1] [1077-G-H; 1078-A-C]

- 1.2 Both the Courts below have materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11 of the CPC. It is required to be noted that it is not in dispute that the gift deed was executed by the original plaintiff himself along with his brother. The deed of gift was a registered gift deed. The execution of the gift deed is not disputed by the plaintiff. It is the case of the plaintiff that the gift deed was a showy deed of gift and therefore the same is not binding on him. For approximately 22 years, neither the plaintiff nor his brother (who died on 15.12.2002) claimed at any point of time that the gift deed was showy deed of gift. One of the executants of the gift deed – brother of the plaintiff during his lifetime never claimed that the gift deed was a showy deed of gift. The summon of the suit filed by the defendant being T.S. (Partition) Suit No. 203 of 2001 was served upon the defendant No.10-plaintiff herein in the year 2001 itself. Despite the same, he instituted the present suit in the year 2003. Even from the averments in the plaint, it appears that during these 22 years i.e. the period from 1981 till 2001/2003,
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the suit property was mortgaged by the appellant herein-original defendant and the mortgage deed was executed by the defendant. By clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation. [Para 7] [1081-D-H; 1082-A]

1.3 The plaintiff never prayed for any declaration to set aside the gift deed. Such a prayer is not asked cleverly. If such a prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Article 59 of the Limitation Act and, therefore, only a declaration is sought to get out of the provisions of the Limitation Act, more particularly, Article 59 of the Limitation Act. The aforesaid aspect has also not been considered by the High Court as well as the learned trial Court. Both the High Court as well as the learned trial Court erred in not exercising the powers under Order 7 Rule 11 of the CPC and in not rejecting the plaint in exercise of powers under Order 7 Rule 11 of the CPC. The impugned judgment and order passed by the High Court as well as the trial Court are quashed and set aside. Consequently, the application submitted by the appellant herein-original defendant to reject the plaint under Order 7 Rule 11 of the CPC is hereby allowed and the plaint, being Title Suit No. 19 of 2003 is hereby rejected. [Paras 7.1, 9] [1082-B-D, G-H; 1083-A]

T. Arivandandam v. T.V. Satyapal (1977) 4 SCC 467 : [1978] 1 SCR 742 ; Ram Singh v. Gram Panchayat Mehal Kalan (1986) 4 SCC 364 ; Madanuri Sri Rama Chandra Murthy v. Syed Jalal (2017) 13 SCC 174 : [2017] 5 SCR 294; Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust (2012) 8 SCC 706 : [2012] 6 SCR 404; A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies (1989) 2 SCC 163 : [1989] 2 SCR 1; Sopan Sukhdeo Sable v. Assistant Charity Commissioner (2004) 3 SCC 137 : [2004] 1SCR 1004 ; Sham Lal alias Kuldip v. Sanjeev Kumar (2009) 12 SCC 454: [2009] 5 SCR 1049; N. V. Srinivas Murthy v Mariyamma (dead) by proposed LRs AIR 2005 SC 2897 : [2005] 1 Suppl.

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A **SCR 411; Ram Prakash Gupta v. Rajiv Kumar Gupta (2007) 10 SCC 59 : [2007] 10 SCR 520 – relied on.**

Bloom Dekor Limited v. Subhash Himatlal Desai (1994) 6 SCC 322 :[1994] 3 Suppl. SCR 322 – referred to.

<u>Case Law Reference</u>		
B	[1978] 1 SCR 742	relied on
	(1986) 4 SCC 364	relied on
	[2017] 5 SCR 294	relied on
C	[2012] 6 SCR 404	relied on
	[1989] 2 SCR 1	relied on
	[1994] 3 Suppl. SCR 322	referred to
	[2004] 1 SCR 1004	relied on
D	[2009] 5 SCR 1049	relied on
	[2005] 1 Suppl. SCR 411	relied on
	[2007] 10 SCR 520	relied on

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2960 of 2019.

E From the Judgment and Order dated 12.03.2013 of the High Court of Judicature at Patna in Civil Revision No. 1829 of 2006.

