

Gujarat High Court

Divyeshbhai Mahendrabhai Patel vs Vijaybhai Odhabhai Lalu on 1 November, 2023

Bench: Ashutosh Shastri

NEUT

C/FA/4413/2023

JUDGMENT DATED: 01/11/2023

und

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/FIRST APPEAL NO. 4413 of 2023
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2023
In
R/FIRST APPEAL NO. 4413 of 2023

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI Sd/-

and

HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK

Sd/-

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|---|---|-----|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | Yes |
| 2 | To be referred to the Reporter or not ? | Yes |
| 3 | Whether their Lordships wish to see the fair copy of the judgment ? | No |
| 4 | Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ? | No |

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DIVYESHBHAI MAHENDRABHAI PATEL

Versus

VIJAYBHAI ODHABHAI LALU

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Appearance:

MS. KRUTI M SHAH(2428) for the Appellant(s) No. 1,2
for the Defendant(s) No. 2

MR MEET D KAKADIA(11896) for the Defendant(s) No. 1

MR SP MAJMUDAR(3456) for the Defendant(s) No. 1

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CORAM:HONOURABLE MR. JUSTICE ASHUTOSH SHASTRI
and
HONOURABLE MR. JUSTICE HEMANT M.
PRACHCHHAK

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C/FA/4413/2023

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undefin

ORAL JUDGMENT

(PER : HONOURABLE MR. JUSTICE HEMANT M. PRACHCHHAK)

1. The appellants - original plaintiffs have filed the present appeal under Section 96 of the Code of Civil Procedure, 1908 ('the Code' hereinafter) challenging the impugned order dated 21.07.2023 passed below application Exhibit 19 in Special Civil Suit No.20 of 2021 by the learned 2 nd Additional Senior Civil Judge, Navsari and the order dated 21.07.2023 passed below Exhibit 1 and decree dated 21.07.2023 drawn in Special Civil Suit No.20 of 2021.

2. Brief facts leading to the present appeals are as follow:

2.1 The appellants herein have filed Special Civil Suit No.20 of 2021 in the Court of Principal Civil Judge, Navsari against the present respondents for cancellation of sale deed, declaration and permanent injunction.

2.2 That the lands bearing Block No.577, revenue survey no.7 old tenure agricultural land, admeasuring Hecter 1-85-52 square meters situated at village: Toli, Taluka District Navsari was of the original ownership of Ramiben Ranchhodbhai Patel and after her death on 04.10.1990, the name of plaintiff no.1 was mutated in the revenue records by Mutation Entry No.598 on 05.11.1990. Thereafter, name of plaintiff no.1 and wife of plaintiff no.1 was entered as co-owner in the suit land, for which Mutation Entry No.1055 was posted on 17.02.2006 and the same was certified.

NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined The plaintiffs had executed an agreement to sell dated 23.02.2011 in favour of Vajsi Vikram Odedara and Pravinsi Ganpatsi Gohil and the purchasers have not acted as per terms and conditions of the agreement to sell, the same was cancelled by giving legal notice.

2.3 Thereafter plaintiffs had agreed to sell the said land to the defendants for total sale consideration of Rs.1,38,16,480/- and the defendants had paid Rs.6,00,000/- and the agreement to sell was registered on 03.10.2012.

2.4 The plaintiffs had produced bank passbook to show that the sale deed was without consideration and when the amount of sale consideration was demanded, they assured to pay remaining amount on certification of mutation entry and thereafter sale deed mutated in the revenue record, which came to be certified.

2.4 For the suit land, Vajsi Vikram Odedara and Pravinsi Ganpatsi Gohil have filed Special Civil Suit No.23 of 2014 before the Principal Senior Civil Judge, Navsari for specific performance of agreement and therefore the defendants did not pay the sale consideration and assured to make the payment after disposal of the said suit and, therefore, the plaintiffs have not filed any suit against the defendants as Special Civil Suit No.23 of 2014 is pending and is on evidence and recently, from the said land, Hector 00-77-49 Aare was sought to be acquired for Delhi NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined Mumbai Express way and therefore the plaintiffs have refused to pay any sale consideration and the defendants has raised objection for disbursement of the compensation amount under the Acquisition Act and the defendants wanted to take disadvantage of the fact that their names are running in the revenue records, for pocketing the amount of compensation and the defendants have backed out from the promise to pay the sale consideration and therefore the suit was filed.

2.5 The defendants filed written statement denying the facts stated in the suit and contended that the suit is barred by law of limitation and for that preliminary issue is to be framed and there is no cause of action to file the suit for which the preliminary issue is to be framed and the suit is barred by the principles of waiver and estoppel and contended that only Taraben was the owner' of the land and the entire sale consideration of Rs.6,00,000/- was paid to her and thereafter registered sale deed was executed and Taraben has not raised any objection during her lifetime and the plaintiff No.1 has filed written reply at Exh.26 in the proceedings of Special Civil Suit No.23 of 2014 praying to reject the plaint.

2.6 The defendants have filed an application Exh.19 under Order-7 Rule-11 of Code for rejecting the plaint on the ground that no cause of action is disclosed and the same is filed after period of limitation and the plaintiffs have accepted the said registered sale deed in their written statement which has been NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined filed in Special Civil Suit No.22 of 2014 and prayed to frame preliminary issue for limitation and prayed to reject the plaint.

2.7 That the learned 2nd Additional Senior Civil Judge, Navsari vide order 21.07.2023 allowed application Exh.19 by holding that the registered sale deed means reference of receipt of sale consideration and therefore it cannot be said that the consideration is not paid.

3. Prayers sought for in the present appeal are as follow:

"7...

(A) admit and allow this appeal by quashing and setting the order dated 21.07.2023 which is at Annexure - A passed below applications Exhibit 1 and 19 in Special Civil Application No.20 of 2021 by the learned 2 nd Additional Senior Civil Judge, Navsari and the decree dated 21.07.2023, signed on 04.08.2023 which is at Annexure - A drawn in Special Civil Suit No.20 of 2021;

(B) grant such other and further relief as thought fit in the interest of justice."

4. We have heard extensively Ms.Kruti Shah, learned advocate for the appellants and Mr.S. P. Majmudar, learned advocate for the respondent.

5. Ms.Shah, learned advocate for the appellants has submitted that the trial Court has committed serious error of facts and law while allowing the application below Exhibit 19 filed NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined under Order VII Rule 11(d) of the Code mainly on the grounds that the suit is barred by law of limitation and the materials placed before the trial Court is beyond the scope of the provisions of Order VII Rule 11(d) of the Code. She has submitted that the trial Court has not considered the decisions of this Court as well as the Hon'ble Supreme Court. She has submitted that the suit is filed within the law of limitation and, therefore, the appeal deserves to be allowed.

5.1 On a core issue of law, it has been urged by Ms.Shah, learned advocate that the serious error has been committed by the trial Court in not appreciating the law laid down by the Apex Court with regard to the issue that the limitation is a mixed question of facts and law and it cannot be decided at a preliminary stage.

5.2 Ms.Shah, learned advocate for the appellants has relied upon the following decisions.

(1) Shrihari Hanumandas Total Vs. Hemant Vithal Kamat in Civil Appeal No.4665 of 2021;

(2) Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal reported in (2017) 13 SCC 174;

(3) Nusli Neville Wadia Vs. Ivory Properties reported in (2020) 6 SCC 557;

(4) Sopan Sukhdeo Sable Vs. Assistant Charity Commissioner reported in (2004) 3 SCC 137;

NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined (5) Shakti Bhag Food Industries Limited Vs. The Central Bank of India and another in Civil Appeal No.2514 of 2020;

6. Per contra, Mr.Majmudar, learned advocate for the respondent has submitted that the respondent has opposed the present appeal mainly on the ground that the suit itself is sham and bogus and filed with distorted facts and, therefore, the trial Court has not committed any error while passing the impugned order below Exhibit 19. He has submitted that even bare reading of the plaint, prima facie, it appears that the Court came to the conclusion that the suit is barred by law of limitation and, therefore, the trial Court has not committed any error of facts and law in passing the impugned order under the provisions of Order VII Rule 11(d) of the Code. He has submitted that the suit is barred by law of limitation and, hence, the appeal being meritless deserves to be rejected.

6.1 In support of his submissions, Mr.Majmudar, learned advocate for the respondent has relied upon the following decisions:

(1) T. Arivandandam Vs. T. V. Satyapal and another reported in (1977) 4 SCC 467;

(2) Dahiben Vs. Arvinbhai Kalyanji Bhanusali reported in (2020) 7 SCC 366;

(3) Masrur Fatema Jafarali Saiyed Vs. Vishnubhai Ambalal Patel reported in 2016 (0) JX (Guj) 1949;

NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined (4) Rajhans Infrancon (India) Private Limited Vs. Santosh Rameshbhai Rathod reported in 2019 JX (Guj) 1297;
(5) Becharbhai Zaverbhai Patel Vs. Jashbhai Shivabhai Patel reported in 2013 (1) GLR 398;

(6) Rameshchandra Chimanlal Shah Vs. Maheshbhai Manubhai Patel rendered in First Appeal No.1329 of 2019 dated 10.04.2019;

(7) Ram Narayan Rai @ Ram Narayan Singh and another reported in 2010 SC Online Patan 737;

(8) Vimalaben Ramniklal Mehta Vs. Patel Valji Devji Vekriya reported in 2023 GLH (1) 152;

6.2 According to learned advocate, Mr.Majmudar the suit for cancellation of registered sale deed and permanent injunction is grossly barred by law of limitation as after period of 12 years, the registered sale deed dated 03.10.2012 is challenged.

