

Trienity Prime Property Projects Llp ... vs Ramesh Pandurang Mali And Ors on 18 July, 2022

Author: R.I. Chagla

Bench: R.I. Chagla

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION (L) NO. 2566 OF 2022
IN
SUIT (L) NO. 29721 OF 2021

M/s Trienity Prime Property
Projects LLP & Ors.

... Applicants
(Org. Def. Nos. 2, 5, 6 & 7)

In the matter between:

Ramesh Mali
Versus

... Plaintiff

M/s Samrat Associates & Ors.

... Defendants

ALONG WITH
INTERIM APPLICATION (L) NO. 3696 OF 2022
IN
SUIT (L) NO. 29721 OF 2021

M/s Samrat Associates and Anr.

... Applicants
(Org. Def. Nos. 1 & 3)

In the matter between:

Ramesh Mali
Versus

... Plaintiff

M/s Samrat Associates & Ors.

... Defendants

ALONG WITH
INTERIM APPLICATION (L) NO. 4569 OF 2022
IN
SUIT (L) NO. 29721 OF 2021

Amrishchandra Agarwal

... Applicant
(Org. Def. No. 10)

In the matter between:

Waghmare

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Ramesh Mali
Versus
M/s Samrat Associates & Ors. ... Plaintiff
... Defendants

Mr. Chetan Kapadia a/w Chaitanya Chavan, Rahul Singh and Pranali Raut i/b M/s. Legal Catalyst for the Plaintiff.

Mr. Naushad Engineer with Shreya Jha a/w Mr. Hemang Raythatta, S.M. Seegarla, Shalaka Chamboowala and Swapnil Shikhare i/b RMG Law Associates for Defendant Nos.1, 3 and 4.

Mr. Mayur Khandeparkar a/w Vikramjit Garewal and Ms. Priyanka Fadia i/b Shashank Fadia for Defendant Nos.2, 5, 6 and 7.

Mr. Ankit Lohia with Ms. Aditi Bhat a/w Kunal Parekh, Ms. Nirali Shah i/b Dua Associates for Defendant Nos.10, 11 (a), (b) and 12 and proposed Defendant Nos.19 and 20.

Mr. Rohan Agarwal i/b Prabha Badadare for Defendant Nos.13 to 15.

Mr. Bhavin Gada a/w Ms. Manshi Shah i/b M/s. Pravin Mehta and Mithi Co. for IA(L)/7677/2022 in Propose Defendant Nos.21 and 22.

CORAM : R.I. CHAGLA, J.
RESERVED ON : 11th APRIL, 2022 &
RESERVED ON : 7th JUNE, 2022.
PRONOUNCED ON : 18th JULY, 2022.

ORAL JUDGMENT :

1 The Interim Application (L) No.2566 of 2022 is filed by Original Defendant Nos.2, 5, 6 and 7 to the captioned Suit whereas Interim Application (L) No.3696 of 2022 has been filed by Original Defendant Nos.1 and 3 to the Suit and Interim Application (L) IAL.2566.22a wt....doc No.4569 of 2022 has been filed by Original Defendant No.10 on behalf of Defendant Nos.10 to 12 to the Suit. All the Interim Applications are filed under Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 seeking rejection of plaint on the ground that the Suit is barred by limitation. They are being disposed of by this common judgment. 2 There are certain facts in the plaint which are necessary to be adverted to. The Plaintiff's father namely late Pandurang Barkya Mali was the owner of the suit properties. By a purported agreement for sale dated 30.06.1974, Defendant Nos.8 and 9 who are referred to as Kanayalal Kalooji Jain ('Jain') and Narain Tulsidas Kanal ('Kanal') in the plaint, sought to purchase suit properties from the Plaintiff's deceased father. Thereafter, Jain and Kanal entered into agreements dated 05.08.1974 and 18.09.1974 with late J.N. Agarwal (predecessor of

Original Defendant Nos.10 to 12) in respect of the suit properties. The late J.N. Agarwal issued public notices and advertisements invited claims in respect of the Suit properties on 06.10.1979 and 11.10.1979. The public notices and advertisements were responded to by the Plaintiff's deceased father disputing the right of the late J.N. Agarwal to purchase the suit properties as according to him the original agreement with Defendant Nos.8 and 9 had come to an end. Being aggrieved, the late J.N. Agarwal filed Suit No.358 of 1980 before this IAL.2566.22a wt....doc Court seeking specific performance of agreement dated 18.09.1974. By an order dated 26.11.1982, this Court granted interim injunction restraining the Defendants in the said Suit from in any manner dealing with or disposing of or alienating, encumbering or transferring the suit properties.

3 Thereafter, with the intention of settling the disputes between the Plaintiff's family and the Agarwal family, Memorandum of Understanding dated 11.12.2008 came to be executed between the Plaintiff, Defendant Nos.13, 15 and Defendant Nos. 3 and 4. Under the said Memorandum of Understanding, Defendant Nos.3 and 4 were the purchasers of the suit properties. The total consideration mentioned therein was a sum of Rs.13,51,00,000/- and for which postdated cheques payable within 11 months were handed over to the Plaintiff. It was agreed between the parties to the said Memorandum of Understanding that Defendant No.1 shall settle/ cause settlement with all parties at their own costs and have the injunction order vacated.

4 Sometime in December 2013, Defendant No.3 called the Plaintiffs and his family members to his office at Gurgaon for the purpose of executing conveyance deeds. The Plaintiff has claimed that IAL.2566.22a wt....doc Defendant No.3 had informed the Plaintiff that the said Memorandum of Understanding would have to be registered and for which signatures on several documents, bank papers and stamp papers were obtained by Defendant No.3 from the Plaintiff and his family members. It was in the month of February, 2014 when the Plaintiff attended the office of Sub-Registrar and executed the documents during which the Plaintiff has claimed that he happened to get a glimpse of Defendant Nos.8 to 12 in the registration office.

5 The Plaintiff has admitted that he received payment of Rs.96,52,116/- through pay orders towards purchase of the suit property. However, the Plaintiff claims that he accepted the same under the representation made by Defendant No.3 and 4 that these monies were paid towards the balance consideration under the Memorandum of Understanding dated 11.12.2008. On 20.02.2014, the Plaintiff admits that he executed four conveyances for sale of the suit property in favour of Original Defendant Nos.10 to 12. However, in paragraph 29 of the Plaint, it is stated that the Plaintiff having been misrepresented and fraudulently made to believe about the contents of the document executed the alleged impugned Conveyance Deeds as to be Memorandum of Understanding in favour of Defendant Nos.1 to 7.

IAL.2566.22a wt....doc 6 The Plaintiff has further stated for the first time he became apprehensive of some foul play and fraud on 27.07.2016. This is when the Plaintiff received notice from the Land Record Department, Maharashtra with respect to measuring boundaries of one of the suit properties being Final Plot No.709. The notice was issued under Section 150(2) of the Maharashtra Land Revenue Code, 1966 by the City Survey Officer. It was stated in the notice that the Plaintiff and Defendant Nos.13 to 15 were sellers and the Original Defendant Nos.10 to 12 described as the

Agarwal family were purchasers under the conveyance deeds which were duly registered along with the registration numbers. The Plaintiff was accordingly notified that the last rights record and mutation register would be amended to reflect the sale in favour of the Agarwal family and that the names of the Agarwal family would be entered in the record of rights. 7 The Plaintiff after receiving legal advice, addressed a reply to the City Survey Officer, objecting to the proposed amendment in the record of rights by stating that the Plaintiff had not received full compensation for the suit properties and in such a situation the Agarwal family namely Mr. Amrishchandra Jagdish Narayan Agarwal IAL.2566.22a wt....doc and others, the buyers of the land and property on the basis of the conveyance deeds, have not received full ownership of the suit properties.

8 Defendant Nos.10 to 12 filed Chamber Summons No.1741 of 2016 in the Suit filed by their predecessors. The suit being Suit No.358 of 1980 which had been transferred to the Bombay City Civil Court due to change in the pecuniary jurisdiction. It was specifically stated in the Chamber Summons that the Mali family i.e. family of the Plaintiff had settled their disputes in the said Suit and necessary documents were executed to record the settlement. 9 The Plaintiff through their Advocates issued public notice on 18.01.2017 stating that the Plaintiff is constrained to file a Suit seeking declaration from this Court to declare the Deeds of Conveyance dated 13.12.2013 as null and void being obtained by fraud. The public notice was issued in two newspapers namely Navshakti in Marathi and Free Press Journal in English for cautioning the general public for not dealing in any manner in respect of the suit properties.

