

Shantibhai Somabhai Patel vs Deceased Ranchodbhai Pujabhai ... on 25 March, 2019

Equivalent citations: AIRONLINE 2019 GUJ 249

Author: J. B. Pardiwala

Bench: J.B.Pardiwala

C/SA/168/2018

CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SECOND APPEAL NO. 168 of 2018
With
CIVIL APPLICATION (FOR STAY) NO. 1 of 2017
In R/SECOND APPEAL NO. 168 of 2018

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE J.B.PARDIWALA

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|---|-----------------------------------------------------------------------------------------------------------------------------------------------|-----|
| 1 | Whether Reporters of Local Papers may be allowed to see the judgment ? | NO |
| 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 |

CIRCULATE THIS JUDGEMENT IN THE SUBORDINATE JUDICIARY.

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SHANTIBHAI SOMABHAI PATEL & 1 other(s)

Versus

DECEASED RANCHODBHAI PUJABHAI PADHIYAR & 8 other(s)

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Appearance:

MR SP MAJMUDAR(3456) for the Appellant(s) No. 1,2

MR. HJ KARATHIYA(7012) for the Appellant(s) No. 1,2

MR ANSHIN DESAI SENIOR ADVOCATE WITH
KAPADIA(5601) for the Respondent(s) No. 8,9

MR JINESH H

CORAM: HONOURABLE MR.JUSTICE J.B.PARDIWALA

Date : 25/03/2019

CAV JUDGMENT

1 This Second Appeal under Section 100 of the Civil Procedure Code, 1908 (for short, 'the C.P.C.') is at the instance of the original plaintiffs and is directed against the judgment and order passed by the 3rd Additional District Judge, Vadodara dated 27th July 2017 in the Regular Civil Appeal No.143 of 2007 arising from the judgment and decree passed by the 6th Additional Senior Civil Judge, Vadodara dated 10th September 2007 below Exhibit : 37 in the Special Civil Suit No.308 of 2003.

2 For the sake of convenience, the appellants herein shall be referred to as the 'original plaintiffs and the respondents herein shall be referred to as the 'original defendants'.

3 The subject matter of this Second Appeal is an order passed by the Trial Court rejecting the plaint under the provisions of Order VII Rule 11

(a) and (d) of the C.P.C. The order passed by the Trial Court rejecting the plaint came to be affirmed by the lower Appellate Court and that is how the original plaintiffs are here before this Court with this Second Appeal against the concurrent findings of two Courts.

4 As the subject matter of this Second Appeal is one relating to the rejection of plaint, it is necessary to concentrate on the contents of the plaint. The plaint reads as under:

"Subject : □Suit. For Rs. Specific Performance of 2,48,880/□for Agreement We the plaintiffs have filed the present suit against the defendants. The relevant facts in the background are as under.

1. The land situated at village Gotri, Taluka Vadodara, District Vadodara bearing Survey No. 127 admeasuring 12444 sq. mtrs. is of the ownership of the defendants. For the said land, the defendants have made an agreement for Sale with development in favour of the plaintiffs on 2.6.1990. The said agreement was also □registered before the sub□Registrar office on 2.6.1990. In the said agreement, the defendants have agreed and decided to sale the said land for development and against this, we the plaintiffs have paid the defendants cash amount of Rs. 10,000/□ which have been received by the defendants. Thereafter also the plaintiffs have paid further cash amount to the defendants under the banakhat.

2 . At the time of making banakhat of the said land, the Urban Land Ceiling Act was in vogue and at that time, the government of Gujarat has declared the said land as non□agricultural land vide its ULCR 2077/68/69 dated 22.5.1997. In the said

agreement, after getting non-agricultural permission cancelled, development agreement is also made with permission to the plaintiffs to construct the residential houses for the poor strata of people and to sell it under Article 21. And in that agreement, 22 conditions have been imposed, which are enclosed herewith vide a separate list. Therefore, those written conditions are to be considered as a part of this suit.