7. In the case of Madanuri Sri Rama Chandra Murthy (supra), the Hon'ble Supreme Court has held and observed in paragraph no.7 as under:-

"7. The plaint can be rejected under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII 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 plaintiff only. If on an entire and meaningful reading of the plaintiff, 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 VII Rule 11, CPC. Since NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 of CPC to the exercise of power of rejection of plaintiff have to be strictly adhered to. The averments of the plaintiff 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 plaintiff. Even when, the allegations made in the plaintiff are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaintiff can be entertained and the power under Order VII Rule 11 of CPC can be exercised. If clever drafting of the plaintiff 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.

8. In the case of Nusli Neville Wadia (supra), the Hon'ble Supreme Court has held and observed in para-63 to 69 as under:-

"63. A Three-Judge Bench of this Court in Major S.S. Khanna v. Brig. F.J. Dhillon, AIR 1964 SC 497, has held that jurisdiction to try issues of law apart from the issues of fact may be exercised by the Court if the whole suit may be disposed on the issue of law alone, but the Code confers no jurisdiction upon the Court to try a suit on the mixed issue of law and facts as preliminary issues.

64. In Narne Rama Murthy v. Ravula Somasundaram & Ors. (2005) 6 SCC 614, this Court has held that even if it is apparent from the plaintiff averment only, that suit is barred by limitation, it can be tried as a preliminary issue even in the absence of plea of limitation raised by the defendants.

However, in cases where the question of limitation is a mixed question of fact and law and suit does not appear to be barred by limitation on the face of it, then the facts NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined necessary to prove limitation, which have been pleaded have to be proved, on issues raised and decided on evidence. However, in our considered opinion question of limitation, in no case, can be said to be a question of jurisdiction of the Court in the context it has been used in Section 9A CPC.

65. In Satti Paradesi Samadhi and Pillayar Temple v. M. Sankuntala (Dead) through Legal Representatives and others, (2015) 5 SCC 674, it has been observed that issue of limitation requiring

an inquiry into the facts, cannot be tried as a preliminary issue. The mixed questions of law and facts cannot be decided as a preliminary issue.

66. In *Ramdayal Umraomal v. Pannalal Jagannathji*, 1979 M.P.L.J 736, a Full Bench of Madhya Pradesh High Court has observed that under Order XIV Rule 2, mixed questions of law and fact requiring recording of evidence cannot be tried as a preliminary issue. The issue of jurisdiction can be tried as a preliminary issue when it is an issue of law requiring no evidence to be adduced. Various High Courts have taken a similar view in several decisions in *Sunni Central Waqf Board and others v. Gopal Singh Vishrad and others*, AIR 1991 All 89, *Venkatesh r. Desai v. Smt. Pushpa Hosmani & Ors.*, ILR 2018 Kar 5095, *Prithvi Raj v. Munnalal*, 1957 RLW 323, *Bhag Singh v. Nek Singh* 1994 SCC OnLine P&H 594, *State Trading Corporation of India Ltd. v. Government of the Peoples Republic of Bangladesh*, ILR (1997) Del 229, *Naresh Chandra Das v. Gopal Chandra Das*, AIR 1991 Cal 237, *Taj Kerala Hotels & Resorts Ltd. v. Easytec India Pvt. Ltd.*, 2013 SCC OnLine Ker 20240, *Madhabananda Govindasamy v. Manickam & Ors.*, 2016-1-L.W. 49, *Angsley Investment Ltd. v. Turus Shipping Service & Ors.*, AIR 2007 Guj 23; *Chandrama Singh v. (D) through LR's v. Ram Kishore Agrawal & Ors.*, 2016 SCC OnLine Chh 1740, *Naresh Chandra Gautam v. Chhote Khan*, 2003 SCC OnLine Utt 12, *Ramagya Tiwari v. Shib Kumar Sah & Ors.*, 2018 SCC OnLine Jah 578, *Lalchand Sha & Ors. v. Kalabati Devi & Ors.*, (2008) 2 Gau LR 561 and *J Mnthamma & Anr. v. Bayya Iiglamma & Ors.*

67. In *Vaish Aggarwal Panchayat v. Inder Kumar and others*, AIR 2015 SC 3357, the question came up for consideration of rejection of the plaint under Order VII Rule 11 on the ground that same being barred by limitation. Mere ex facie reading of the plaint, it could not be held that the suit was barred by time. The question of limitation NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined becomes a mixed question of facts and law and cannot be decided as a preliminary issue as the framing of issues and taking evidence was necessary.

68. In our opinion, it cannot be laid down as proposition of law under Order VII Rule 11(d) that plaint cannot be rejected as barred by limitation. It can be said that it is permissible to do so mainly in a case where the plaint averment itself indicate the cause of action to be barred by limitation and no further evidence is required to adjudicate the issue.

69. In *Hareendran and others v. Sukumaran and others*, (2018) 14 SCC 187, this Court has laid down that question of limitation in the case being mixed question of law and facts, could not have been decided as preliminary issue. The provision under which a plaint can be rejected is provided in Order VII Rule 11(d). The language used in Order VII Rule 11 is where averments made in plaint does not disclose a cause of action; relief claimed is undervalued, and the plaint is not corrected in spite of the direction of the Court; plaint is insufficiently stamped, and in spite of Court's order the plaintiff has failed to supply the requisite stamp duty; where the suit appears from the statement in the plaint to be barred by any law; where it is not filed in duplicate; and where plaintiff fails to comply with the provisions of rule 9. What is of significance under Order VII Rule 11 is that from the averments of plaint itself the suit is barred by any law and it would include limitation also including bar created by any other law for the time being in force. For the rejection of plaint, averments made by the defendant in the written statement or otherwise cannot be seen, only the averments of the

plaint are material and can be taken into consideration and no other evidence."

9. In the case of Sopan Sukhdeo Sable and others (supra), the Hon'ble Supreme Court has held and observed in paras - 13, 14, 15 and 18 as under:-

"13. It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in Roop Lal Sathi V/s. Nachhattar NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined Singh Gill, only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected.

14. In Raptakos Brett & Co. Ltd. v. Ganesh Property it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII was applicable.

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

18. As noted supra, the Order VII Rule 11 does not justify rejection of any particular portion of the plaint. Order VI Rule 16 of the Code is relevant in this regard. It deals with 'striking out pleadings'. It has three clauses permitting the court at any stage of the proceeding to strike out or amend any matter in any pleading i.e. (a) which may be unnecessary, scandalous, frivolous or vexatious, or, (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or, (c) which is otherwise an abuse of the process of the court."

10. In the case of T. Aravindandam (supra), the Hon'ble Supreme Court has held and observed in para-5 as under:-

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined statement of the facts found in the Judgement 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 O. VII R. 11, C. P. C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O. X. Code of Civil Procedure An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi.

"It is dangerous to be too good."

11. In the case of Dahiben (supra), the Hon'ble Supreme Court has held and observed in paras - 15.1 - 15.5, 15.7 and 15.8 as under:-

"15. Analysis and Findings We have carefully perused the averments in the plaint read with the documents relied upon.

15.1 On a reading of the plaint and the documents relied upon, it is clear that the Plaintiffs have admitted the execution of the registered Sale Deed dated 02.07.2009 in favour of Defendant No.1/Respondent No.1 herein.

Para 5 of the plaint reads as :

(5) ...Thus, subject of the aforesaid terms the plaintiffs had executed sale deed selling the suit property to the opponent no.1 vide sale deed dated 02/07/2009 bearing Sr.No. 5158...

The case made out in the Plaint is that even though they had NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined executed the registered Sale Deed dated 02.07.2009 for a sale consideration of Rs.1,74,02,000, an amount of only Rs.40,000 was paid to them. The remaining 31 cheques mentioned in the Sale Deed, which covered the balance amount of Rs.1,73,62,000 were alleged to be bogus or false , and allegedly remained unpaid.

We find the averments in the Plaint completely contrary to the recitals in the Sale Deed dated 02.07.2009, which was admittedly executed by the Plaintiffs in favour of Respondent No.1. In the Sale Deed, the Plaintiffs have expressly and unequivocally acknowledged that the entire sale consideration was paid by Defendant No.1/Respondent No.1 herein to the Plaintiffs.

Clauses 3 and 4 of the Sale Deed are extracted hereinbelow for ready reference : -

Since the full amount of consideration of the sale as decided above, has since been paid by you the Vendees to we the Vendors of this sale deed, for which we the Vendors of this sale deed acknowledge the same so, we or our descendants, guardian or legal heirs is to take any dispute or objection in future that such amount is not received, or is received less, and if we do so then, the same shall be void by this deed and, if any loss or damage occurs due to the same then, we the Vendors of this sale deed and descendants, guardians, legal heirs of we the vendors are liable to the pay the same to you the vendees or your descendants, guardian, legal heirs and you can recover the same by court proceedings.

(4) We the party of Second part i.e. Vendors of the sale deed since received full consideration on the above facts, the physical possession, occupancy of the land or the property mentioned in this sale deed has been handed over to you the Vendee of this sale deed, and that has been occupied and taken in possession of the land or property mentioned in this sale deed by you the Vendee of this sale deed by coming at the site and therefore, we the Vendors of this sale deed have not to raise any dispute in the future that the possession of the land or the property has not been handed over to you. ...