Lakshmi Raman Singh, Advs. for the Appellants.

F Brajesh Verma, Dinkar Sharma, Shirsh Kumar, E. C. Vidya Sagar, Upendra Pratap Singh, Ms. Kheyali, D. K. Devesh, Advs. for the Respondents.

The Judgment of the Court was delivered by

G **M. R. SHAH, J.** 1. Application for substitution is allowed in terms of the prayer made.

1.1 Leave granted.

H 2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 12.03.2013 passed in Civil Revision No. 1829 of 2006 by the High Court of Judicature at Patna by which the High Court has dismissed the said revision petition and has confirmed the order passed

by the learned Munsif, Danapur dated 28.08.2006 passed in Title Suit No. 19 of 2003 by which the learned trial Court rejected the application submitted by the original defendant to reject the plaint in exercise of powers under Order 7 Rule 11(d) of the Code of Civil Procedure (hereinafter referred to as the 'CPC'), the original defendant has preferred the present appeal.

3. The facts leading to the present appeal in nutshell are as under:

That the original plaintiff and his brother Sheo Prasanna Singh jointly purchased the suit land in question in the year 1965. That the original plaintiff, who is the father of the appellant herein-original defendant, and his late brother Sheo Prasanna Singh executed a registered deed of gift in favour of the appellant herein on 06.03.1981 gifting the suit land and put him in possession thereof. That the appellant herein-original defendant instituted one T.S. (Partition) Suit No. 203 of 2001 against his brothers and others for partition of the joint Hindu family properties. That the respondent herein-original plaintiff in the present suit was also joined as defendant No. 10 in the same suit. It appears that the summon along with a copy of the plaint of the aforesaid partition suit was allegedly served on the plaintiff-respondent herein on 21.12.2001. That Sheo Prasanna Singh died on 15.12.2002. That thereafter, the respondent herein-original plaintiff alone filed T.S. No. 19 of 2003 against the appellant herein-original defendant in the Court of Munsif, Danapur for a declaration that the deed of gift dated 06.03.1981 executed in favour of the appellant herein is showy and sham transaction and no title and possession with respect to the gifted property ever passed to the appellant-original defendant and hence the same is not binding on him. A prayer was also made for confirming his possession over the suit property and in case he is found out of possession, then a decree for recovery of possession be passed.

3.1 That the appellant herein-original defendant after filing his written statement, filed an application under Order 7 Rule 11 r/w Order XIV, Rule 2 CPC for rejection of the plaint on the ground that the suit is clearly barred by law of limitation, as the deed of gift having been executed on 06.03.1981, the suit under Article 59 of the Limitation Act ought to have been filed within three years of the deed of execution of the gift deed, whereas the same has been filed after more than 22 years of the execution of the deed. It was also further averred that the suit is not

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- A maintainable in view of Sections 91 and 92 of the Evidence Act as well as Section 47 of the Registration Act.

3.2 That the Munsif, Danapur rejected the said application vide order dated 28.08.2006 on the ground that from the perusal of records and other documents, for determining the question of Limitation, oral

- B evidence are required to be taken into account. Therefore, the question is to be adjudicated only after the evidence are led by both the parties.

3.3 Feeling aggrieved and dissatisfied with the order passed by the Munsif, Danapur rejecting the Order 7 Rule 11 application, the appellant herein-original defendant filed a revision application before the

- C High Court. By the impugned judgment and order, the High Court has dismissed the revision application and has confirmed the order passed by the Munsif, Danapur rejecting the Order 7 Rule 11 application. Hence, the present appeal at the instance of the original defendant.

4. Learned counsel on behalf of the appellant-original defendant D has vehemently submitted that, in the facts and circumstances of the case, both the High Court as well as the trial Court have materially erred in rejecting the Order 7 Rule 11 application and have materially erred in not rejecting the plaint in exercise of powers under Order 7 Rule 11(d) of the CPC.