3. In the said agreement, the Article 21 is under, "During the existence of this agreement, if any further relaxation is declared by the government under the Urban Land Ceiling Act, 1976, or even if the Act is no more, this agreement will remain in force and during that period, the sale document for the sale consideration as decided under this agreement is to be prepared by us in part/(s) in your name or in the name suggested by you or in the name of Co-operative Housing Society Limited" The Urban Land Ceiling Act is not applicable being not in force since 30.3.1999 to the said land, but till 30.3.1999, the defendants have not taken any steps to construct residential premises for poor strata people as prescribed under Article 21 after non-agricultural permission. And in spite of our reminder and intimation, they got cancelled the Non-agricultural permission and have not submitted the form under Article 21 before the competent authority. Thus our agreement dated 2.6.1990 is in existence and is in force. And because of annulling of the Act on 30.3.1999, the sale consideration at the rate of Rs. 20/- per square meter as decided by the defendants will continue to operate and after 30.3.1999, in spite of the fact that the plaintiffs requested the defendants to sell the said land as per the agreement after getting permission of non-agricultural, the defendants are not making the sale documents as per the conditions of the banakhat. Therefore, the plaintiffs have preferred the present suit for specific performance of the conditions of the said banakhat so that the plaintiffs could get the possession of the said land on sale.

4. The defendants have categorically mentioned in the agreement that the land in question is not in mortgage or in the possession of the third party nor the land in question is the subject matter before any court of law, nor there is any tenant on the land or any right for agricultural activities on it. And the said land has clear title. These all facts are categorically mentioned in the agreement. It is also mentioned in the agreement that the title of the said land is clear and marketable and in that regard, the defendants have promised that they would give title clearance certificate of the said land from M/s. H. Desai and Company, Solicitor and Advocate and Notary within six months. After the said agreement, the defendants have not provided any title clearance certificate with regard to the land in question. In spite of this, we the plaintiffs requested the defendants to comply with the conditions of the agreement. However, no efforts has been done by the defendants in this regard. And we the plaintiffs were always ready for getting prepared the sale documents with regard to the suit land after 30.3.1999 and today also we are prepared. In spite of this, the defendants are not fulfilling their obligations of taking the legal permission from the competent authority for non-agricultural or for converting the land into old tenure.

Therefore, the plaintiffs are compelled to file the present suit for specific performance of the conditions of the said agreement.

5. The defendants have specifically mentioned in the agreement that if they would fail to prepare the sale document, the plaintiffs would have right to get it done through court, therefore the present suit is filed against the defendants.

6. Before the present suit was instituted, it was informed on 1.1.2002 and thereafter from time to time it was informed and lastly, the defendants were informed on 9.2.2003, in spite of this the defendants have not got prepared the sale document and the defendants have also not procured the title clearance certificate, therefore the cause has arisen for the plaintiff to institute this suit. Therefore, the plaintiffs have instituted the present sit before the defendants.

7. As stated above, during the existence of the said agreement and after 30.3.1999, from time to time the defendants were informed by the plaintiffs that we were ready to prepare the sale document and are ready today also, in spite of this, after the agreement, the defendants had with an ill-intention and ill motive, got prepared the banakhat in favour of the Lalit Karansinh Mandavat-partners of the partnership firm namely Padmawati builders. The said banakhat is not binding to the plaintiffs and have no efficacy for the plaintiffs, since when our banakhat was in existence and in force, the defendants had with an ill-intention and ill motive, got prepared the banakhat in favour of the Lalit Karansinh Mandavat-partners of the partnership firm namely Padmawati builders. And that banakhat is not binding to the plaintiffs. And the defendant No. 6 had with the collusion of each other and on the strength of the subsequent banakhat, and with the collusion of defendant Nos. 1 to 5, had instituted regular civil suit No. 1400 of 1994 before the Hon'ble Civil Judge (S.D.), Vadodara, and in that suit, the defendant No.6 a partnership firm Padmavati builders with the collusion of each other persuade the court to pass a decree in its favour. This fact came to our knowledge. The defendant Nos. 1 to 5 had agreed and had told us that they would execute the sale deed on 9.2.2003 but thereafter they informed us that they were not in a position to execute sale document as the Padmavati builders had obtained a decree from the court of law in regular suit No. 1400 of 1994, the said decree is prayed to be set aside in the present suit. Therefore, a partner namely Lilachandra Mandavat of the partnership firm Padmavati builders has been made a party defendant no.6. Therefore, in the present a prayer is also sought to set aside the decree passed against the interest of the plaintiff in regular civil suit no. 1400 of 1994. The said agreement on the basis of which the decree has been obtained by respondent No. 6 is also not a registered document therefore, the same is not valid in eye of law and is liable to be set aside.