(emphasis supplied) The Sale Deed records that the 36 cheques covering the entire sale consideration of Rs.1,74,02,000 were paid to the Plaintiffs, during the period between 07.07.2008 to NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined 02.07.2009.

15.2 If the case made out in the Plaint is to be believed, it would mean that almost 99% of the sale consideration i.e. Rs.1,73,62,000 allegedly remained unpaid throughout. It is, however inconceivable that if the payments had remained unpaid, the Plaintiffs would have remained completely silent for a period of over 5 and years, without even issuing a legal notice for payment of the unpaid sale consideration, or instituting any proceeding for recovery of the amount, till the filing of the present suit in December 2014.

15.3 The Plaintiffs have made out a case of alleged nonpayment of a part of the sale consideration in the Plaint, and prayed for the relief of cancellation of the Sale Deed on this ground.

Section 54 of the Transfer of Property Act, 1882 provides as under :

54. Sale defined. Sale is a transfer of ownership in exchange for a price paid or promised or part-paid and partpromised.

The definition of sale indicates that there must be a transfer of ownership from one person to another i.e. transfer of all rights and interest in the property, which was possessed by the transferor to the transferee. The transferor cannot retain any part of the interest or right in the property, or else it would not be a sale. The definition further indicates that the transfer of ownership has to be made for a price paid or promised or part paid and part promised . Price thus constitutes an essential ingredient of the transaction of sale.

In *Vidyadhar v. Manikrao & Anr.*, (1999) 3 SCC 573, this Court held that the words price paid or promised or part paid and part promised indicates that actual payment of the whole of the price at the time of the execution of the Sale Deed is not a sine qua non for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a sale, the parties must intend to transfer the ownership of the property, on the NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined agreement to pay the price either in praesenti, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.

In view of the law laid down by this Court, even if the averments of the Plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the Sale Deed. The Plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of the registered Sale Deed. We find that the suit filed by the Plaintiffs is vexatious, meritless, and does not disclose a right to sue. The plaint is liable to be rejected under Order VII Rule 11 (a).

15.4 The Plaintiffs have averred in the plaint that the period of limitation commenced on 21.11.2014, when they obtained a copy of the index of the Sale Deed dated 02.07.2009, and discovered the alleged fraud committed by Defendant No.1.

The relevant extract from the plaint in this regard is set out hereinbelow :

(7) ... Not only that but also, on obtaining the copy of the index of the sale deed of the acts committed by the Opponent No.1, 4, 5 and on obtaining the certified copy of the sale deed, we the plaintiffs could come to know on 21- 11-2014 that, the Opponent No.1 had in collusion with Opponent No.4, 5 mentioned the false cheques stated below in the so called sale deed with intention to commit fraud and no any consents of we the plaintiffs have also been obtained in that regard. The said cheques have not been received to we the plaintiffs or no any amounts of the said cheques have been credited in accounts of we the plaintiffs. Thus, the cheques which have been mentioned in the agreement caused to have been executed by the Opponent No.1, the false cheques have been mentioned of the said amounts. Not only that but also, the agricultural land under the suit had been sold by the Opponent No.1 to the Opponent No.2 Dillipbhai Gordhanbhai Sonani and the Opponent No.3, Laljibhai Gordhanbhai Sonani on 1-4-2013 for Rs.2,01,00,000/- as if the said sale deed was having clear title deeds. On taking out the copy of the said sale deed with seal and signature on 21-11-2014, it could come to the knowledge of we the plaintiffs. We the plaintiffs have not done any signature or witness on the said agreement. The said agreement is not binding to we the plaintiffs. Since the NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined said agreement is since null, void and invalid as well as illegal, therefore, no any Court fee stamp duty is required to be paid by we the plaintiff on the said agreement and for that we the plaintiffs rely upon the judgment of the Supreme Court in A.I.R.2010, Supreme Court, Page No. 2807. ...

(emphasis supplied) The plea taken in the plaint that they learnt of the alleged fraud in 2014, on receipt of the index of the Sale Deed, is wholly misconceived, since the receipt of the index would not constitute the cause of action for filing the suit. On a reading of the plaint, it is clear that the cause of action arose on the non-payment of the bulk of the sale consideration, which event occurred in the year 2009. The plea taken by the Plaintiffs is to create an illusory cause of action, so as to overcome the period of limitation. The plea raised is rejected as being meritless and devoid of any truth.

15.5 The conduct of the Plaintiffs in not taking recourse to legal action for over a period of 5 and years from the execution of the Sale Deed in 2009, for payment of the balance sale consideration, also reflects that the institution of the present suit is an after-thought. The Plaintiffs apparently filed the suit after the property was further sold by Respondent No.1 to Respondent Nos. 2 and 3, to cast a doubt on the title of Respondent No.1 to the suit property.

15.6 The Plaintiffs have placed reliance on the Order of the Collector dated 19.06.2009 with the plaint. The Order reveals that the permission was granted subject to the fulfilment of certain conditions. Clause 4 of the permission states that :

(4) The purchaser of the land/property, shall have to make the payment of the price of the land by cheque and its reference shall require to be made in the Sale Deed.

If the Plaintiffs had a genuine grievance of nonpayment of the balance sale consideration, the Plaintiffs could have moved for revocation of the permission granted by the Collector on 19.06.2009.

Clause 6 of the Order provided that :

(6) On making violation of any of the aforesaid terms, the permission shall automatically be treated as cancelled and, separate proceeding shall be taken up for the violation of the NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined terms and conditions.

The Plaintiffs did not make any complaint whatsoever to the Collector at any point of time. The conduct of the Plaintiffs is reflective of lack of bona fide.

15.7 The present case is a classic case, where the plaintiffs by clever drafting of the plaint, attempted to make out an illusory cause of action, and bring the suit within the period of limitation.

Prayer 1 of the plaint reads as :

1) The suit property being agricultural land of old tenure of Revenue Survey No.610 whose block Number is 573 situated at village Mota Varachha, Sub-district : Surat city, Dis : Surat has been registered by the opponent No.1 of this case in office of the Sub-Registrar (Katar Gam) at Surat vide Serial No.5158 in book No.1. Since, the same is illegal, void, in-effective and since the amount of consideration is received by the plaintiffs, and by holding that it is not binding to the plaintiffs and to cancel the same, and since the sale deed as aforesaid suit property has been executed by the

opponent No.1 to the opponent No.2,3, it is registered in the office of Sub-registrar, Surat (Rander) on 01/04/2013 vide serial No.443 which is not binding to we the plaintiffs. Since, it is illegal, void, in-effective and therefore, this Hon ble Court may be pleased to cancel the same and this Hon ble Court may be pleased to send the Yadi in that regard to the Sub- registrar, Surat (Karat Gam) and the Sub- Registrar (Rander) in regard to the cancellation of both the aforesaid documents.

The Plaintiffs deliberately did not mention the date of the registered Sale Deed dated 02.07.2009 executed by them in favour of Respondent No.1, since it would be evident that the suit was barred by limitation. The prayer however mentions the date of the subsequent Sale Deed i.e. 01.04.2013 when the suit property was further sold by Respondent No.1 to Respondent Nos. 2 & 3.

The omission of the date of execution of the Sale Deed on 02.07.2009 in the prayer clause, was done deliberately and knowingly, so as to mislead the Court on the issue of limitation.

15.8 The delay of over 5 and years after the alleged cause of action arose in 2009, shows that the suit was clearly barred NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined by limitation as per Article 59 of the Limitation Act, 1963. The suit was instituted on 15.12.2014, even though the alleged cause of action arose in 2009, when the last cheque was delivered to the Plaintiffs.

The Plaintiffs have failed to discharge the onus of proof that the suit was filed within the period of limitation. The plaint is therefore, liable to be rejected under Order VII Rule 11 (d) of CPC.

Reliance is placed on the recent judgment of this Court rendered in Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by LR., 15 Civil Appeal No.2960/2019 decided on 13.03.2019. wherein this Court held the suit would be barred by limitation under Article 59 of the Limitation Act, if it was filed beyond three years of the execution of the registered deed. "

12. In the case of Masrur Fatema Jafarali Saiyed (Supra), the Hon'ble Division Bench of this Court has held and observed in para - 9, 10 and 11 as under:-

"9. At the outset, it is required to be noted that the suit has been filed by the original plaintiffs with respect to the land bearing old revenue survey no. 400 paiki and new survey no. 506 paiki admeasuring 2814.28 acres. It is required to be noted that the cause of action pleaded in the suit is the registered sale deeds executed in favour of original defendants no. 1 to 4, executed in the year 1969.