10 The Plaintiff in response to the Chamber Summons No.1741 of 2016 filed the affidavit dated 14.02.2017 in Suit No.358 of IAL.2566.22a wt....doc 1980 wherein they stated that the Plaintiff in that Suit, namely the Defendant Nos.10 to 12 in this Suit had approached the Plaintiff herein for the settlement of the issue in that Suit and agreed to pay the consideration price. However, in view of the Plaintiff not having paid the entire consideration price as agreed, there is no settlement whatsoever, although the Plaintiff in that Suit got executed certain documents by fraud in their favour. It is further stated that a Suit for declaration of the said documents to be null and void, would be filed. 11 In the year 2018, the Plaintiff has claimed that they noticed certain development activities on the suit property. When the Plaintiff physically attempted to enter the suit property, he was stopped by the persons who informed him that the suit property was purchased by Original Defendant Nos.10 to 12.

12 The Plaintiff has thereafter claimed that In October, 2018 he noticed development activities on suit property 4 and when the Plaintiff physically attempted to enter the suit property 4, he was stopped by the personnel present who informed him that the same was purchased by Defendant Nos.10 to 12. The Plaintiff further claims that he was not allowed to enter the other Suit properties as well. In view of forceful possession of the suit properties being taken by the IAL.2566.22a wt....doc Defendants, a Police complaint dated 28.10.2018 was filed. The Plaintiff thereafter filed complaint against Defendant Nos.1 to 7 and 10 to 12 before the Economic Offence Wing on 20.12.2018. The Economic Offence Wing by letter dated 03.01.2019 transferred the investigation to the local Police Station. However, the local Police Station refused to take cognizance of the Plaintiff's complaint on the ground that the complaint is of civil nature. The Plaintiff accordingly claims that the cause of action has arisen in October, 2018 when forceful possession of the suit properties were

taken and thereafter arose in the year 2019 when the local Police Station refused to take cognizance of the complaint. The Plaintiff has claimed further cause of action arose in the month of November, 2021 when Defendant Nos.1 to 7 refused to pay the consideration as promised under the Memorandum of Understanding dated 11.12.2008 unless no objection is given to the pending Chamber Summons in Suit No.7420 of 1980 before the City Civil Court and that the same is continued till today. The Plaintiff has accordingly filed the captioned Suit on 14.12.2021. 13 Mr. Naushad Engineer, learned Counsel appearing for Defendant Nos.1, 3 and 4 has submitted that from the facts, as set out in the plaint, it is apparent that the Suit is barred by the Law of Limitation. He has submitted that the Plaintiff has admittedly been a IAL.2566.22a wt....doc party to the Conveyance Deeds which he has impugned in the present suit, having executed the same and by which Conveyance Deeds, the suit properties were transferred to the Original Defendant Nos.10 to

12. This is borne out from paragraphs 33 and 35 of the plaint read with the Plaintiff's affidavit dated 14.02.2017 which is in response to the Chamber Summons No.1741 of 2016 filed in Suit No.358 of 1980 and by which the Plaintiff has admitted that the Original Defendant Nos.10 to 12 approached the Plaintiff for settlement and agreed to pay consideration price for purchase of the suit properties. However, the full consideration was not paid by Defendant Nos.10 to 12 and hence, there was no settlement. Accordingly, the claim of the Plaintiff is that the documents were executed by fraud.

14 Mr. Engineer has submitted that assuming that there is any fraud or misrepresentation, the same was to the knowledge of the Plaintiff by 22.08.2016 or 14.02.2017 and the Plaintiff himself has stated that he would be filing a Suit for declaration that the Conveyance Deeds were not binding. He has submitted in that case, the Suit had to be filed latest by 21.08.2019 or latest by 15.02.2020. The Suit having been filed on 14.12.2021 i.e. approximately two years after the limitation had expired, would be barred by limitation.

IAL.2566.22a wt....doc 15 Mr. Engineer has submitted that even assuming that the Conveyance Deeds were executed by fraud or misrepresentation as claimed by the Plaintiff, Section 19 of the Contract Act, 1872, stipulates that the same was only voidable at the option of the Plaintiff. The Plaintiff would have to sue for cancellation of the documents and, therefore, the present Suit would have to be filed within three years of knowledge of such fraud or misrepresentation which is admittedly three years from 22.08.2016 or 14.02.2017 and, thus, the Suit having been filed beyond the period of three years, is clearly barred by law of limitation under Article 59 of the Limitation Act. 16 Mr. Engineer has made reference to decisions of the Supreme Court which clearly lay down the principles for deciding an application under Order VII Rule 11. One such decision of the Supreme Court is in Dahiben vs. Arvindbhai Bhanushali reported in (2020) 7 SCC 366. These principles include that the Court must read the plaint as a whole and the substance and not the form must be ascertained. The Court must look at documents which are annexed to the Plaint. The Court must ascertain if the assurance made in the plaint are contrary to statutory law, or judicially dicta, for deciding whether a case for rejecting the plaint at the threshold is made out. The Court must not allow the Plaintiff to take advantage of clever IAL.2566.22a wt....doc drafting and circumvent the provision of law which bars the Suit. The provisions of Order VII Rule 11 are mandatory and if on a meaningful reading of the plaint, it is found that the Suit is barred by any law then the Court shall dismiss the Suit. He has also relied upon the decision of the Supreme Court in Sree Surya

Developers & Promoters V. N. Sailesh Prasad, (2022) SCC Online SC 165, which has held that 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. In that case the Plaintiff had sought multiple reliefs and by clever drafting wanted the Suit to be maintainable, which otherwise would not be maintainable questioning the Compromise Decree.

17 Mr. Engineer has thereafter referred to the decisions of the Supreme Court in support of his contention that the Plaintiff would have to set aside the documents which prevent the Plaintiff from exercising its right, title and interest in property. These decisions are under Article 59 of the Limitation Act. They are as under :

i) Mohd. Noorul Hoda v. Bibi Raifunnisa, (1996) 7 SCC 767 at para 6;

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ii) Abdul Rahim v. Sk. Abdul Zabar, (2009) 6 SCC 160 at paragraphs 26 to 29; and

iii) Raghwendra Sharan Singh v. Ram Prasanna Singh, (2020) 16 SCC 601 at paragraphs 7 and 8.

18 He has further relied upon the settled law that where possession can only be granted if a document is set aside, then Article 65 of the Limitation Act is not applicable and instead, Article 59 of the Limitation Act would be applicable and for which he has relied upon the decision of the Supreme Court in Mohd. Noorul Hoda (supra) and Rajah of Ramnad v. A.L.A.R.R.M. Arunachellam Chettiar, Madras LJR Vol.XXIV 592 (pages 599 and 615, 616). (AIR 1916 Madras 350). 19 He has also relied upon the decision of the Supreme Court in State of Punjab v. Balkaran Singh (2006) 12 SCC 709 at paragraph 17 and Anand Madanmohan Jaiswal v. Pratibha (2017) SCC Online Bom 8509 at paragraph 20, in support of his submission that if the main relief is barred then the consequential relief cannot be granted. He has accordingly submitted that Suit is clearly barred by the law of limitation and in view thereof the Plaint be rejected under Order VII Rule 11 (d) of the Civil Procedure Code.

IAL.2566.22a wt....doc 20 Mr. Ankit Lohia, the learned Counsel appearing for Defendant Nos.10 to 12 has supported the submissions of Mr. Engineer. He has submitted that the captioned Suit is essentially a Suit for cancellation of four Conveyance Deeds. The relief of possession claimed by the Plaintiff is only a relief consequential to the relief of cancellation. A meaningful reading of the plaint makes it clear that the captioned Suit essentially seeks cancellation of the Conveyance Deeds. He has also placed reliance upon Section 31 of the Specific Relief Act, 1963 and Article 59 of the Limitation Act, 1963 in support of his submission that absent the relief for declaration of cancellation of the Conveyance Deeds, the Plaintiff is not entitled to seek the relief of possession. He has submitted that the Conveyance Deeds are registered documents by which the Suit properties have been sold to Defendant Nos.10 to 12. The execution of the document is admitted by the Plaintiff before the Sub-Registrar of Assurances in accordance with the procedures of Registration Act, 1908. The Plaintiff has admittedly received and accepted consideration under the Conveyance Deeds and continues to enjoy the benefit of money paid to him under the Conveyance Deeds. He has also

placed reliance upon the events which transpired between the execution of the Conveyance Deeds and filing of Suit which clearly reveal that the Plaintiff was aware of the IAL.2566.22a wt....doc nature of the Conveyance Deeds, the character thereof and the consequences thereof and acquiesced in the same. This is borne out from the notice dated 22.08.2016 addressed by the Land Record Department, Maharashtra to the Plaintiff. Mr. Lohia has submitted that there is a clear admission on the part of the Plaintiff in the Plaintiff's reply dated 29.08.2016 to the said Notice sent under Section 150(2) of Maharashtra Land Revenue Act, 1966 as well as in the subsequent affidavit in reply dated 14.02.2017 to the Chamber Summons No.1741 of 2016 preferred by Defendant Nos.10 to 12 in their Suit that there were sale transactions and that title of the Suit properties would pass to Defendant Nos.10 to 12 and the only grievance being that the entire consideration had not been received.