8. A prayer is also made that if the subject land is considered to be the restricted land, then the defendants may be directed to get the title clearance certificate after getting permission as per section 43 of the Tenancy Act and thereafter to sell the plaintiffs.

9. Cause of action to file the Suit.

Since 2.6.1999 i.e. the date on which the defendants got prepared the banakhat for the suit property and thereafter on 30.03.1999 when the Urban Land Ceiling Act got repealed and thereafter on 1.1.2003 and thereafter, from time to time they were informed and ultimately on 9.2.2003 they were informed, but the defendants failed to discharge their liability to execute the sale deed, therefore the cause has arisen for filing the present suit.

10 . Valuation of the Suit□As per section 6(11) of the Court Fees Act, considering the sale consideration of Rs. 2,48,880/□as mentioned in the banakhat, the court fees stamp Rs. 8950 is paid. And for seeking injunction, under section 6(4) of the Court Fees Act and under Article 23F, stamp of Rs.100, aggregating to Rs. 9050/□has been stamped on the suit. And for deciding the jurisdiction aspect, the said amount is to be taken into consideration.

11. The plaintiffs reserve all right to add/alter any pleadings in the suit during the trial.

12 . The name and address mentioned in the cause title of the suit are true and correct as per Civil Procedure Code.

13. The following reliefs is prayed for;

I. Considering the reasons mentioned hereinabove, a decree may be passed in favour of the plaintiffs directing the defendants to get the title clearance certificate with regard to the land bearing Survey No. 127 situated at Village Gotri, Taluka□District Vadodara and thereafter to perform its liability under the agreement to get the sale document prepared and if the defendants fail to do so, the Hon'ble court may appoint the Receiver through which the sale documents may be got prepared in favour of the petitioners. Further, it may be declared that the agreement dated 13.7.1994 got prepared by the defendants in collusion of each other is not binding to the plaintiffs and it may also further be held that the said agreement is null and void for the plaintiffs.

II. This Hon'ble court may further be please to declare that the decree obtained by the defendants in collusion of each other in Regular Civil Suit No. 1400 of 1994, is not binding to the plaintiffs and the same may kindly be declared null and void for the petitioners. Further, the permanent injunction in the nature that defendants may be restrained from implementing the decree passed in collusion of each other.

III. Costs of the suit may be allowed to the plaintiffs.

IV. Any other or further relief as may be deemed fit and proper by this Hon'ble court.

Date : 9.5.2013 Vadodara."

5 Thus, it appears that the plaintiffs instituted the Special Civil Suit No.308 of 2003 against the defendants for the specific performance of the agreement of sale dated 2nd June 1990. It appears from the materials on record that the original defendants Nos.1 to 5 are the owners of the land in question bearing revenue survey No.127 admeasuring 12,444 sq. mtrs. situated at mouje : Gotri, Vadodara. The original defendants Nos.1 to 5 executed the agreement of sale in favour of the plaintiffs, and at the time of the execution of the agreement, Rs.10,000/□was paid by the plaintiffs to the defendants Nos.1 to 5 in cash.

6 The agreement of sale reads thus:

"Development Agreement alongwith the conditions of sell.