It is required to be noted that thereafter there are number of transactions which had taken place with respect to the suit land in question for which, mutation entries were made. After 1969 mutation revenue proceedings have been initiated. Number of even tenancy proceedings were initiated. It is the case on behalf of the original plaintiffs that they had knowledge of transactions / entries with respect to the suit land in question, more particularly, in favour of original defendants no. 1 to 4 which were executed in the year 1969 when they filed Civil Application No. 11711 of 2005 in pending Special Civil Application No. 8848 of 2002. Therefore, it is the case on behalf of the original

plaintiffs that thereafter the aforesaid Special Civil NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined Application No. 8848 of 2002 came to be disposed of by the High Court in the year 2007 observing that it will be open for the parties to initiate civil proceedings and thereafter when suit has been preferred in the year 2008, the same cannot be said to be beyond the period of limitation. However, it is required to be noted that the sale deeds in question are executed in the year 1969 with respect to 1673 acres of land. All the sale deeds were registered sale deeds. Mutation entries have been made thereafter. One petition was filed before this Court by way of Special Civil Application No. 8848 of 2002 with respect to land in question. However, the some of the respondents were not served and therefore, public notice was given and at that stage appellants herein preferred Civil Application No. 11711 of 2005 permitting them to be joined as party respondents in the said petition. The said Civil Application was affirmed on 1.11.2004. Therefore, the fact of disputed sale deeds and other revenue proceedings and other proceedings in respect of the suit properties were within the knowledge of the plaintiffs on 1.11.2004. Despite the above, the suit has been preferred challenging the transactions/ registered sale deeds executed from 1969 onwards, in the year 2008 i.e. beyond the period of three years. Under the circumstances, apart from the fact that all the mutations entries were made in the revenue records with respect to the registered sale deeds executed in the year 1969 /1970, the plaintiffs can be said to have deemed knowledge, at least from 1.11.2004 , when the plaintiffs came to know about the fact of disputed sale deeds and other revenue proceedings and other proceedings in respect of the suit property on 1.11.2004 and thereafter after a period of three years, the suit has been preferred in the year 2008. Under the circumstances, the learned trial Court has rightly rejected the plaint under Order VII Rule 11(d) of the Code of Civil Procedure.

9.1. Even otherwise, it is required to be noted that from the document produced on record which are produced by the plaintiffs, produced at Mark 3.6 to 3.8 it can also be said that the plaintiffs had knowledge since 2000, when they applied for certified copies of the mutation entries and copy of registered sale deeds executed in the year 1969. Therefore, also suit is barred by limitation.

10. It is also required to be noted that even original plaintiff no.6 was a signatory to registered sale deeds executed in the year 1969 and despite the above, the NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined plaintiffs had not disclosed aforesaid facts in the suit. Only when the defendants pointed out the aforesaid, thereafter when the present appeal is preferred the same has been preferred by the original plaintiffs no.1 to 3 only and rest of the plaintiffs including of original plaintiff no.6 who had executed sale deed in the year 1969 are joined as party respondents in the present appeal which shows the conduct on the part of the appellants.

10.1. At this stage, it is required to be noted that even the original plaintiffs have not stated correct facts before the learned trial Court and there are suppression of material facts in the plaint / suit. In the plaint / suit, it is the case on behalf of the plaintiffs that they came to know about the transactions/ registered sale deeds in the year 2005. However nothing has been averred in the plaint with respect to filing of Civil Application No. 11711 of 2005 in Special Civil Application No. 8848 of 2002 and other allied petitions. They did not disclose the fact that the original plaintiff no. 6 also executed sale deed in the year 1969 with respect to land ademasuring 821 acres. As observed herein above, after the registered sale deeds were executed in the year 1969 in favour of original defendants

no. 1 to 4 which are challenged by way of filing suit in the year 2008, thereafter approximately 1603 acres of land has been sold in favour of the original defendant no.8 by executing registered sale deeds. Thereafter number of registered sale deeds have been executed in favour of number of persons including proposed defendants and third parties rights are already created.

11. Now, so far as reliance placed upon Section 14 of the Limitation Act and the contention on behalf of the plaintiffs that as the High Court disposed of the Special Civil Application No. 8848 of 2002 and other allied petitions in the year 2007 observing that it will be open for the plaintiffs to file civil proceedings and therefore, the suit filed in the year 2008 is within the period of limitation is concerned, it is required to be noted that at no point of time plaintiffs were prosecuting civil proceeding against the defendants. Under the circumstances, Section 14 of the Limitation Act shall not be applicable to the facts of the case on hand and / or same shall be of any avail to the plaintiffs.. Now, so far as reliance placed upon Section 17 of the Limitation Act and the contention on behalf of the plaintiffs that as they have pleaded fraud committed in relation to the transfer of subject lands is concerned, it is NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined required to be noted that as observed herein above the plaintiffs had knowledge of the transactions at least in the year 2000 and if not in 2000 then in the year 2004 i.e. on 1.11.2004. The suit has been preferred in the year 2008. The plaintiffs did not file any suit against the defendants till 2008. Under the circumstances, Section 17 of the Limitation Act shall also be of no avail to the plaintiffs.

11.1. As the suit has been preferred after a period of three years from the date of knowledge of the transactions, Article 56 and 59 of the Limitation Act shall not be applicable and / or same shall be of any avail to the plaintiffs.

11.2. Now, so far as the contention on behalf of the appellants - original plaintiffs relying upon Article 65 of the Limitation Act that plaintiffs had sought relief for possession of the disputed land in question and therefore, the suit can be filed within the period of 12 years is concerned, the aforesaid has no substance. Apart from the fact that original defendant no.8 is in possession of approximately 1603 crores of land since 1985 onwards, it is required to be noted that there are no averments when plaintiffs were dispossessed. Therefore, the suit is apparently filed beyond the period of limitation even as provided under Article 66 of the Limitation Act.

11.3. Considering the aforesaid facts and circumstances of the case and the purpose and object of Order VII Rule 11(d) of the Code of Civil Procedure and when it has been found that the suit is barred by limitation, the learned trial Court has rightly rejected the plaint under Order VII Rule 11(d) of the Code of Civil Procedure. We see no reason to interfere with the impugned judgment and order passed by the learned trial Court rejecting the plaint under Order VII Rule 11(d) of the Code of Civil Procedure. We are of the opinion that present suit is nothing but an abuse of process of law and Court and therefore, considering the aforesaid decisions of the Hon'ble Supreme Court plaint is rightly rejected under Order VII Rule 11(d) of the Code of Civil Procedure. At this stage, it is required to be noted that it appears that original plaintiffs wake up only in the year 2000/2002. It appears that the litigation is financed by one Shri Bharat Unadkat with whom the plaintiffs have entered into partnership agreement on 23.1.2002. That the said partnership agreement is produced on record

before the learned trial Court. It appears that plaintiffs were aware of NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined the litigation and sale of agriculture land admeasuring 1603 acres before the date of partnership agreement dated 23.01.2002 and thereupon agreed to share / assign 40% land to said Shri Bharat Unadkat for financing litigation and attending the Court. Be that as it may, as observed herein above, the suit and the reliefs prayed in the suit are barred by limitation. The learned trial Court has rightly rejected the plaint under Order VII Rule 11(d) of the Code of Civil Procedure."

13. In the case of Rajhans Infrancon (India) Private Limited (Supra), this Court has held and observed in para - 19 as under:-

"19. In Yodhishter (supra), this Court observed: (SCC pp. 210-11, Para 10)

10. This question has been considered by this Court in Commissioner of Wealth Tax, Kanpur and Ors. v. Chander Sen and Ors. [(1987) 1 SCR 516] where one of us (Sabyasachi Mukharji,J) observed that under the Hindu Law, the moment a son is born, he gets a share in father's property and become part of the coparcenary. His right accrues to him not on the death of the father or inheritance from the father but with the very fact of his birth. Normally, therefore whenever the father gets a property from whatever source, from the grandfather or from any other source, be it separated property or not, his son should have a share in that and it will become part of the joint Hindu family of his son and grandson and other members who form joint Hindu family with him."

14. In the case of Becharbhai Zaverbhai Patel (supra), this Court has held and observed in para - 6 as under:-

"6. At the outset, it is required to be noted that in the plaint the original plaintiffs have challenged the registered sale deed dated 25.8.1975 which has been executed by the original defendant no.1 in favour of defendants no. 3 NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined and 4 and the said suit has been filed in the year 2010 i.e. after a period of 35 years. It is also required to be noted and even so pleaded / averred in the plaint that name of father of the defendant no.1 was mutated in the revenue record and even thereafter on the death of father of the defendants no.1 and 2 Chottabhai Bhagwanbhai mutated in the revenue record on 11.10.1979 vide mutation entry no.1024. It is also further averred in the plaint that even the name of defendants no. 3 and 4 were also mutated in the revenue record pursuant to the sale deed dated 25.8.1975 vide entry no.1115 and not only that even in 1981 there was partition between defendants no. 3 and 4 and the land bearing Survey No.380 (disputed suit land) has gone into the share of Ambalal Patel defendant no.4 and his name is mutated in the revenue record vide mutation entry no.1283 dated 10.6.1981. Even considering cause of action pleaded in the plaint in para 8, it appears to the Court that the averments in the plaint are too vague and nothing has been mentioned in the said para on which date he came to know about

the registered sale deed dated 25.8.1975. Even in the entire plaint nothing has been pleaded with respect to limitation. Mere clever drafting in the plaint and by such vague averments and the pleading the cause of action in the plaint, the suit which is otherwise barred by law of limitation can not be brought within a period of limitation.

6.1. It is not disputed that while considering application under Order 7 Rule 11 (d) of the Code of Civil Procedure, the Court is required to consider the averments in the plaint and the supporting documents produced along with plaint. However, it cannot be disputed that if on the face of it and even considering the averments made in the plaint, it is found that the suit is clearly barred of law of limitation, the plaint can be rejected in exercise of powers under Order 7 Rule 11 (d) of the Code of Civil Procedure. Even considering the decision of the Hon'ble Supreme Court in the case of N.V.Srinivasan Murthy V/s. Mariyamma (Dead) by proposed Lrs reported in AIR 2005 SC 2897 as well as decision of the Hon'ble Supreme Court in the case of Dilboo (Smt) (Dead) Bij lea (supra), the plaint can be rejected in exercise of powers under Order 7 Rule 11(d) of the Code of Civil Procedure if it is found that even accepting all the averments made in the suit, it is found therefore, the suit is barred by law limitation. Considering the above proposition of law laid down by the Hon'ble Supreme Court, it is required to be considered whether NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined considering facts and circumstances of the present case and even considering averments made in the plaint and even accepting all the averments made in the plaint as they are, whether the suit is barred by law of limitation or not ?