21 Mr. Lohia has further submitted that the Memorandum of Understanding executed between the Plaintiff and Defendant No.1 also makes it evident that the Plaintiff had for all practical purposes, effectively divested all his interest in the suit properties and only the acquisition/enjoyment of the rights by the Defendant No.1 was subject to the order of injunction granted by this Court in the Suit filed by Defendant Nos.10 to 12.

IAL.2566.22a wt....doc 22 Mr. Lohia has submitted that this is a classic case where the Plaintiff by clever drafting has attempted to make out an illusory cause of action to bring the Suit within limitation. The Plaintiff has sought to contend that "fraud" was played upon the Plaintiff. He has placed reliance upon Section 19 of the Contract Act, 1872, which provides that a contract which is vitiated by fraud makes the contract 'voidable' at the instance of the innocent party. Thus, it is for the Plaintiff to avoid the contract by seeking its cancellation under Section 31 of the Specific Relief Act. In the present case the Plaintiff would have to seek cancellation of the documents being the Conveyance Deeds which would necessarily have to be filed within three years from the date of knowledge of the alleged fraud. The Plaintiff had knowledge of the alleged fraud not only from the execution of the Conveyance Deeds dated 31.12.2013 but had clear knowledge of the fraud as admitted by him both in his reply dated 29.08.2016 to the Notice dated 22.08.2016 received from the City Survey Officer and in his affidavit in reply dated 14.02.2017 to the Chamber Summons preferred by Defendant Nos.10 to 12 in their Suit before the City Civil Court.

23 Mr. Lohia has submitted that the case of the Plaintiff in the plaint is that the right to sue first accrued in favour of the Plaintiff so IAL.2566.22a wt....doc as to seek cancellation of the impugned Conveyance Deeds as the Defendants infringed upon the rights of the Plaintiff of settled possession and of ownership of the suit properties. He has submitted that the plea for possession sought in the plaint can be of no assistance to the Plaintiff as much as the plea of possession is consequential upon the relief of cancellation/void ab initio as the case may be. The Plaintiff cannot seek possession if the Plaintiff fails to seek cancellation/declaration that the Conveyance Deeds are void ab initio. Thus, if the primary relief/main cause of action in respect of contract being void/liable to be cancelled is barred by limitation the consequential relief can never be granted and cannot save limitation. 24 Mr. Lohia has submitted that the Plaintiff cannot rely upon his contention that the consideration was not paid by Defendant Nos.1 to 7 and such out right rejection arose in November, 2021, which consideration was promised under the Memorandum of Understanding dated 11.11.2008. He has

submitted that under said Memorandum of Understanding, it was clearly contemplated that balance payment would be made within 11 months from the execution of Memorandum of Understanding. Thus, the cause action on the Memorandum of Understanding if any, arose post 11 months from execution. He has accordingly submitted that there is no merit in the Plaintiff's plaint on IAL.2566.22a wt....doc when the cause of action arose. The Suit is clearly barred by the law of limitation.

25 Mr. Mayur Khandeparkar, learned Counsel on behalf of Defendant Nos.2, 5, 6 and 7 has made submissions. He has relied upon the facts as well as well settled principles of a Court dealing with an application for rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908. He has relied upon the decision of the Supreme Court in Raghwendra Sharan Singh v. Ram Prasanna Singh (dead) by Legal Representatives (2020) 16 SCC 601, in support of his submission that the Court can examine not only the plaint but also the documents annexed and referred to in the plaint for the purpose of ascertaining the genesis of dispute of and/or triggering point of right to sue/cause of action for the purpose of passing appropriate orders in an application filed for rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure. He has submitted that the plaint as framed and filed is devoid of material particulars in context of allegation of fraud. In terms of Articles 58 and 59 of the Limitation Act, a Suit seeking declaration and/or cancellation of Deeds of Conveyance dated 31.12.2013 was required to be filed on or before three years from the date of execution thereof. He has relied upon the well settled law in that context. He has also placed reliance upon IAL.2566.22a wt....doc Section 19 of the Contract Act which provides when consent to an agreement is caused due to coercion, fraud or misrepresentation, such agreement is voidable at the option of the party, whose consent was so caused. He has submitted that in the present case, the Plaintiff had at no point of time elected to render the Deeds of Conveyance as void by his acts pursuant thereto. The Plaintiff has in fact not only received valuable consideration, aggregating to a sum of Rs.96,52,116/- under the Deeds of Conveyance, but has acted thereupon by handing over possession of the suit properties to the purchasers. 26 Mr. Khandeparkar has submitted that the Plaintiff has not sought specific performance of the Memorandum of Understanding dated 11.12.2008 on the basis of which the Plaintiff has claimed that the Deeds of Conveyance were executed. It is the case of Defendant No.1 that the said Memorandum of Understanding has in fact been cancelled vide letter dated 02.09.2010. However, there has been no attempt to refund or return the consideration under the Deeds of Conveyance.

27 Mr. Khandeparkar has further submitted that the Plaintiff is deemed to have knowledge of the Deeds of Conveyance at least since their registration on 20.02.2014 as they are registered documents, IAL.2566.22a wt....doc having regard to Section 3 of the Transfer of Property Act and Section 17 of the Limitation Act. He has accordingly submitted that the captioned suit is clearly barred by the law of limitation and the plaint be rejected under Order VII Rule 11 (d) of the Code of Civil Procedure. 28 Mr. Chetan Kapadia, learned Counsel appearing for the Plaintiff has submitted that from a true and correct reading of the plaint as a whole, it is clear that the captioned Suit has been filed on the cause of action of misrepresentation by Defendant Nos.1, 3 and 4 to the Plaintiff and Defendant Nos.13, 14 and 15 that the documents executed in 2013 were in fact fresh Memorandum of Understanding and documents in aid thereof in furtherance of Memorandum of Understanding dated 11.12.2008. The purported Deeds of Conveyance dated 31.12.2013 are

accordingly void and non est factum. Further cause of action in the plaint is that the Deeds of Conveyance are void as they are executed in violation of an injunction order dated 26.11.1982 passed by this Court in Suit No.359 of 1980, which was later transferred to the City Civil Court. Hence, the cause of action in the Suit being one for primary relief of possession and for relief of adjudgment that the Deeds of Conveyance are void ab initio and other ancillary reliefs based on title.