- E 4.1 It is further submitted by the learned counsel appearing on behalf of the appellant-original defendant that the registered gift deed was executed by the original plaintiff in the year 1981. At no point of time, till the year 2003, the original plaintiff as well as his brother Late Sheo Prasanna Singh challenged the registered gift deed dated 06.03.1981. It is submitted that therefore the present suit filed by the plaintiff F challenging the registered gift deed was after a period of approximately 22 years from the date of the execution of the registered gift deed and, therefore, the same was clearly barred by law of limitation, more particularly, considering Article 59 of the Limitation Act.

- G 4.2 It is further submitted by the learned counsel appearing on behalf of the appellant-original defendant that the High Court as well as the trial Court ought to have appreciated the fact that by mere clever drafting, the plaintiff cannot bring the suit within the period of limitation, if otherwise the same is barred by law of limitation. It is submitted that, in the present case, as such, the original plaintiff deliberately did not

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specifically pray to set aside the registered gift deed dated 06.03.1981. It is submitted that if the plaintiff would have asked for such a relief, in that case, the plaintiff was aware that the suit would be dismissed at the threshold being barred by law of limitation. It is submitted that, therefore, deliberately the plaintiff specifically did not ask for the relief of quashing and setting aside the registered gift deed.

4.3 Relying upon the decisions of this Court in the cases of *T. Arivandandam v. T.V. Satyapal* (1977) 4 SCC 467; *Ram Singh v. Gram Panchayat Mehal Kalan* (1986) 4 SCC 364 and *Madanuri Sri Rama Chandra Murthy v. Syed Jalal* (2017) 13 SCC 174, it is requested to allow the present appeal and quash and set aside the impugned orders rejecting the Order 7 Rule 11 application submitted by the defendant.

4.4 It is further submitted by the learned counsel appearing on behalf of the appellant-original defendant that as held by this Court in catena of decisions while considering the application under Order 7 Rule 11 of the CPC, only the averments in the plaint are required to be considered.

4.5 It is further submitted by the learned counsel appearing on behalf of the appellant-original defendant that if clever drafting has created the illusion of a cause of action, as observed by this Court in a catena of decisions, the Court must nip it in the bud at the first hearing by examining the party searchingly under Order 10 of the CPC. It is further submitted that, therefore, as observed by this Court in the case of *T. Arivandandam* (supra), an activist judge is the answer to irresponsible law suits. It is submitted that, in the present case, if the bundle of facts narrated in the plaint and the averments in the plaint, as a whole, are considered, in that case, the suit is not only barred by law of limitation, but it is a vexatious and meritless suit and, therefore, the plaint is required to be rejected in exercise of powers under Rule 7 Order 11 of the CPC. In support of his submissions, the learned counsel appearing on behalf of the appellant-original defendant has relied upon the decisions of this Court in *T. Arivandandam* (supra); *Church of Christ Charitable Trust & Educational Charitable Society v. Ponniamman Educational Trust* (2012) 8 SCC 706; *A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies* (1989) 2 SCC 163; *Bloom Dekor Limited v. Subhash Himatlal Desai* (1994) 6 SCC 322; *Sopan Sukhdeo Sable v. Assistant Charity Commissioner* (2004) 3 SCC 137; *Sham Lal alias Kuldip v. Sanjeev*