6.2. As stated above, registered sale deeds was executed by the original defendant no.1 in favour of original defendants no. 3 and 4 (petitioners herein) on dated 25.8.1975. It is also required to be noted and even so pleaded / averred in the plaint that mutation entry in favour of defendant nos. 3 and 4 on the basis of registered sale deed was made in the revenue record vide entry no.1115 and not only that even in 1981 there was partition between defendants no. 3 and 4 and the land bearing Survey No.380 (disputed suit land) has gone into the share of Ambalal Patel defendant no.4 and his name is mutated in the revenue record vide mutation entry no.1283 dated 10.6.1981.As held by the Hon'ble Supreme Court in the case of Dilboo (Smt) (Dead) Bij lea(supra) whenever the document is registered the date of registration becomes the date of deemed knowledge and in other cases where a fact could be discovered by due diligence then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend the period of limitation by merely claiming that he had no knowledge. Thus when the sale deed dated 25.8.1975 was registered in the year 1975 itself and even the mutation entry was made in favour of defendants no.3 and 4 on the basis of the registered sale deed immediately thereafter the plaintiff is deemed to have the knowledge of the said transaction and by making such vague averments in the plaint that earlier he had no knowledge and he came to know about the transaction only in the 2010, by such clever drafting the plaintiff cannot be permitted to bring the suit within the period of limitation which otherwise is barred by law of limitation as the suit challenging the registered sale deed dated 25.8.1975 has been filed after a period of 35 years. Under the circumstances and considering the aforesaid, it appears to the Court that learned trial Court has materially erred in rejecting the application Exh.14 and in not rejecting the plaint exercising the power under Order 7 Rule 11(d) of the Code of Civil Procedure. Under the circumstances, the impugned order passed by the learned trial Court cannot be sustained and same

deserves to be quashed and set aside.

NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined 6.3. Now, so far as the decision of the Hon'ble Supreme Court in the case of Balasaria Construction (P)Ltd (supra) relied upon by the learned advocate for the original plaintiffs, as stated above it cannot be disputed that while considering application under Order 7 Rule 11(d) of Code of Civil Procedure at that stage the Court is required to consider the averments in the plaint and supporting documents produced along with plaint only. However, considering the facts and circumstances of the case and as stated above even considering the averments and the pleadings in the plaint as they are, the suit is clearly barred by law of limitation. Under the circumstances, the impugned order passed by the learned trial Court deserves to be quashed and set aside."

15. In the case of Rameshchandra Chimanlal Shah (supra), this Court has held and observed in para - 7 to 9 and 13 as under:-

"7. In view of the above factual position, this Court is required to consider as to whether the averments in the plaint justify the exercise of powers under Order 7 Rule 11(d) of CPC. The proposition of law that the plaint which would include the document annexed therewith would be the only material to be considered for exercise of powers under the said provisions is well settled. However, in a case where clandestinely the real purport of plaint is maneuvered by clever drafting; by misleading statements, and by suppressing the basic facts, can the plaintiff contend that the averments in the plaint do not justify the exercise of powers under Order 7 Rule 11. The rule that the averments in the plaint and the related documents would be the material for consideration under Order 7 Rule 11 would not justify the plaintiff to choose the averments suiting his case. The aforesaid rule would only mean that the averments made and which ought to be made and the documents produced and which ought to be produced in justification of the prayer in the suit would be the material for the above purpose. In other words, a deliberate avoidance of the necessary averments in the plaint and related documents in order to clandestinely alter the true purport of the plaint, would not justify the plaintiff to contend that the powers under Order 7 Rule 11(d) were not NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined exercisable, if after considering of avoided necessary material, the case under said provision would be made out. Therefore, even in cases where the necessary averments are deliberately avoided or misleading statements are made or false suggestions are made, the aforementioned rule for the decision in the applications under Order 7 Rule 11 of the CPC would be attracted and it would be permissible to trace out the missing statements; false suggestions and avoided statement for the purpose and said provision.

8. Testing on the above principles, there can be no escape from the conclusion that a deliberate attempt was made by the appellant-plaintiff to avoid the relevant averments in relation to the background of the dispute pertaining to block no.730. Plaintiff - appellant chose to make halfhearted averments with an only intention to

make out a case that he was a tenant in relation to block no.730. A deliberate misleading statement that he has been declared as tenant for the said land also came to be made in the prayer clause. A feeble statement that dispute in relation to block no.730 was the subject matter in the Special Civil Application No.12533 of 2017 came to be made; no positive, cogent or clear statement pointing out the circumstances giving rise to the above referred Special Civil Application were made and appears to have been deliberately avoided. Had the aforesaid required averments been made in the plaint, the facts would have been as clear as the day light; giving rise to a clear inference that the plaintiff - appellant had lost in his claim to the title as tenant in respect of block no.730. It also would have led to a clear inference that the plaintiff had no locus to assail the sale deed pertaining to block no.730 in absence of his title as a tenant or otherwise, to the said property.

9. Thus, the omitted statements and the misleading statements and the false suggestions, if read in the light of the true facts, would justify that the plaintiff - appellant had no cause of action to plead in the plaint and the Court may be justified in exercise of powers under Order 7 Rule 11(d) for the consideration of the relief as to cancellation of the sale deed, obviously, the Court would be obliged to determine whether the plaintiff is a tenant under the Gujarat Tenancy Act; in absence of such predetermination subsisting on the date of the suit. Thus, had the plaintiff stated that he does not hold the title as a tenant on the date of the suit, the suit would be barred by the provisions under the Gujarat Tenancy Act.

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13. The manner in which the plaintiff has abused the legal procedure, calls for heavy cost. However, the exemplary cost provided in section 35A of CPC being rupees three thousand can no more be considered as the provision providing for exemplary cost as it has no teeth to deter the unscrupulous litigants like the appellant herein who would misuse the process of law for personal undesirable goals and would get away happily by bearing a meager amount of Rs.3,000/- as exemplary cost. With a hope that these observations would receive the legislative attention to amend section 35A of CPC so as to provide the deterrent effect against the litigant's misusing the process of law by vexatious litigations, this Court finding itself bound by the outer limits of cost, contemplated therein; imposes a cost of Rs.3,000/- upon the appellant - plaintiff for having consumed the public time with the vexatious litigation. The plaintiff - appellant shall bear the said cost and in absence of his depositing the same with the Court below within seven days from this date, it shall be recovered from him in accordance with law under the Gujarat Land Revenue Code."

16. In the case of Bhagirath Prasad Singh (supra), the Patna High Court has held and observed in para - 10 and 13 as under:-

"10. Law is well settled that dexterity of the draftsman whereby the material facts are camouflaged in a cleverly drafted plaint and illusionary cause of action is set out, cannot defeat the right of the defendant to get the plaint rejected. In this regard it would be pertinent to quote the relevant passage of the observation of the Apex Court in *T. Arivandandam v. T.V. Satyapal* [1977 (4) 467 (SCC p. 470, para 5 as under):-

"We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful - not formal-

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undefined 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 and 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."

11. From the aforesaid decisions of the Apex Court rendered in *T. Arivandandam v. T.V. Satyapal* (supra) as well *I.T.C. Limited Versus Debts Recovery Appellate Tribunal and others* (supra) it would emerge that the gross abuse of process of Court would be condemned. Further, the reading of plaint for the purposes of Order VII Rule 11 of the Code of Civil Procedure would be meaningful reading and not only the formal reading of the same. If real cause of action has not been set out in the plaint rather something illusionary has been stated with a view to get out the scope of Order VII Rule 11 of the Code of Civil Procedure, such clever drafting and suppression of material facts are not permitted in law and hence such action should be nipped at the bud. Similar view has been taken by learned Single Judge of this Court in *Vikash Singh & Anr. Vrs. Sri Krishna Prasad Sinha and others* (C.R. No. 1044 of 2006) disposed of on 27.9.2007.

12. In the present case it has to be held that in view of the suppression of the material fact by the plaintiffs by cleverly omitting to state regarding the factum of challenging the order dated 20.11.2006 in Civil Revision No. 16 of 2006, which has been dismissed by a reasoned order dated 1.5.2008, the subsequent suit challenging the same order on the ground of fraud is not at all maintainable and plaint was liable to be rejected on this ground. The court below has committed serious error by holding that the suit is not barred by res judicata and, thus, the plaint is not required to be rejected rather the suit is to be tried after framing of issues. Continuance of the suit, for the aforesaid reasons, in my opinion, would amount to abuse of process of court."

17. At the outset, the provision of Order VII Rule 11 of the Code and Section 59 of the Limitation Act would be necessary to be NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined reproduced.

"Order VII Rule 11: The plaint shall be rejected in the following cases:-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;
- (c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be barred by any law;
- (e) where it is not filed in duplicate;
- (f) where the plaintiff fails to comply with the provisions of rule 9.

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

Article 59 of the Limitation Act, 1963 Description of Suit Period of Time from which period Limitation begins to run To cancel or set aside Three years When the facts entitling an instrument or the plaintiff to have the decree or for the instrument or decree rescission of a contract cancelled or set aside or the contract rescinded first become known to him.