IAL.2566.22a wt....doc 29 Mr. Kapadia has submitted that the Plaintiff is illiterate and can only read and write in his vernacular language i.e. Marathi. The Plaintiff at best, can only initial and/or write his name in English. This fact is supported by the Plaintiff and his family members having affixed their signatures only in Marathi to the documents and that the plaint is also affirmed by the Plaintiff in Marathi. 30 Mr. Kapadia has thereafter referred to the facts of the case and has made particular reference to the Memorandum of Understanding executed on 11.12.2008 between the Plaintiff, his family members and Original Defendant No.1 which was for a total consideration of Rs.13.51 crores and which was payable by post-dated cheques within 11 months and which was also handed over. He has submitted that cheques aggregating to Rs.5,95,03,212/- between 30.10.2013 to 30.10.2014 were issued by Defendant No.1 in favour of the Plaintiff and his family members. He has submitted that the Plaintiff had executed the documents/Deeds of Conveyance with the understanding that this was in relation to the Memorandum of Understanding executed in 2008 and for which fresh Memorandum of Understanding was required to be prepared. He has submitted that the presence of Defendant Nos.8 to 12 at the Registration Office when the documents were registered on 20.02.2015 were questioned by the IAL.2566.22a wt....doc Plaintiff and Defendant Nos.13 to 15 upon which they were informed that the presence of Defendant Nos.8 to 12 was necessary for effective implementation of the 2008 Memorandum of Understanding and for which a fresh Memorandum of Understanding has been executed with them, separately. He has submitted that the Deeds of Conveyance were registered by fraud, deceit and misrepresentation and this is borne out from the Deeds of Conveyance. The consideration paid to the Plaintiff/his family members in respect of the Deeds of Conveyance by Defendant Nos.10 to 12 is a meager sum of Rs.96,52,116/- as against a market value of Rs.23,94,19,000/-. He has referred to certain inconsistencies in the Deeds of Conveyance. In respect of the one Deed of Conveyance which is pertaining to Suit property No.3 claimed to be purchased by Defendant No.2, the purchase consideration paid by Defendant No.2 to Defendant Nos.10 to 12 is a sum of Rs.11,00,00,000/- as against market value of Rs.6,18,24,000/-. This demonstrates the fraudulent nature of the Deeds of Conveyance. 31 Mr. Kapadia has submitted that after three years of execution of the Deeds of Conveyance, on or about 14.12.2016, the Plaintiff was served with the Chamber Summons No.1741 of 2016 in 1980 Suit. The Chamber Summons refers to a settlement. However, there was no reference to and/or production of any documents, at all.

IAL.2566.22a wt....doc He has submitted that it is inconceivable and suspicious as to why Defendant Nos.10 to 12 would wait for a period of 3 years to prefer Chamber Summons seeking to place on record the alleged settlement between the parties and that too without mentioning and/or relying upon the documents pertaining to any alleged settlement. He has submitted that it is only in 2017, the Plaintiff was able to obtain copies of the alleged Conveyance Deeds. The Plaintiff only then became aware of the contents of the Conveyance Deeds and accordingly filed police complaint with the concerned police station on 05.06.2017. It is only upon noticing development activities on suit

property since 2018 and the Plaintiff being stopped from entering the suit properties, that the Plaintiff was constrained to file the present suit seeking possession of suit properties which were fraudulently taken away from him. 32 Mr. Kapadia has relied upon the decision of the Supreme Court in the State of Maharashtra v. Pravin Jethalal Kamdar , (2000) 3 SCC 460 wherein it has been held that a suit seeking declaration of a void document and seeking possession, would be governed by Article 65 of the Limitation Act since it is not necessary to claim declaration in respect of a void document. He has also placed reliance upon the substantive law applicable to the cause of action in the plaint on the principle of mistake of character and non est factum. These IAL.2566.22a wt....doc decisions are as under :

- 1) Foaster v. Mackinnon, (L.R.)4 C.P. 704.
- 2) Jagardeo Singh v. Phuljari & Anr., 1908 SCC OnLine AII
- 3) Sanni Bibi v. Siddik Husain Munshi, (1918-19) 23 CWN
- 4) Sarat Chandra Gupta v. Kanai Lal Chakrabarty & Anr., (1921-22) 26 CWN 479.
- 5) Raja Singh & Ors. v. Chaichoo Singh, AIR 1940 Pat 201.
- 6) Jami Appann v. Jami Venkatppadu & Ors., AIR 1953 Mad
- 7) Ningawwa v. Byrappa Shiddapa Hireknrabar & Ors., AIR 1968 SC 956.
- 8) Dularia Devi v. Janardan Singh, 1990 Supp SCC 216.
- 9) Naranjan Singh v. Ranjit Singh, 2015 SCC OnLine 455.

33 Mr. Kapadia has relied upon aforesaid decisions in support of his submission that where a man who cannot read/illiterate person IAL.2566.22a wt....doc has a written contract/deed falsely read once to him and he executes the deed relying on the false reading as being the true substance of the transaction, his act is wholly void. In other words the documents would be 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. He has submitted that the Courts have held that in such case the alleged document/deed was no deed and the deed being void ab initio did not require to be set aside or cancelled. 34 Mr. Kapadia has also made submissions on the substantive law i.e. on the principle of a transaction being illegal and void if in violation of an injunction. He has in support of this submission relied upon the following authorities :

- 1) Surjit Singh & Ors. v. Harbans Singh & Ors., (1995) 6 SCC 50.
- 2) Smt. Savitri Devi v. Civil Judge (Senior Division), Gorakhpur & Ors. AIR 2003 AII 321.

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3) Keshrimal Jivji Shah & Anr. v. Bank of Maharashtra & Ors.

2004 (3) Mh.L.J. 893.

4) Pralhad Jawale & Ors. v. Sitabai Chander Nikam, 2011 (4) Mh.L.J. 137.

5) Vidur Impex and Traders Private Limited & Ors. v. Tosh Apartments Private Limited & Ors., (2012) 8 SCC 384.

6) Jehal Tanti & Ors. v. Nageshwar Singh (Dead) through Lrs., (2013) 14 SCC 689.

7) Shri Prakash Gobindram Ahuja v. Ganesh Pandharinath Dhonde & Ors., 2016 SCC OnLine Bom 8884.

8) Robust Hotels Private Limited & Ors. v. EIH Limited & Ors. (2017) 1SCC 622.

9) Edit II Productions v. Standard Chartered Bank & Ors., Judgment dated 05.09.2019 passed in Notice of Motion (L) No.2304 of 2018 in Suit No.461 of 2010.

35 Mr. Kapadia has submitted that when property is transferred in breach of an order of injunction and/or order of status IAL.2566.22a wt....doc quo, it is held by the Courts that there is no transfer in the eyes of law and transfer is void ab initio.

36 Mr. Kapadia has further made submissions on Article 65 of the Limitation Act which according to him is applicable as well as relied upon judgments thereon and Order VII Rule 11 of the Code of Civil Procedure as follows :

1) Sopanrao & Anr. v. Syed Mehmood & Ors., (2019) 7 SCC

2) Salim D. Agboatwala & Ors. v. Shamalji Oddhavji Thakkar & Ors. 2021 SCC OnLine SC 735.

3) C Mohammad Yunus v. Syed Unnissa & Ors., AIR 1961 SC

4) Daya Singh & Anr. v. Gurdev Singh (Dead) By Lrs. & Ors.

(2010) 2 SCC 194.

5) Chhotanben & Anr. v. Kiritbhai Jalkrushnabhai Thakkar & Ors. (2018) 6 SCC 422.

6) P.V. Guru Raj Reddy & Anr. v. P. Neeradha Reddy & Ors., (2015) 8 SCC 331.

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7) Pankaja & Anr. v. Yellappa (Dead) By Lrs. & Ors., (2004) 6 SCC 415.

37 Mr. Kapadia has submitted that in view of the present suit being a suit for possession, Article 65 of Limitation Act provides for a period of limitation of 12 years from the date when possession of the land became adverse to the Plaintiff. Merely because one of the reliefs sought is of declaration that will not mean that the outer limitation of 12 years is lost. He has placed reliance in this context on the aforementioned decision of the Supreme Court in Sopanrao & Anr. (supra).

38 Mr. Kapadia has also relied upon the aforementioned decisions which are on the well settled principles laid down on rejection of a plaint under Order VII Rule 11. The Supreme Court in Salim D. Agboatwala (supra) has held this to be a drastic power conferred on the Court to terminate a civil action at the threshold. Therefore, the conditions precedent to the exercise of the power are stringent and it is especially so when rejection of plaint is sought on the ground of limitation.

39 Mr. Kapadia has submitted that there is no merit in the application under Order VII Rule 11 as the Defendants have sought to IAL.2566.22a wt....doc go into the merits of the dispute. He has submitted that an application filed under Order VII Rule 11 of the Code of Civil Procedure does not require the Plaintiff to prove his case on merits or for an adjudication on merits. All that the Court has to see is what is pleaded by the Plaintiff to ascertain the cause of action in the plaint. In the present case, the Plaintiff has lost possession of the suit properties sometime around October, 2018. The Applicant, in their Interim Applications have contended that the Plaintiff lost possession in December, 2013 when the Deeds of Conveyance were executed. In either case, the present Suit having been filed in December, 2021 is well within the period of limitation which under Article 65 of Limitation Act is 12 years from the date of loss of possession of the suit properties. He has submitted that the Deeds of Conveyance itself are illegal and void ab initio in view of the settled law and hence, not required to be cancelled and/or set aside. The Deeds of Conveyance according to the substantive law relied upon having been executed on the principle of mistake of character and non est factum, would be void ab initio. Further, according to the substantive law transaction is illegal and void ab initio, if it is in violation an order of injunction. 40 Mr. Engineer, Mr. Lohia and Mr. Khandeparkar have on behalf of the respective Defendants made submissions in rejoinder.