This Development Agreement alongwith the conditions for sell, is made on 2nd June, 1990 (Saturday) at Vadodara, VENDOR:

1. Ranchodbhai Pujabhai Padhiyar Age: 49 years, Occupation: Farming
2. Kalidas Punjabhai Padhiyar . Age: 46 years, Occupation: Farming
3. Revaben w/d of Punjabhai Desaibhai Age: 72 years, Occupation: Farming
4. Jadaben d/o Punjabhai Desaibhai Age: 42 years, Occupation: Farming
5. Vijayaben d/o Punjabhai Desaibhai Age: 33 years, Occupation: Farming All the above are residents of At & Post Gotri, District Vadodara All the above persons are hereinafter referred to as "Giver" and/or "Seller"

and/or "the owner of land", which expressions shall also include the heirs, legal representatives, successor, assignees etc. of the vendor, PURCHASER:

1. Shantubhai Somabhai Patel Age: 49 years, Occupation: Farming/business
2. Rajeshbhai Natubhai Patel Age: 49 years, Occupation: Farming/business Both resident of 16, Monali Society, No.4 Karelibag, Vadodara All the above persons are hereinafter referred to as "You" and/or "Purchaser"

and/or "the owner of land", which expressions shall also include the heirs, legal representatives, successors, assignees etc. of the purchaser.

A. Whereas, the land bearing survey No. 127, admeasuring area 12444 sq. mtrs. Situated at village Gotri, District sub District Vadodara runs in the ownership and possession of the vendor.

B. We the vendor have already filled in the Form No.1 under the Urban Land Ceiling Act, 1976. Since we the vendor were doing agricultural activities on the land in question, we have made an application under section 20 of the Act before the government before 31.3.1997 for exemption from agricultural (kheti mukti) pursuant thereto, the government has given permission for the land in question for non-agricultural purposes vide No. ULC/ARA/2077/68/UP/79 dated 22.5.1997 and the said permission still continues.

C. We the vendor with the discloser of the above facts to you, have decided to sell the land described in the below appendix which is hereinafter in this agreement referred to as the "said land", on which after getting cancelled the permission of exemption from agricultural (kheti mukti), you can start the scheme to construct the houses for poor strata of people and can sell the houses as per section 21 of the Act, and as per the said scheme if revised scheme is sanctioned, then on the said land, the houses for the weaker strata of people can be built up and after constructing the houses on the land mentioned in the appendix under section 21, to sell it and to develop as per the conditions to be decided by the government. The conditions for the same and necessary details are as under, Conditions:

1. We the vendor have decided to sell you the land mentioned in the Appendix at the rate Rs. 20/- per sq. mtr. for development purpose and for this, you have paid us token amount of Rs. 10,000/- in lieu of part of sale consideration, which has been received by us. This amount is to be adjusted against the full and final sale consideration.

2. We the vendor will have to prepare the sale document for the lands described in the Appendix and for the constructions to be made on it, in your name or in the name of the society which you are going to register or in the different names of the members of the society or in the names as suggested by you in one or other part and if asked by you, we are ready to prepare the separate sale document for each construction.

3. The scheme which is going to be developed by you on the lands mentioned in the Appendix under section 21, regarding that scheme, you need to take the required permission from the state government, revenue department as well as from the officers of the Land Ceiling department as well as from the Vadodara Urban Development Authority and after getting the approved plan or revised plan and for that, the peace and vacant possession shall be given to you as a part performance of this agreement and you will be entitled to start construction work and before starting the construction work, you will be required to convert the lands into non-agricultural purposes and for that, if any conversion tax or other relevant taxes are required to be paid, you shall have to pay the same on our behalf.

4. We the vendor for and on behalf of the owner of the lands declare that on the lands described in the Appendix, as per section 21 of the Act, you can get the scheme sanctioned from the government for constructing residential premises for the weaker section of the society and on the said lands as per the letters and advertisement of the

government, the construction of the residential remises for the members of the proposed co-operative society is possible and we will extend all our possible cooperation to you in completion of the scheme, for taking permission for construction, for getting sanctioned the plan, for getting converted the land into non agricultural purposes, for getting sanctioned the revised plan and whenever required, we will appear in person and put our required signature on the applications, declaration or bond and will extend all possible cooperation. But, all the expenses for this to be incurred by you.

Even if you after undergoing the procedures provided under the Urban Land Ceiling Act and after observing all the procedures provided under the rules and resolutions of the Act, you will be able to complete the formalities of sale, you will have to pay the consideration of the sale amount as decided under this agreement.