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18. On perusal of the provisions of Order VII Rule 11(d) of the Code, it is clear that while considering the application filed under Order VII Rule 11(d) of the Code, the Court cannot go into the merits of the matter. But the Court has to look into the averments made in the plaint and after satisfaction and perusing the averments made in the application, the Court can certainly passed an order of rejection of the plaint. It is also equally settled that by clever drafting of the plaint, it cannot be accepted by the Court on gospel truth and, therefore, while filing the written submission and/or by filing an application under Section VII Rule 11(d) of the Code, the Court can certainly go into the

facts stated in the memo of plaint as well as submissions made in the written statement on behalf of the otherside and also averments made in the application filed under the provisions of Order VII Rule 11(d) of the Code. But at the same time, the Court cannot overlook the conduct of the party to the proceedings. Herein the present case, from bare reading of the plaint, the cause of action of the suit was mentioned in para-8 of the order dated 21.07.2023 wherein it has been specifically mentioned that the suit filed by the plaintiffs for cancellation of the sale deed executed way back in the year 2012 i.e. on 03.10.2012, which has admitted by the plaintiffs in their reply in 2014. Looking to the cause of action of the suit, prima facie the trial Court came to the conclusion that the registered sale deed executed by and between the plaintiffs and defendant on 03.10.2012 and, therefore, the suit was beyond the prescribed period of limitation and on the ground of law of limitation, the NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined trial Court has passed the order below application at Exhibit 19 under Order VII Rule 11(d) of the Code. It clearly establishes that the subject sale deed challenged under the suit is executed by and between the mother of the plaintiffs and the defendant, which was registered before the office of the Sub Registrar on 03.10.2012. It is well settled that at the time of registration of the sale deed, the Sub Registrar verifies the fact that whether the seller has received an amount of sale consideration or not and after satisfaction, the Registrar can register the subject sale deed. Here in the present case, the sale deed executed on 03.10.2012 in the office of the Sub-Registrar and the plaintiffs have not raised any dispute with regard to the sale consideration, which was not received by the mother of the plaintiffs. As per the averments made in the plaint, the purchasers have given assurance that as and when the subject parcel of the land entered into their names and entry to that effect was entered in the revenue record, they will pay the remaining amount of sale consideration. That the entry was posted on 22.11.2012 and the same was certified in 2012 itself, so the plaintiffs were aware that the sale deed executed by their mother in favour of the defendant which was registered. On the basis of the said registered sale deed, entry to that effect posted in the revenue record. However, till the filing of the present suit, the plaintiffs have not initiated any such proceedings against the defendant for remaining amount of sale deed for consideration is due and payable to them nor they have issued any legal notice to the respondent. Therefore, this fact stated in the plaint itself is NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined not tenable in the eyes of law as till the date of institution of the suit, original plaintiffs remained silent for almost ten years. It is crystal clear that since original defendant being owner of the subject parcel of the land, which has been acquired by the concerned authority under the Land Acquisition and he received the compensation, the present suit was instituted. This Court has also looked into the fact that as the mother of the original plaintiffs has entered into an agreement to sell with one Vajasi Vikram Odedara and Pravinsinh Ganpatsinh Gohil on 23.02.2011 and the said agreement to sell was subsequently cancelled by the mother of the present plaintiffs by issuing legal notice through advocate on 20.01.2012. Against the said cancellation, the purchasers namely Vajasi Vikram Odedara and Pravinsinh Ganpatsinh Gohil have preferred Special Civil Suit No.23 of 2014 against the mother of the present plaintiffs and in the said suit, mother of the plaintiffs has filed written statement wherein she has disclosed the fact that after cancellation of the agreement to sell entered into by and between her and said two persons, subsequently thereafter she entered into transaction with the present defendant and she has executed sale deed in favour of the present defendant by receiving full amount of sale consideration. Though this fact stated in the written statement filed by the mother of the present plaintiffs in the Special Civil Suit No.23 of 2014, the

present plaintiffs have categorically stated that the sale deed was executed without sale consideration and, therefore, the sale deed executed by and between the mother of the plaintiffs and defendant deserves to NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined be cancelled. The mother of the plaintiffs had filed written statement in Special Civil Suit No.23 of 2014 with supporting affidavit and the plaintiffs had also filed affidavit in support of the plaint. So, the plaintiffs and the mother of the plaintiffs have stated different facts before the concerned Court and, therefore, this Court cannot ignore and overlook all these facts while dealing with the present appeal. Though this Court cannot examine the evidence, but from the observation made by the trial Court, the conduct of the appellants speaks volume about it and the Court cannot remain silent and considering all these aspects, the suit was rightly rejected by the trial Court while exercising the power under Order VII Rule 11(d) of the Code. Now, it is well settled by the Hon'ble Apex Court in the many decisions that by cleverly drafting of the plaint, the same cannot be considered as gospel truth as stated by the plaintiffs in the suit. Even considering the fact that while exercising the power under Section 96 of the Code can go into the facts of the case as if it is in continuation of the proceedings of the suit and, therefore, considering all these aspects, the appeal deserves to be rejected at this stage only. Even considering the averments made in the plaint itself we are of the opinion that the plaintiffs were within the knowledge that in the year 2012, the revenue entry was mutated in the revenue record in favour of the defendant and if the defendant has not paid remaining amount of sale consideration then for what reason the plaintiffs have not initiated proceedings of recovery of the consideration at the earlier point of time nor even issued any legal notice to the NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined defendant till the registration of the suit and all these facts led to the conclusion that the trial Court has rightly rejected the suit while passing the impugned order in exercising of the power under Order VII Rule 11(d) of the Code. From perusal of the averments made in para-4 of the plaint, it appears that the plaintiffs have categorically stated that since the original defendant has received an amount of compensation and as he did not want to part with the said amount of compensation, the plaintiffs have filed the suit meaning thereby that from 2012 till the date of receiving the said compensation under the land acquisition proceedings, they have slept in slumber for all these years and on receipt of the said amount of compensation by the defendant, the plaintiffs have suddenly get up from slumber and initiated such proceedings and, therefore, it is hit by the provisions of law of limitation. We are of the opinion that the Court cannot ignore and overlook the conduct of the parties who are before the Court below and in the present case, prima facie considering the materials on record, we are of the opinion that the suit instituted by the plaintiffs is with ulterior motive and, therefore, no interference is required to be called for in the appeal.

9. In case of Dahiben Vs. Arvindbhai Kalyanji Bhanusali (supra) the Apex Court held that the Order VII, Rule 11 is mandatory in nature and if any of the grounds specified in clause

(a) to (e) is made out, the Court is bound to reject the claim. While discussing the law of limitation, the Apex Court held that NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected. It was a case of a suit to obtain the declaration and to set aside the instrument or for rescission of contract, it is held that the Court must have determined when right to sue first accrued and the right to sue accrues only when cause of action arises. The suit must be instituted

when right asserted in suit is infringed or there is a clear and unequivocal threat of infringement.

9.1 Apt would be to refer to the findings and observations of the Apex Court would need to be reproduced.

"16.The Trial Court held that the period of limitation for filing the suit was 3 years from the date of execution of the Sale Deed dated 02.07.2009. The suit was filed on 15.12.2014. The cause of action as per the averments in the plaint had arisen when the Defendant No.1 / Respondent No.1 had issued 'false' or 'bogus' cheques to the Plaintiffs in 2009. The suit for cancellation of the Sale Deed dated 02.07.2009 could have been filed by 2012, as per Articles 58 and 59 of the Limitation Act, 1963. The suit was however filed on 15.12.2014, which was barred by limitation.

17. The suit property was subsequently sold by Respondent No.1 to Respondent Nos. 2 and 3 by a registered Sale Deed dated 01.04.2013. Before purchasing the suit property, the Respondent Nos. 2 and 3 had issued a public notice on 14.08.2012. The Plaintiffs did not raise any objection to the same.

18.The Trial Court, on the basis of the settled position in law, held that the suit of the Plaintiffs was barred by limitation, and allowed the application under Order VII Rule 11(d) CPC.

19. Aggrieved by the Judgment dated 12.08.2016 passed by the Sr. Civil Judge, Surat, the Plaintiffs filed First Appeal No.2324/2016 before the High Court of Gujarat at Ahmedabad.

20.The Division Bench of the High Court took note of the fact that the Plaintiffs did not deny having executed the registered Sale NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined Deed dated 02.07.2009 in favour of Respondent No.1. In the said Sale Deed, it was specifically admitted and acknowledged by the Plaintiffs that they had received the full sale consideration. The Sale Deed contained the complete particulars with respect to the payment of sale consideration by Respondent No. 1 through 36 cheques, the particulars of which were recorded therein. Since the execution of the Sale Deed was not disputed, and the conveyance was duly registered in the presence of the Plaintiffs before the Sub- Registrar, the Sale Deed could not be declared to be void, illegal, or ineffective. The suit property was subsequently sold by Respondent No. 1 in favour of Respondent Nos. 2 and 3 vide registered Sale Deed dated 01.04.2013 for a sale consideration of Rs. 2,01,00,000/-. Respondent Nos. 2 and 3 were bona fide purchasers for valuable consideration.