IAL.2566.22a wt....doc They have submitted that the Law laid down by the Supreme Court makes a clear distinction between "fraud with regard to the character of a document" and "fraud with regard to the contents of document". The legal effect/consequence of the two is completely different. They have submitted that "fraud with regard to the character of document"

covers cases where a person executed a document thinking that it would be one kind/type such as a power of attorney or a lease of some property, but finds that, in fact, the document was a sale deed or a gift. Therefore, the nature or type of document was completely different from what was intended. Whereas in the case of fraud with regard to contents of a document, these are cases where a person wanted to gift one property but discovers that, in fact, more properties have been gifted

under the document, or where the consideration figure agreed upon is fraudulently altered or the purchaser of the property is someone else. They have submitted that it is settled law that if there is "fraud with regard to the contents of a document", then the document is only voidable and the Plaintiff would have to sue for cancellation of those documents. It is only in the case of "fraud with regard to character of a document" that it would not be necessary to sue for cancellation of document as the document itself is invalid and void ab initio. They have submitted that this distinction is required to be kept IAL.2566.22a wt....doc in mind. It is their contention that in the present case, assuming without admitting that there is any fraud, the Plaintiff has himself pleaded that the fraud was only with regard to the contents of the document. This is apparent from paragraph 29 of the plaint as well as the subsequent paragraphs 33 and 35 of the plaint.

41 The learned Counsel have submitted that it is in fact the case of the Plaintiff that he had entered into settlement with Defendant Nos.10 to 12 and executed conveyances in their favour and it was only because the entire consideration had not been paid that the Plaintiff has alleged "fraud". This is further apparent from the police complaint dated 05.06.2017 made by the Plaintiff which is annexed at Exhibit-M to the plaint, wherein the Plaintiff has stated that "... once again believing upon the said accused, we executed the documents not knowing the contents of the same and that the said Agarwal also signed the documents". It is further borne out from paragraphs 27 and 28 of the Plaint that the Plaintiff thought that he was executing the documents in furtherance of and for transferring his right, title and interest in favour of Defendant Nos.1 to 7 and the Plaintiff thought that even Defendant Nos.8 to 12 are also transferring their rights in favour of Defendant Nos.1 to 7 simultaneously. It is clear that the Plaintiff was of the view that he was executing the documents, by IAL.2566.22a wt....doc which he was transferred his rights in the property in favour of Defendant Nos.1 to 7. The Plaintiff was thus conscious that the character of the documents was one, by which he was to receive consideration and he was to transfer his right, title and interest in favour of another. That even assuming without admitting that what has been stated in the Plaint is correct, at the highest, the Plaintiff did not receive the full consideration and he thought that he was going to transfer his rights in the suit property to Defendant Nos.1 to 7. This, at best, can only be fraud on contents and is not fraud on character of the documents, because the Plaintiff's intention was to transfer the property for consideration to a third party.

42 The learned Counsel thereafter dealt with the decisions relied upon by Mr. Kapadia in support of his submissions on behalf of the Plaintiff. They have submitted that the decision relied upon by the Plaintiff namely, Jagardeo Singh v. Phuljari (supra) is misplaced as it does not draw a distinction between fraud of character and fraud of contents and is contrary to decision of the Supreme Court in Ningawwa v. Byrappa Shiddapa (supra) and Dularia Devi v. Jonardan Singh (supra) and in fact supports the Defendants as it states that if there is fraud as to the contents of the document, the document is not void ab initio. This judgment is also contrary to the law as laid down IAL.2566.22a wt....doc in the case of Abdul Rahim v. Abdul Zabar (supra) where it is held that even if a transaction is void or voidable, the party must sue for cancellation. Accordingly, the judgment in Jagardeo Singh (supra) is not good law and cannot be relied upon.

43 They have further submitted that the other decisions relied upon by the Plaintiff namely Sanni Bibi (supra); Appanna v. Venkatappa (supra); Naranjan Singh (supra), Sarat Chandra Gupta (supra) are all decisions which are with regard to fraud on character of the document where the Plaintiff thought he was executing a particular document, when actually he was executed an entirely different document. In Sanni Bibi (supra) the Plaintiff thought he was executing a deed for maintenance for a term of three years, when what actually he was executing was a sale deed. In this judgment, the Calcutta High Court in the context of fraud as to the contents of the document has held that 'There can be no doubt that when a person seeks to recover property against an instrument executed by himself or one under whom he claims, he must first obtain cancellation of the instrument and that the three years rule indicated by, Article 91 applies to any Suit brought by such person'. Thus, these findings of the Calcutta High Court supports the case of these Defendants, as there is no fraud on character in the facts of the present case. In the case of IAL.2566.22a wt....doc Appanna v. Venkatappa (supra) the Plaintiff thought he was executing a Power of Attorney in favour of the Defendants, authorizing them to manage the Plaintiff's estate. However, this, in fact, turned out to be a gift deed, by which the Plaintiff had gifted away his properties in favour of the Defendants. Thus, this was a clear case of fraud with regard to the character of the documents which is entirely different from the facts of the present case. In Naranjan Singh (supra) the Plaintiff had not even executed the document and that his brother had fraudulently sold the suit land by impersonating him. These facts are entirely different from the facts of the present case. In Sarat Chandra Gupta (supra) the Plaintiff signed a document under a belief that she was signing a power of attorney, whereas, in fact, she executed a deed, thereby alienating the property from herself to the Defendants. Thus, this was also clear case of fraud with regard to the character of the document and accordingly the Calcutta High Court held that this is not a case where the contract was entered into by fraud with regard to the contents of the document.

44 The learned Counsel have further submitted in rejoinder that the decision of the Patna High Court in Raja Singh (supra) relied upon by the Plaintiff which holds that if a party signs the document based on misrepresentation as to its contents, there would be no real IAL.2566.22a wt....doc execution and plea of non est factum would succeed and the document would be void ab initio is not a good law. This is contrary to the decision of the Supreme Court in Ningawwa (supra) and Dularia Devi (supra) and is accordingly impliedly overruled. In Ningawwa (supra) the Supreme Court was considering a case where the wife was the owner and she intended to gift two of the plots to her husband. However, in the gift deed, all four plots were gifted by the wife to her husband. It was held by the Supreme Court that though the wife did not intend to gift away two out of four properties, there was no fraud with regard to the character of the documents, but it was merely fraud with regard to the contents of the documents and hence, the gift deed was voidable and accordingly, a suit would have to be filed within the time prescribed under Article 95 of the Limitation Act (which is now Article 59 of the Limitation Act).

45 In Dularia Devi (supra) the Plaintiff believed that she was executing a gift deed in favour of her daughter, but in fact, the property was sold. Relying upon the decision in Ningawwa (supra) the Supreme Court held that where there is fraud with regard to the character of the documents, the contract is void. The Supreme Court has reaffirmed that if the fraud is not on character, but only with regard to the contents, then it would only be voidable. The learned IAL.2566.22a wt....doc

Counsel have submitted that the ratio of this judgment applies to the facts of the present case, as here there is no fraud with regard to the character of the documents. They have accordingly submitted that at the highest, assuming the Plaintiff's case of fraud with regard to the contents of the document is correct, it is well settled law that for the Plaintiff to recover possession of property, the Plaintiff must seek cancellation of the instrument under which the property was transferred viz. the Deeds of Conveyance in the present case i.e. within the period of three years from the knowledge of the fraud as provided in Article 59 of the Limitation Act. At the very latest three years run from 14.02.2017 i.e. by 15.02.2020 and the suit filed in December, 2021 is accordingly barred by limitation. 46 The learned Counsel have thereafter dealt with the Plaintiff's contention that the Conveyance Deeds are void ab initio as they were executed in violation of the order of injunction dated 26.11.1982. It is submitted by the learned Counsel for the respective Defendants that the case of the Plaintiff is entirely misconceived as the order of injunction was passed in a Suit filed by the predecessor of Defendant Nos.10 to 12 and that the order of injunction was in favour of Defendant Nos.10 to 12 and did not operate against them. Hence there is no embargo on the Defendant Nos.10 to 12 or any of their IAL.2566.22a wt....doc nominees from entering into the Conveyance Deeds with the Plaintiff. They have submitted that even assuming that the order of injunction applied, a sale in violation of an order of injunction is not void ab initio. This has been held by the Supreme Court in the case of Thompson Press (India) Limited v. Nanak Builders and Investors, reported in 2013 5 SCC 397 at paragraph 53. They have submitted that the judgments relied by the Plaintiff to the contrary have been either impliedly or expressly overruled by the said decision of the Supreme Court.