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- A *Kumar* (2009) 12 SCC 454; *N. V. Srinivas Murthy v Mariyamma (dead) by proposed LRs* AIR 2005 SC 2897 and *Ram Prakash Gupta v. Rajiv Kumar Gupta* (2007) 10 SCC 59. Making the above submissions, it is prayed to allow the present appeal and quash and set aside the impugned order passed by the High Court as well as the trial Court rejecting Order 7 Rule 11 application and consequently to allow the said application and to reject the plaint in exercise of powers under Order 7 Rule 11 of the CPC.
- B 5. Learned counsel appearing on behalf of the original plaintiff-respondent has vehemently opposed the present appeal.
- C 5.1 It is vehemently submitted by the learned counsel appearing on behalf of the original plaintiff that the question of limitation is a mixed question of law and facts and for which the evidence is required to be led by the parties and therefore both, the High Court as well as the learned trial Court, rightly refused to reject the plaint at the threshold and in exercise of powers under Order 7 Rule 11 of the CPC.
- D 5.2 It is further submitted by the learned counsel appearing on behalf of the original plaintiff that, while considering the application under Order 7 Rule 11 of the CPC, the averments in the plaint alone are required to be considered and not the defence and/or the written statement filed by the defendant. It is submitted that, in the present case, it is specifically averred in the plaint that the plaintiff came to know about the gift deed in the year 2001, when the plaintiff instituted T.S. No. 203 of 2001 and asserted his right on the basis of the registered gift deed dated 06.03.1981. It is submitted that, as so averred in the plaint, till 2001, the defendant did not assert his right on the basis of the registered gift deed dated 06.03.1981
- E and, therefore, as averred in the plaint, the plaintiff came to know about the registered gift deed in the year 2001, and when the suit was filed in the year 2003, the suit cannot be said to be barred by law of limitation. It is submitted that, in any case, the question with respect to the limitation can be said to be a mixed question of law and facts, as rightly observed by the learned trial Court as well as the High Court, the evidence is required to be led by both the parties and only thereafter, the issue with respect to limitation is required to be considered. It is submitted that, therefore, the High Court has rightly refused to reject the plaint under Order 7 Rule 11 of the CPC.
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5.3 Making the above submissions, it is prayed to dismiss the A present appeal.

6. Heard the learned counsel appearing on behalf of the respective parties at length. We have perused the impugned judgment and order of the High Court as well as the order of the trial Court, dismissing the application under Order 7 Rule 11 of the CPC and refusing to reject the B plaint in exercise of powers under Order 7 Rule 11 of the CPC. We have also considered the averments in the plaint.

6.1 At the outset, it is required to be noted that the plaintiff has instituted the suit against the defendant for a declaration that the defendant has acquired no title and possession on the basis of the deed of gift dated 06.03.1981 and that the plaintiff has got title and possession in the said property. In the suit, the plaintiff has prayed for the following reliefs:

“A That on adjudication of the facts stated above, it be declared that the defendant acquired no title and possession on the basis of the said showy deed of gift dated 06.03.1981 and the plaintiff has got title and possession in the said property.

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

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

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

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

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

Considering the averments in the plaint, it can be seen that, as such, the plaintiff has specifically admitted that the plaintiff and his brother executed the gift deed on 06.03.1981. It is admitted that the gift deed is a registered gift deed. It also emerges from the plaint that till 2003,

- A neither the plaintiff nor his brother (during his lifetime) challenged the gift deed dated 06.03.1981 nor, at any point of time, claimed that the gift deed dated 06.03.1981 was a showy deed of gift. In fact, it is the defendant-appellant herein who instituted the suit in the year 2001 against his brothers to which even the plaintiff was a party as defendant No. 10 and that was a partition suit filed by the appellant herein-original defendant.
- B It appears that the summon and the copy of the plaint – T.S. (Partition) Suit No. 203 of 2001 – was served upon the plaintiff in the year 2001 itself. Still, the plaintiff averred in the plaint that it came to the knowledge of the plaintiff with respect to the gift deed on 10.04.2003. Thus, it is born out from the averments in the plaint that, till 2003, the plaintiff
- C never disputed the gift deed and/or never claimed that the gift deed dated 06.03.1981 was a showy deed of gift. With the aforesaid facts and circumstances, the application submitted by the appellant-original defendant to reject the plaint in exercise of powers under Order 7 Rule 11 of the CPC is required to be considered.
- D 6.2 While considering the scope and ambit of the application under Order 7 Rule 11 of the CPC, few decisions of this Court on Order 7 Rule 11 of the CPC are required to be referred to and considered.
 - 6.3 In the case of **T. Arivandandam** (supra), while considering the very same provision i.e. Order 7 Rule 11 of the CPC and the decree
- E of the trial Court in considering such application, this Court in para 5 has observed and held as under:
- F “5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentently resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7, Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10, CPC. An activist Judge is the answer to irresponsible law suits....”
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6.4 In the case of *Church of Christ Charitable Trust and Educational Charitable Society* (supra), this Court in paras 13 has observed and held as under:

“13. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the Plaintiff the right to relief against the Defendant. Every fact which is necessary for the Plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words “cause of action”. A cause of action must include some act done by the Defendant since in the absence of such an act no cause of action can possibly accrue.”