21.The present suit for cancellation of the Sale Deed was filed by the Plaintiffs after a period of over 5 years after the execution of the Sale Deed dated 02.07.2009, and 1 year after the execution of the Sale Deed dated 01.04.2013 by Respondent No.1. It was noted that prior to the institution of the suit on 15.12.2014, at no point of time did the Plaintiffs raise any grievance whatsoever, of not having received the full sale consideration mentioned in the Sale Deed dated 02.07.2009. It was for the first

time that such an allegation was made after over 5 years from the date of execution of the Sale Deed dated 02.07.2009. Since the suit in respect of the Sale Deed dated 02.07.2009 was held to be barred by law of limitation, the High Court was of the view that the suit could not be permitted to be continued even with respect to the subsequent Sale Deed dated 01.04.2013. The Plaintiffs had not raised any allegation against Respondent Nos. 2 and 3, and there was no privity of contract between the Plaintiffs and Respondent Nos. 2 and 3. The High Court rightly affirmed the findings of the Trial Court, and held that the suit was barred by limitation, since it was filed beyond the period of limitation of three years.

22. Aggrieved by the impugned Judgment and Order dated 12.08.2016 passed by the High Court, the original Plaintiff No.1 has filed the present Civil Appeal.

23. We have heard the learned Counsel for the parties, perused the plaint and documents filed therewith, as also the written submissions filed on behalf of the parties.

23.1 We will first briefly touch upon the law applicable for deciding an application under Order VII Rule 11 CPC, which reads as under: "11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

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(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9: Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of exceptional nature for correction of the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

(emphasis supplied) 23.2 The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is

satisfied that the action should be terminated on any of the grounds contained in this provision.

23.3 The underlying object of Order VII Rule 11 (a) is that if in a suit, no cause of action is disclosed, or the suit is barred by limitation under Rule 11 (d), the Court would not permit the plaintiff to unnecessarily protract the proceedings in the suit. In such a case, it would be necessary to put an end to the sham litigation, so that further judicial time is not wasted.

23.4 In *Azhar Hussain v. Rajiv Gandhi*¹ this Court held that the whole purpose of conferment of powers under this provision is to ensure that a litigation which is meaningless, and bound to prove abortive, should not be permitted to waste judicial time of the court, in the following words:

"12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action."

23.5 The power conferred on the court to terminate a civil action is, however, a drastic one, and the conditions enumerated in Order VII Rule 11 are required to be strictly adhered to.

23.6 Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint², read in conjunction with the documents relied upon, or whether the suit is barred by any law.

23.7 Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under :

"Order 7 Rule 14: Production of document on which plaintiff sues or relies.- (1)Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.

(2)Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.

(3)A document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

(4)Nothing in this rule shall apply to document produced for the cross examination of the plaintiff's witnesses, or, handed over to a witness merely to refresh his memory."

23.8 Having regard to Order VII Rule 14 CPC, the documents filed along with the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11 (a). When a NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.

23.9 In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

23.10 At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.

23.11 The test for exercising the power under Order VII Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed. This test was laid down in *Liverpool & London S.P. & I Assn. Ltd. v. M.V.Sea Success I & Anr.*,⁴ which reads as :

"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23.12 In *Hardesh Ores (P.) Ltd. v. Hede & Co.* the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact.

23.13 If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order VII Rule 11 CPC.

NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined 23.14The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra*.⁷ The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar*

Hussain (supra).

23.15 The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clause (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.

24. "Cause of action" means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

24.1 In *Swamy Atmanand v. Sri Ramakrishna Tapovanam* this Court held :

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

24.2 In *T. Arivandandam v. T.V. Satyapal & Anr.*⁹ this Court held that while considering an application under Order VII Rule 11 CPC what is required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words : -

"5. ...The learned Munsiff 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 O. VII, R. 11, C.P.C. taking care to see that the ground NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined 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 ..."

24.3 Subsequently, in *I.T.C. Ltd. v. Debt Recovery Appellate Tribunal*,¹⁰ this Court held that law cannot permit clever drafting which creates illusions of a cause of action. What is required is that a clear right must be made out in the plaint.

24.4 If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Ramachandra Murthy v. Syed Jalal* held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court.

25. The Limitation Act, 1963 prescribes a time-limit for the institution of all suits, appeals, and applications. Section 2(j) defines the expression "period of limitation" to mean the period of limitation prescribed in the Schedule for suits, appeals or applications. Section 3 lays down that every suit instituted after the prescribed period, shall be dismissed even though limitation may not have been set up as a defence. If a suit is not covered by any specific article, then it would fall within the residuary article.

26. Articles 58 and 59 of the Schedule to the 1963 Act, prescribe the period of limitation for filing a suit where a declaration is sought, or cancellation of an instrument, or rescission of a contract, which reads as under :

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

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The period of limitation prescribed under Articles 58 and 59 of the 1963 Act is three years, which commences from the date when the right to sue first accrues.

27. In *Khatri Hotels Pvt. Ltd. & Anr. v. Union of India & Anr.*,¹² this Court held that the use of the word 'first' between the words 'sue' and 'accrued', would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first

accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed, if it is beyond the period of limitation counted from the date when the right to sue first accrued.

28. A three-Judge Bench of this Court in *State of Punjab v. Gurdev Singh*, held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words "right to sue" means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted. Order VII Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected."

10. Here in the present case, it is an admitted fact that the suit is instituted after more than ten years from registration of the sale deed and even the mutation entry to that effect entered into the revenue record in favour of the defendant, which came to be certified in the year 2012 and till the date of institution of the suit, the appellants have neither initiated any proceedings nor issued any legal notice calling upon the defendant to make payment of remaining amount of sale consideration.

11. We are of the opinion that the trial Court has committed no error in rejecting the plaint in the instant case. Being conscious NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined of the decision which has been sought to be relied upon by the appellants herein who are the original plaintiffs, we notice that the challenge is made to the execution of the sale deed and for questioning the registered sale deed of 03.10.2012, the Civil Suit has been preferred.

12. We are conscious also that only on meaningful reading of the plaint, any trial Court needs to decide the aspect of limitation and particularly the incident of knowledge of such transfer.

13. In one of the decisions of the Apex Court even while discussing the law of limitation which will presume the knowledge from the date of registration of the date, the Court from the plaint could notice the fraud perpetrated upon the parties before it where the essential challenge was to the thumb impression which had been found on the registered sale deed. The trial Court while dealing with an application under Order VII, Rule 11(d) of the Code had also simultaneously dealt with the application questioning the thumb impressions and had directed such thumb impressions to be taken and sent to the Hand Writing Expert for examination, demanding a report within a very short period and in this background when the application was moved under Order VII, Rule 11(d) of the Code where the trial Court chose not to entertain the same with robust and glaring facts of deceit. This when was entertained by the High Court, the Apex Court quashed and set aside the order of the High Court and had upheld the order passed by the trial Court on an NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined application under Order VII, Rule 11(d) of the Code.

14. It is worthwhile to refer to the decision of the Hon'ble Supreme Court in the case of Venkatesh Construction Company Vs. Karnataka Vidyuth Karkhane Limited reported in (2016) 4 SCC 119 wherein the Hon'ble Supreme Court has held and observed in paragraph no.20 as under:-

"20. The Appellate Court may not interfere with the finding of the trial court unless the finding recorded by the trial court is erroneous or the trial court ignored the evidence on record. The High Court reversed the decree passed by the trial court without discussing oral and documentary evidence and several grounds raised before the trial court. The High Court veered away from the main issue and went on to elaborate on the law of arbitration and the mode of setting aside the arbitral award under Section 34 of the Arbitration Act, which in our view, was not warranted. Without considering the oral and documentary evidence, the High Court erred in interfering with the factual findings recorded by the trial court and the impugned judgment is liable to be set aside."

15. It is also worthwhile to refer to the decision of the Hon'ble Supreme Court in the case of V. Prabhakara Vs. Basavaraj K. and another reported in (2022) 1 SCC 115 wherein the Hon'ble Supreme Court has held and observed in paragraphs no.22 to 24 as under:-

"22. The first appellate court while exercising power under Section 96 can re-do the exercise of the trial court. However, such a power is expected to be exercised with caution. The reason being, the trial court alone has the pleasure of seeing the demeanor of the witness. Therefore, it has got its own advantage in assessing the statement of the witnesses which may not be available to the appellate court. In exercising such a power, the appellate court has to keep in mind the views of the NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined trial court. If it finds that the trial court is wrong, its decision should be on the reasoning given. A mere substitution of views, without discussing the findings of the trial court, by the appellate court is not permissible. If two views are possible, it would only be appropriate to go with the view expressed by the trial court. While adopting reasoning in support of its findings, the appellate court is not expected to go on moral grounds alone.

23. The aforesaid views expressed by us are nothing but a reiteration of the settled principle of law as could be seen through the following paragraphs of the decision rendered by this Court in the case of Jagdish Singh v. Madhuri Devi, (2008) 10 SCC 497:

"27. It is no doubt true that the High Court was exercising power as first appellate court and hence it was open to the Court to enter into not only questions of law but questions of fact as well. It is settled law that an appeal is a continuation of suit. An appeal thus is a re-hearing of the main matter and the appellate court can reappraise, re- appreciate and review the entire evidence - oral as well as documentary and can come to its own conclusion.

28. At the same time, however, the appellate court is expected, nay bound, to bear in mind a finding recorded by the trial court on oral evidence. It should not forget that the trial court had an advantage and opportunity of seeing the demeanor of witnesses and, hence, the trial court's conclusions should not normally be disturbed. No doubt, the appellate court possesses the same powers as that of the original court, but they have to be exercised with proper care, caution and circumspection. When a finding of fact has been recorded by the trial court mainly on appreciation of oral evidence, it should not be lightly disturbed unless the approach of the trial court in appraisal of evidence is erroneous, contrary to well-established principles of law or unreasonable.