47 The learned Counsel have submitted that order of injunction obtained by a Plaintiff, in its favour to protect the suit property cannot be held to operate against the Plaintiff for whose protection the order was passed. This would tantamount to a complete travesty if in the present case the injunction order obtained by the predecessor of Defendant Nos.10 to 12 and upon his demise, Defendant Nos.10 to 12 who are Plaintiffs in the suit before the City Civil Court is to operate against them. The conveyances sought to be impugned in the present Suit are not in violation of the injunction order as the injunction order did not operate against Defendant Nos.10 to 12 herein or their nominee. It has been clearly held by the Supreme Court in Thompson Press (supra) that where a sale deed is executed in IAL.2566.22a wt....doc breach of injunction issued by competent Court, there is no reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The learned Counsel for respective Defendants have contended that in fact the Conveyance Deeds in the present Suit were not executed in violation of the order of injunction and without prejudice to this contention, assuming that the Conveyance Deeds was executed in violation of the injunction order, the same would not be a void ab initio sale and would be valid subject to any directions which this Court may issue against the vendors.

48 The learned Counsel for the respective Defendants have also dealt with the Plaintiff's contention that since the Plaintiff is seeking possession of the suit properties, the period of limitation for filing the Suit is 12 years under Article 65 of the Code of Civil Procedure and hence the present Suit is not barred by the law of limitation. They have submitted that this contention of the Plaintiff and the judgments relied upon in support thereof would apply where the cases are under Articles 58 and 65 of the Limitation Act. They are all cases where relief sought were for possession and a declaration

was sought. None of these judgments are cases where the right to possession was consequential or dependent upon the setting aside of a IAL.2566.22a wt....doc document. These judgments are completely distinguishable on facts. 49 The learned Counsel for the respective Defendants have submitted that in the present case it is the plea of the Plaintiff that there is fraud as to the contents of the Deeds of Conveyance and that the Plaintiff had knowledge of the fraud by 22.08.2016 and/or the very latest by 23.02.2017. In view thereof, the Suit for cancellation of Deeds of Conveyance must be filed latest by 15.02.2020. The contention of the Plaintiff that the impugned Deeds of Conveyance are void ab initio, is contrary to the well settled law that where there is no fraud as to the character of the documents but only fraud as to the contents of the documents, the Deeds of Conveyance would be voidable and would require cancellation and for which Article 59 of the Limitation Act is applicable. Thus, the Suit for cancellation would have to be filed in the facts of the present case latest by 15.02.2020 and the Suit admittedly was filed only on 14.12.2021 and thus is barred by limitation. They have submitted that this Court under Order VII Rule 11 is mandated to reject the plaint since the Suit is barred by law of limitation under Order VII Rule 11 (d).

50 After the judgment was reserved in the present matter on 11.04.2022, Mr. Chetan Kapadia had moved the Court on 07.06.2022 IAL.2566.22a wt....doc by placing reliance on the recent decision of the Supreme Court in Veena Singh (Dead) v. District Registrar/Additional Collector (F/R) , 2002 SCC OnLine SC 593, decided on 10.05.2022. Mr. Kapadia has placed reliance on paragraph 78 of the said decision wherein it is held that "execution' of a document does not stand admitted merely because a person admits to having signed the document. Adopting a contrary interpretation would unfairly put the burden upon the person denying execution to challenge the registration before a Civil Court or a writ court, since registration will have to be allowed once the signature has been admitted. Mr. Kapadia by placing reliance on this decision submitted that the Plaintiff in the present case merely by signing the deeds of Conveyance has not admitted to having executed the document as the Plaintiff was not aware of the contents of the document.

51 The learned Counsel appearing for the Defendants have distinguishing the decision of the Supreme Court in Veena Singh (supra) on the ground that the Supreme Court in that decision was considering a case where the Appellant has sought action to be taken by the Sub-Registrar for forgery alleged to have been committed by the 2nd Respondent on the ground that the signature of the Appellant was forcibly taken on the sale deed thereby conveying the land in favour of IAL.2566.22a wt....doc the 2nd Respondent and having the sale deed registered. The Sub- Registrar had by order declined to register the sale deed which was thereafter challenged and the order of the Sub-Registrar was set aside by the District Registrar. The Appellant had challenged the order of the District Registrar before the Allahabad High Court. Writ Petition was dismissed by the Allahabad High Court and the Appellant was directed to move the Civil Court for declaration that sale deed had been obtained by fraud and nullity. In Appeal, the matter was heard by the Supreme Court. The Supreme Court in the context of the facts before it arrived at the finding at paragraph 78 of the said decision namely that execution of a document does not stand admitted merely because a person admits to having signed the document. Considering that the burden would then be upon the person denying execution to challenge the registration before a civil court or a writ court since registration will have to be allowed once the signature has been admitted. The Supreme Court allowed the Appeal and set aside the Judgment of the Single Judge of the Allahabad High Court and the order

passed by the District Judge.

52 The learned Counsel appearing for the Defendants have submitted that in the present case there is no issue as to the signature of the Plaintiff having been forged and/or forcibly taken. The issue IAL.2566.22a wt....doc raised in the plaint is only insofar as the Plaintiff being unaware of the contents of the document. They have submitted that it is well settled merely because there is fraud as to the contents of the document that does not make the document void but voidable and will have to be avoided by the Plaintiff seeking the setting aside of the document. 53 Having considered the submissions, it is necessary to note the well settled principles laid down by the Supreme Court for deciding applications under Order VII Rule 11 which are as under :

(i) The Court must read the Plaint as a whole and that the substance and not the form must be ascertained;

(ii) The Court must look at the documents that are annexed to the plaint;

(iii) The Court must ascertain if the averments made in the plaint are contrary to settled law or judicial dicta for deciding whether a case for rejecting the plaint at the threshold is made out;

(iv) The Court must not allow the Plaintiff to take advantage of clever drafting, and circumvent the provision of law which bars the Suit.

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(v) Order VII Rule 11 is mandatory and if in the event of meaningful reading of the plaint the Suit is found to be barred by any law, the Court shall dismiss the Suit.

54 These principles have also been enunciated in the decision of the Supreme Court in Dahiben (supra), upon which it has been held at sub-para 23.15 as under :

23.15 The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint."

55 It has further being held by the Supreme Court in Sree Surya Developers & Promoters (supra) that the Plaintiff cannot be allowed to circumvent the provision by means of clever drafting so as to avoid mention of those circumstances, by which the Suit is barred by the law of limitation. In that case the Supreme Court considered that the Plaintiff had sought multiple reliefs and by clever drafting wanted to get his Suit maintainable which otherwise would not have been IAL.2566.22a wt....doc maintainable in questioning the compromise decree. The Plaint was accordingly rejected under Order VII Rule 11 (d) of the Code of Civil Procedure. The Supreme Court in Sree Surya Developers (supra) at paragraphs 32 and 33 held thus :

"32. In the case of Ram Singh v. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364, this Co 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.

33. If we consider the reliefs of declaration of title, recovery of possession, cancellation for DGPA and Deed of Assignment- cum-DGPA, the said reliefs can be granted only if the Compromise Decree dated 13.01.2016 passed in O.S. No. 1750 of 2015 is set aside.

Therefore, by asking such multiple reliefs, the plaintiff by clever drafting wants to get his suit maintainable, which otherwise would not be maintainable questioning the Compromise Decree. All the aforesaid reliefs were subject matter of earlier suits and thereafter also subject matter of O.S. No. 1750 of 2015 in which the Compromise Decree has been passed. Therefore, it is rightly held by the Trial Court IAL.2566.22a wt....doc that the suit in the present form and for the reliefs sought would be barred under Order XXIII Rule 3A CPC and therefore the Trial Court rightly rejected the plaint in exercise of powers under Order VII Rule 11(d) of the CPC. The High Court has erred in setting aside the said order by entering into the merits of the validity of the Compromise Decree on the ground that the same was hit by Order XXXII Rule 7 CPC, which was not permissible at this stage of deciding the application under Order VII Rule 11 CPC and the only issue which was required to be considered by the High Court was whether the suit challenging the Compromise Decree would be maintainable or not."