6.5 In *A.B.C. Laminart Pvt. Ltd. v. A.P. Agencies, Salem* (supra), this Court explained the meaning of “cause of action” as follows:

“12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.”

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

“11. In *I.T.C. Ltd. v. Debts Recovery Appellate Tribunal* [(1998) 2 SCC 70] it was held that the basic question to be decided while dealing with an application filed under Order 7 Rule 11 of the Code is whether a real cause of action has been set out in the

- A plaint or something purely illusory has been stated with a view to get out of Order 7 Rule 11 of the Code.
- 12.** The trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the Code. (See *T. Arivandandam v. T.V. Satyapal* (supra).”
- C 6.7 In the case of **Madanuri Sri Rama Chandra Murthy** (supra), this Court has observed and held as under:
- “7. The plaint can be rejected under Order 7 Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order 7 Rule 11 CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order 7 Rule 11 CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when the allegations made in the plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for
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rejection of plaint can be entertained and the power under Order 7 Rule 11 CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

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

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

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- A clever drafting the plaintiff has tried to bring the suit within the period of limitation which, otherwise, is barred by law of limitation. Therefore, considering the decisions of this Court in the case of *T. Arivandandam* (supra) and others, as stated above, and as the suit is clearly barred by law of limitation, the plaintiff is required to be rejected in exercise of powers under Order 7 Rule 11 of the CPC.
- B 7.1 At this stage, it is required to be noted that, as such, the plaintiff has never prayed for any declaration to set aside the gift deed. We are of the opinion that such a prayer is not asked cleverly. If such a prayer would have been asked, in that case, the suit can be said to be clearly barred by limitation considering Article 59 of the Limitation Act and, therefore, only a declaration is sought to get out of the provisions of the Limitation Act, more particularly, Article 59 of the Limitation Act. The aforesaid aspect has also not been considered by the High Court as well as the learned trial Court.
- C 8. Now, so far as the application on behalf of the original plaintiff and even the observations made by the learned trial Court as well as the High Court that the question with respect to the limitation is a mixed question of law and facts, which can be decided only after the parties lead the evidence is concerned, as observed and held by this Court in the cases of *Sham Lal alias Kuldip* (supra); *N.V. Srinivas Murthy* (supra)
- D as well as in the case of *Ram Prakash Gupta* (supra), considering the averments in the plaint if it is found that the suit is clearly barred by law of limitation, the same can be rejected in exercise of powers under Order 7 Rule 11(d) of the CPC.
- E 9. In view of the above and for the reasons stated above, we are of the opinion that both the High Court as well as the learned trial Court have erred in not exercising the powers under Order 7 Rule 11 of the CPC and in not rejecting the plaint in exercise of powers under Order 7 Rule 11 of the CPC. For the reasons stated above, the impugned judgment and order passed by the High Court as well as the trial Court cannot be sustained and the same deserve to be quashed and set aside.
- F G Consequently, the impugned judgment and order passed by the High Court dated 12.03.2013 as well as the order passed by the Munsif, Danapur rejecting the Order 7 Rule 11 application filed by the original defendant are hereby set aside. Consequently, the application submitted

by the appellant herein-original defendant to reject the plaint under Order 7 Rule 11 of the CPC is hereby allowed and the plaint, being Title Suit No. 19 of 2003 is hereby rejected. The present appeal is allowed accordingly in terms of the above. No costs. A

Divya Pandey

Appeal allowed. B