29. Before more than a century, in *Coghlan v. Cumberland* [(1898) 1 Ch 704 (CA)] Lindley, M.R. pronounced the principle thus;

"Even where the appeal turns on a question of fact, the Court of Appeal has to bear in mind that its duty is to rehear the case, and the Court must reconsider the materials before the Judge with such other materials as it may have decided to admit. The Court NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined must then make up its own mind, not disregarding the judgment appealed from, but carefully weighing and considering it; and not shrinking from overruling it if on full consideration the Court comes to the conclusion that the judgment is wrong. When, as often happens, much turns on the relative credibility of witnesses who have been examined and cross-examined before the Judge, the Court is sensible of the great advantage he has had in seeing and hearing them. It is often very difficult to estimate correctly the relative credibility of witnesses from written depositions and when the question arises which witness is to be believed rather than another; and that question turns on manner and demeanour, the Court of Appeal always is, and must be, guided by the impression made on the Judge who saw the witnesses. But there may obviously be other circumstances, quite apart from manner and demeanour, which may shew whether a statement is credible or not; and these circumstances may warrant the Court in differing from the Judge, even on a question of fact turning on the credibility of witnesses whom the Court has not seen."

(See also observations of Lord Thankerton in *Watt v. Thomas*, [1947 AC 484])

30. In *Sara Veeraswami v. Talluri Narayya* [AIR 1949 PC 32] the Judicial Committee of the Privy Council, after referring to relevant decisions on the point, stated :

"...but if the evidence as a whole can reasonably be regarded as justifying the conclusion arrived at the trial, and especially if that conclusion has been arrived at on conflicting testimony by a tribunal which saw and heard the witnesses, the appellate court will bear in mind that it has not enjoyed this opportunity and that the view of the trial Judge as to where credibility lies is entitled to great weight. This is not to say that the Judge of first instance can be treated as infallible in determining which side is telling the truth or is refraining from exaggeration. Like other tribunals, he may go

wrong on a question of fact, but it is a cogent circumstance that a Judge of first instance, when estimating the value of verbal testimony, has the advantage (which is denied to courts of appeal) of having the witnesses before him and observing the manner in which their evidence is given."

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31. This Court also, before more than half a century in *Sarju Pershad v. Jwaleshwari, Pratap Narain Singh* [AIR 1951 SC 120] stated: (SCC p. 717, para 8) "8. The question for our consideration is undoubtedly one of fact, the decision of which depends upon the appreciation of oral evidence adduced in the case. In such cases, the appellate court has got to bear in mind that it has not the advantage which the trial Judge had in having the witnesses before him and of observing the manner in which they deposed in court. This certainly does not mean that when an appeal lies on facts, the appellate court is not competent to reverse a finding of fact arrived at by the trial Judge. The rule is and it is nothing more than a rule of practice that when there is conflict of oral evidence of the parties on any matter in issue and the decision hinges upon the credibility of the witnesses, then unless there is some special feature about the evidence of a particular witness which has escaped the trial Judge's notice or there is a sufficient balance of improbability to displace his opinion as to where the credibility lies, the appellate court should not interfere with the finding of the trial Judge on a question of fact."

32. Referring to several cases on the point, the Court concluded: (*Sarju Pershad case*, SCC p. 720, para

18):

"18. ...The duty of the appellate court in such cases is to see whether the evidence taken as a whole can reasonably justify the conclusion which the trial court arrived at or whether there is an element of improbability arising from proved circumstances which, in the opinion of the court, outweighs such finding." (emphasis supplied)

33. After about a decade, in *Radha Prasad v.*

Gajadhar Singh, this Court reiterated: (AIR p. 118, para 14) "14. The position in law, in our opinion, is that when an appeal lies on facts it is the right and the duty of the appeal court to consider what its decision on the question of facts should be; but in coming to its own decision it should bear in mind that it is looking at the printed record and has not the opportunity of seeing the witnesses and that it should not lightly reject the trial Judge's conclusion that the evidence of a particular witness should be believed or should NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined not be believed particularly when such conclusion is based on the observation of the demeanor of the witness in court. But this does not mean that merely because an appeal court

has not heard or seen the witness it will in no case reverse the findings of a trial Judge even on the question of credibility, if such question depends on a fair consideration of matters on record. When it appears to the appeal court that important considerations bearing on the question of credibility have not been taken into account or properly weighed by the trial Judge and such considerations including the question of probability of the story given by the witnesses clearly indicate that the view taken by the trial Judge is wrong, the appeal court should have no hesitation in reversing the findings of the trial Judge on such questions. Where the question is not of credibility based entirely on the demeanor of witnesses observed in court but a question of inference of one fact from proved primary facts the court of appeal is in as good a position as the trial Judge and is free to reverse the findings if it thinks that the inference made by the trial Judge is not justified."

34. In T.D. Gopalan v. Commissioner of Hindu Religious & Charitable Endowments, this Court said: (SCC p. 333, para 9):

"9. The High Court next proceeded to reproduce a summary of the statement of each of the witnesses produced by the defendants. No attempt whatsoever was made to discuss the reasons which the learned District Judge had given for not accepting their evidence except for a general observation here and there that nothing had been suggested in the cross-examination of a particular witness as to why he should have made a false statement. We apprehend that the uniform practice in the matter of appreciation of evidence has been that if the trial court has given cogent and detailed reasons for not accepting the testimony of a witness the appellate court in all fairness to it ought to deal with those reasons before proceeding to form a contrary opinion about accepting the testimony which has been rejected by the trial court. We are, therefore, not in a position to know on what grounds the High Court disagreed with the reasons which prevailed with the learned District Judge for not relying on the evidence of the witnesses produced by the defendants."

35. Yet in another decision in Madhusudan Das v.

NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined Narayanibai [(1983) 1 SCC 35], this Court said: (SCC pp. 39-40, para 8):

"8. ...At this stage, it would be right to refer to the general principle that, in an appeal against a trial court decree, when the appellate court considers an issue turning on oral evidence it must bear in mind that it does not enjoy the advantage which the trial court had in having the witnesses before it and of observing the manner in which they gave their testimony. When there is a conflict of oral evidence on any matter in issue and its resolution turns upon the credibility of the witnesses, the general rule is that the appellate court should permit the findings of fact rendered by the trial court to prevail unless it clearly appears that some special feature about the evidence of a particular witness has escaped the notice of the trial court or there is a sufficient balance of improbability to displace its opinion as to where the credibility lies. ...The principle is one of practice and governs the weight to be given to a finding of fact by the trial court. There is, of course, no doubt that as a matter of law if the appraisal of the evidence by the trial court suffers from a material irregularity or is based on inadmissible evidence or on a misreading of the evidence or on conjectures and surmises the appellate court is entitled to interfere with the finding of fact."

36. Three requisites should normally be present before an appellate court reverses a finding of the trial court:

- (i) it applies its mind to reasons given by the trial court;
- (ii) it has no advantage of seeing and hearing the witnesses; and
- (iii) it records cogent and convincing reasons for disagreeing with the trial court.

37. If the above principles are kept in mind, in our judgment, the decision of the High Court falls short of the grounds which would allow the first appellate court to reverse a finding of fact recorded by the trial court. As already adverted earlier, the High Court has 'virtually' reached a conclusion without recording reasons in support of such conclusion. When the court of original jurisdiction has considered oral evidence and recorded findings after seeing the NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined demeanour of witnesses and having applied its mind, the appellate court is enjoined to keep that fact in mind. It has to deal with the reasons recorded and conclusions arrived at by the trial court. Thereafter, it is certainly open to the appellate court to come to its own conclusion if it finds that the reasons which weighed with the trial court or conclusions arrived at were not in consonance with law." (emphasis in original)

24. Thus, we have no hesitation in holding that though the first appellate court is the final court of fact and law, it has to fall in line with the scope and ambit of Section 96 of the Code.

16. The Division Bench of this Court has dealt with identical issue of limitation considering the provisions of Order VII Rule 11(d) of the Code rendered in the case of Jyotsnaben d/o. Govindbhai Patel w/o. Rajendrabhai Patel and others Vs. L.H. of late Ashokbhai Govindbhai Patel and others in First Appeal No.3386 of 2017 dated 13.07.2022 and this Court has also dealt with identical issue of limitation rendered in the case of L H of Decd. Alibhai Kalubhai Vs. L H of late Pagi Vaja Vittal in First Appeal No.4150 of 2023 dated 09.10.2023.

17. Considering the scope of the first appeal, the Court cannot ignore and overlook the documents which are part and parcel of the trial Court and considering all these aspects, it appears that the suit filed by the appellants herein is hit by the provisions of law and, therefore, the trial Court has not committed any error while rejecting the suit. Considering overall facts and circumstances of the case, materials on record, the submissions canvassed by the learned advocate for the appellants and the NEUTRAL CITATION C/FA/4413/2023 JUDGMENT DATED: 01/11/2023 undefined order passed by the trial Court, we are of the opinion that the trial Court has not committed any error in passing the order and, therefore, no interference is required to be called for.

18. Hence, the appeal deserves to be rejected and the same is, accordingly, rejected. Pending civil application/s, if any, shall stand disposed of accordingly.

Sd/-

(ASHUTOSH SHASTRI, J) Sd/-

(HEMANT M. PRACHCHHAK,J) V.R. PANCHAL