56 The present Interim Applications which have been taken out by the respective Defendants seek rejection of the plaint under Order VII Rule 11 (d) on the ground that the Suit is barred by limitation. The arguments on behalf of the Defendants have proceeded on the premise that the Plaintiff in the present Suit has sought various reliefs including the prayer for order and decree that the transfer of the Suit property by the Conveyance Deeds dated 31.12.2013 in respect of the suit properties being on the face of injunction order dated 26.11.1982 passed in Notice of Motion No.385 of 1980 by this Court in IAL.2566.22a wt....doc Suit No.7420 of 1980 which is now pending before the City Civil Court are ineffective and void ab initio and possession of the suit property be restored in favour of the Plaintiff. Further relief has been sought for an order and declaration that the Conveyance Deeds with regard to the suit properties are illegal, null, non-est and void in law due to fraud, cheating, breach of trust and misrepresentation, without consideration and possession of suit properties be restored in favour of the Plaintiff. Thereafter, relief has been sought for an order and decree that the Defendants found in possession of the suit properties be directed to handover possession of the suit properties to the Plaintiff. In addition compensation has been sought as well as mesne profit from the date of filing of the suit till the time of handing over of vacant, absolute and quiet possession of suit properties to the Plaintiff. It can be seen from the averments in the plaint, in particular paragraphs 27, 28, 29, 33 and 35 that the Plaintiff had challenged the impugned Conveyance Deeds on two main grounds one that the Plaintiff thought he was executing documents in furtherance of and for transferring his right, title and interest in favour of Defendant Nos.1 to 7

and thought that even Defendant Nos.8 to 12 are also transferring their rights in favour of Defendant Nos.1 to 7 simultaneously. The other ground of challenge to the Conveyance Deeds is that though Defendant Nos.10 to 12 IAL.2566.22a wt....doc approached the Plaintiff for settlement and agreed to pay consideration price for purchasing the suit properties, Defendant Nos.10 to 12 had not paid full consideration and hence there was no settlement. 57 In paragraph 29 of the plaint, the Plaintiff has stated that there was fraud and misrepresentation with regard to the 'contents of the documents'. Paragraph 29 of the plaint is material and is accordingly reproduced :

"29. The Plaintiff having been misrepresented and fraudulently made to believe about the contents of the document executed the alleged impugned Conveyance Deeds as to be Memorandum of understanding in favor of Defendant Nos.1 to 7. The Plaintiff was led to believe that the documents registered are nothing but a Memorandum of Understanding and documents to further implementation thereof. In the circumstances, the alleged impugned Conveyance Deeds were executed by the Plaintiff and the Defendant No.13 to 15 without even knowing the contents, only on account of misrepresentation caused and illegal, fraudulent, coercive and unethical tactics deployed by Defendants 1 to 7. The IAL.2566.22a wt....doc Plaintiff submits that all throughout the Plaintiff did not know the content therein and hence was not aware of and ramifications / repercussions of signing the alleged impugned Conveyance Deeds. It is pertinent to note that the Plaintiff was made to understand that the Memorandum of Understanding dated 11th December, 2008 was being in some form in order to give sanctity to the understanding and commitment brought out by Memorandum of Understanding dated 11th December, 2008. The Plaintiff never knew that the other Defendant Nos. 8 to 12 were also signing the same document and getting suit properties transferred in their own name."

(Emphasis supplied) 58 From reading of the plaint, it is apparent that the Plaintiff was aware that he was executing the documents/Conveyance Deeds to transfer his rights in the suit property in favour of another. He was thus conscious that the character of the documents was one, by which he was to receive consideration and he would to transfer his right, title and interest favour of another.

IAL.2566.22a wt....doc 59 Mr. Kapadia, learned Counsel for the Plaintiff has relied upon decisions of the Courts on fraud as to the character of the document and in which event the document is void ab initio and not required to set aside. It is based on these decisions that the Plaintiff has sought to justify the prayers in the plaint which do not seek cancellation and/or setting aside of the Deeds of Conveyance on the ground that the Deeds of Conveyance are itself illegal and void ab initio. In my view these decisions are wholly inapplicable to the present case where there is no fraud with regard to the character of the document.

60 In the law laid down by the Courts including the Supreme Court, a clear distinction has been made as to the "fraud with regard to the character of the documents" from that of "fraud with regard to the contents of the document". It is only in the case of "fraud with regard to character of documents" where the character of document is different from what was intended by the party that such document has been held to be null and void and not required to be set aside. 61 It is in fact

clear from the documents annexed to the Plaint which include the Plaintiff's reply to the City Survey Officer who had issued notice under Section 150(2) of the Maharashtra Land Revenue IAL.2566.22a wt....doc Code, 1966 that there was no fraud with regard to the character of the documents. In the reply dated 29.08.2016 to the said notice issued by the City Survey Officer, the Plaintiff had objected to the proposed amendment in the record of rights on the basis that the Plaintiff and other co-owners had not received full compensation of the land. It was stated that in such situation the Agarwal family, the buyers of the land and property on the basis of the Conveyance Deeds had not received further ownership of the land. It is clear that the Plaintiff had not disputed that he had voluntarily sold the land to the Agarwal family. The only objection being that the Agarwal family had not paid the Plaintiff full consideration. It is further clear from the affidavit in reply dated 14.02.2017 to Chamber Summons No.1741 of 2016 filed by predecessor of Defendant Nos.10 to 12 in their Suit, that the Plaintiff has admitted that Defendant Nos.10 to 12 approached the Plaintiff for settlement of the issue in the suit and agreed to pay the consideration price, however having not paid entire consideration price there was no settlement whatsoever, although the Plaintiff got executed certain documents by fraud in their favour. The Plaintiff has in this affidavit in reply to the Chamber Summons has in fact stated that a Suit for declaration that the Conveyance Deeds are null and void would be filed. Thus, the Plaintiff was aware of the purpose for which the IAL.2566.22a wt....doc Conveyance Deeds have been executed and which transferred rights of the suit property. The only objection being that full consideration was not paid to them. It accordingly appears that though the averments in the Plaint proceed on the premise that the Plaintiff was not aware of the contents of the Conveyance Deeds and/or that the transfer of the Suit was in favour of Defendant Nos.10 to 12, the documents annexed to the Plaint which have been adverted to above make it clear that the Plaintiff in fact had knowledge of the contents of the Conveyance Deeds at least on receiving notice dated 22.08.2016 from the City Survey Officer as borne out from the reply of the Plaintiff to the notice as well as from the affidavit in reply to Chamber Summons No.1741 of 2016 that the Conveyance Deeds were executed by the Plaintiff to transfer as rights in the suit property to Defendant Nos.10 to 12. 62 In my view, if the Plaintiff were at all aggrieved by the Conveyance Deeds as to there being fraud as to the contents of the Conveyance Deeds, the Plaintiff was obligated to file a Suit for setting aside of the conveyance deeds and for which limitation of three years under Article 59 of the Limitation Act would be applicable. At the latest the present suit should have been filed within a period of three years from such knowledge which would be at the latest three years from 14.02.2017 when the Plaintiff had filed the affidavit in reply to IAL.2566.22a wt....doc the Chamber Summons and the three years period expired on 15.02.2020. It is clear from the decisions relied upon by the Plaintiff, in particular Ningawwa (supra) and Dularia Devi (supra) that where there is no fraud with regard to character of the documents, but fraud with regard to contents of the documents, the documents are voidable and accordingly Suit will have to be filed within the time prescribed under Article 59 of the Limitation Act. It has been held by the Supreme Court in Ningawwa (supra) at paragraphs 4 and 5 as under :

"4. ... It is well established that a contract or other transaction induced or tainted by fraud is not void, but only voidable at the option of the party defrauded. Until it is avoided, the transaction is valid, so that third parties without notice of the fraud may in the meantime acquire rights and interests in the matter which they may enforce against the party defrauded."

"5. The legal position will be different if there is a fraudulent misrepresentation not merely as to contents of the document but as to its character. The authorities make a clear distinction between fraudulent misrepresentation as to character of the document and fraudulent misrepresentation as to contents thereof. With reference IAL.2566.22a wt....doc to the former, it has been held that the transaction is void, while in the case of the latter, it is merely voidable. 63 Mr. Kapadia on behalf of the Plaintiff made submissions on the substantive law on the principle of a transaction being illegal and void if in violation of an injunction. He has submitted that in the present case the Conveyance Deeds were executed in violation of the order of injunction dated 26.11.1982. This contention of the Plaintiff cannot be accepted in view of the fact that the order of injunction was passed in the suit filed by the predecessor of Defendant Nos.10 to 12 and was in favour of Defendant Nos.10 to 12 and did not operate against them. The Conveyance Deeds transferred the Suit Properties to Defendant Nos.10 to 12 and thus cannot be held to be breach of the injunction order which enures in their favour. The Defendant Nos.10 to 12 had admittedly approached the Plaintiff for settlement of the Suit filed by their predecessor which is pending before the City Civil Court and for which Conveyance Deeds were executed by which the rights of the Suit Properties were transferred by the Plaintiff to Defendant Nos.10 to 12. The Defendant Nos.10 to 12 had taken out Chamber Summons No.1741 of 2016 in their Suit which was filed for specific performance of agreement dated 30.06.1974 by which the predecessor of the Plaintiff had agreed to sell the Suit properties to the predecessor IAL.2566.22a wt....doc of Defendant Nos.10 to 12. It was in this Chamber Summons that Defendant Nos.10 to 12 stated that the Plaintiff referred to as the Mali family had settled their disputes and necessary documents have been executed to record the settlement. Thus, it is clear that there is no violation of the injunction order dated 26.11.1982 as the Conveyance Deeds transferring the Suit Properties to Defendant Nos.10 to 12 were by way of settlement of the disputes between Defendant Nos.10 to 12 and the Plaintiff in the Suit filed by the predecessor of Defendant Nos.10 to 12.

64 Presuming that the Plaintiff is right in contending that the order of injunction applied and the conveyance deeds were executed in violation of an injunction order, it has been held in Thompson Press (India) Ltd. (supra) that a breach of any injunction order would not render the transfer by way of absolute sale or otherwise ineffective. In this context it is necessary to set out paragraph 53 of the said decision which is as under :

"53. There is, therefore, little room for any doubt that the transfer of the suit property pendente lite is not void ab initio and that the purchaser of any such property takes the bargain subject to the rights of the plaintiff in the IAL.2566.22a wt....doc pending suit. Although the above decisions do not deal with a fact situation where the sale deed is executed in breach of an injunction issued a competent court, we do not see any reason why the breach of any such injunction should render the transfer whether by way of an absolute sale or otherwise ineffective. The party committing the breach

may doubtless incur the liability to be punished for the breach committed by it but the sale by itself may remain valid as between the parties to the transaction subject only to any directions which the competent court may issue in the suit against the vendor."

(emphasis supplied) 65 It has been held by the Supreme Court that a sale even in violation of an injunction order may remain valid as between the parties to the transaction subject to any directions which the competent Court may issue in the suit against the vendor. Though there are decisions of the Supreme Court as well as of this Court to the contrary, they have not considered the decision of the Supreme Court in Thompson Press (supra). However, it would not be necessary to consider whether the other decisions are either impliedly overruled or IAL.2566.22a wt....doc per incurium, considering the fact that the conveyance deeds in the present case cannot be held to be in violation of injunction order particularly when the transfer of the Suit Properties by way of the Conveyance Deeds are in favour of Defendant Nos.10 to 12, for whose benefit the injunction order was passed.

66 Thus, the Plaintiff's contention that since the impugned Conveyance Deeds are void ab initio there is no need for their cancellation and Article 59 of the Limitation Act would have no application cannot be accepted. The prayer in the plaint of possession clearly would follow the Conveyance Deeds having to be set aside and absent the setting aside of the Conveyance Deeds, the Suit for possession cannot stand on its own. Hence, Article 65 which provides a period of limitation of 12 years in the event the Plaintiff is seeking possession is not applicable and cannot save the Suit from being barred by the law of limitation. The decisions relied upon by the Defendants where the Plaintiff would have to sue for cancellation of the document and Article 59 of the Limitation Act being applicable are apposite. 67 I have considered the submissions made by the learned Counsel for the parties on the decision of the Supreme Court in Veena Singh (supra). In my view the said decision of the Supreme Court is IAL.2566.22a wt....doc inapplicable to the facts of the present case particularly considering that unlike in the case Veena Singh (supra), in the present case there is no issue insofar as execution of the document is concerned. The Plaintiff has in the present case not claimed that his signature was either forcibly taken or there was forgery committed by the Defendants in taking his signature. In fact, in the present case the Plaintiff has admittedly executed the Deed of Conveyance as well as taking part in its registration. The learned Counsel for the Defendants are in my view are correct in their submission that in the present case the issue raised by the Plaintiff in the present Suit is only as to "fraud with regard to the contents of the document" which in light of the settled law would require the Plaintiff to seek appropriate relief for setting aside and/or cancelling the document which in the present case are the Deeds of Conveyance, and that too within the prescribed period of three years from their learning of such alleged fraud with regard to the contents of the document. Further, it is well settled that fraud with regard to the contents of the document only make a document voidable and would have to be avoided by the person seeking to do the same. In my view, the decision of the Supreme Court in Veena Singh (supra) would not support the Plaintiff's case.

IAL.2566.22a wt....doc 68 Thus, in my considered view the Suit filed by the Plaintiff is barred by the law of limitation as it is clear from the averments in the Plaint read with the documents annexed thereto that the Plaintiff had knowledge about the alleged fraud by 22.08.2016 and at the very latest

by 14.02.2017. That being so, the Suit for cancellation would have to be filed by 15.02.2020. The Suit having been filed on 14.12.2021 is clearly barred by the law of limitation. Further, the averments in paragraphs 60 and 61 as well as paragraphs 60 to 63 of the plaint whereby the Plaintiff has sought to justify the Suit brought within limitation on the pretext that cause of action is continuous in nature, cannot be accepted. The plea of the Plaintiff being dispossessed of the Suit properties in October, 2018 by Defendant Nos.1 to 7 and 10 to 12 taking forceful possession of the suit property and the plea that the right to sue first accrued in favour of the Plaintiff due to such dispossession likewise cannot be accepted. In fact in paragraph 63 of the plaint, the Plaintiff has admitted that the right to Sue accrued in favour of the Plaintiff so as to seek cancellation of the alleged impugned Conveyance Deeds as the Defendants infringed upon the rights of the Plaintiff of settled possession and of possession of the suit properties. Thus, Plaintiff's have in the Plaint admitted that it would be necessary for the Plaintiff to seek cancellation of the IAL.2566.22a wt....doc impugned Conveyance Deeds. The Plaintiff cannot rely on the suspension of limitation applicable to Suits by the Supreme Court in its orders in light of corona virus pandemic since March, 2020. This is in view of my finding that the present Suit would have to be filed latest by 15.02.2020. Thus, in my view given the pleadings in the plaint, documents annexed thereto, the impugned Conveyance Deeds would have to be set aside given that the Conveyance Deeds were voidable at the option of the party. Thus, Section 31 of the Specific Relief Act would be applicable for setting aside of the Conveyance Deeds. The period of limitation would undoubtedly be a period of three years for setting aside the impugned conveyance deeds and which period has in my view expired, prior to the filing of the present Suit. In view thereof, the Interim Application (L) No.2566 of 2022; Interim Application (L) No.3696 of 2022 and Interim Application (L) No.4569 of 2022 are required to be allowed.

69 Hence, the following order:

i) The Plaint filed in the captioned Suit is rejected under Order VII Rule 11(d) on the ground that the Suit appears from the statement in the plaint to be barred by the law of limitation.

IAL.2566.22a wt....doc

ii) Interim Application (L) No.2566 of 2022, Interim Application (L) No.3696 of 2022 and Interim Application (L) No.4569 of 2022 are made absolute in the above terms and disposed of.

iii) There shall be no order as to costs.

(R.I. CHAGLA, J.) 70 The learned Counsel appearing for the Plaintiff has sought for the judgment to be kept in abeyance. In my view, the judgment cannot be kept in abeyance considering the findings that the Suit is clearly barred by the law of limitation and accordingly the Plaint has been rejected under Order VII Rule 11(d) of the Code of Civil Procedure, 1908.

71 Thus, the application is rejected.

(R.I. CHAGLA, J.) Digitally signed by WAISHALI WAISHALI SUSHIL SUSHIL WAGHMARE
WAGHMARE Date:

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