5. The scheme to be sanctioned by the government on the land mentioned in the scheduled or whatever amount is decided as per the circulars issued by the government for the co-operative housing societies, the said amount is to be paid by the purchaser to the vendor. The value of sale consideration of the land described in the appendix is decided @ Rs. 20/- per sq. mtr. By the government.

6. The time period within which the sale document for the land mentioned in the Appendix is to be prepared, is fixed in a manner that if a scheme as per section 21 is submitted before the government and when the government sanctions such scheme, at that time under the conditions mentioned in the order for grant of scheme, if the constructions work completes and the construction is verified by the competent authority, after that we the vendor and the purchaser with the cooperation of each other, will have to seek permission for sale. And after getting the permission for sale, we will have to prepare the sale document of the said land within the time mentioned in the said permission letter. You the purchaser will have a right to seek different sale documents for different properties on the said land.

7. You will have all the rights under this agreement for constructing the residential houses for the weaker sections of the society or for construction the houses under the co-operative housing societies and for undertaking developing work for that and for giving advertisement, for admitting members in the society and for collecting amounts from such members. Under this agreement, you will have right for development of the housing societies, but if you take any amount from the members in lieu of land allotment, for constructions or for entry fee, in that regard we the vendors will have no liability.

8. After the plan is legally sanctioned after having obtained the signatures of the vendors, You the vendor will have right to put into motion the scheme for residential houses for the weaker sections of the society and as per the scheme, you will have right to organize the Co-operative housing society or will have right to put the same on ownership basis and can induct the members in the scheme and can advertise the scheme through pamphlet booklets. And you can also place the advertisement board on the site of the land and can also open for office on the land.

9.If the scheme is .sanctioned under section 21 of the Urban Land Ceiling Act on the lands mentioned in the appendix or if the revised plan is sanctioned, then for getting the scheme sanctioned and for getting the said plan passed by the Urban Development Authority or by the Vadodara Municipal Corporation or by other competent authority, whatever expenditure would occur, you the purchaser will have to bear such expenses. And if in that procedure, the signatures of the vendors are required, we the vendors are bound to put our signatures.

10. If the revised plan of the plan sanctioned under section 21 of the Act on the said land is sanctioned, then it will be the responsibility of yours to complete the scheme and the purchaser will have - right to induct members in the scheme. Purchaser will have a right to collect amounts from the members for the land and construction cost. You the purchaser will have right to publish the advertisement, to make agreements with the members, to collect amounts from the members, to register the members, to allot the units to the inducted members, and in that regard we the vendors will have no right.

11. Under this agreement, the purchaser will have all the rights with regard to construction of residential units under the scheme, to decide and to collect the amount to be taken from the members who have been inducted in the society for the allotment of the land/constructed house and further to make agreements with the members, to collect the installments or to accept any legal amounts, to put signatures in the agreements. And if the members fails to pay the installments for the units allotted to them, you will have right to cancel their membership and to remove them from the society and to induct some other member in its place and to further make agreements with such newly inducted members. The vendors will have no liability for any financial transaction with such members.

12. The purchaser will have a right to appoint Engineers and Architects for construction of the residential houses under the scheme on the lands mentioned in the appendix, for making the constructions design, for making the plans for the scheme.

13. The purchaser will have right to get the construction work complete under the scheme by itself or by appointing contractors and further the purchaser will have right to prepare the contract for construction and the conditions for it and further the purchaser will have a right to make such contract for construction and to make its signatures on such contract agreements.

14. The purchaser will have right to form a society under the Gujarat Co-operative Housing Society Act on the said lands mentioned in the appendix.

15. Under section 21 of the Urban Land (Ceiling & Regulation) Act, 1976, whatever permissions are given, under such permission and the conditions meant for it, and the cost evaluated of the land or construction, the purchaser is entitled to make different agreements for each units or to sell the lands to the cooperative societies or to sell it to other person/institution and to make agreements for such transaction. The purchaser will have every right to make the required conditions under the agreement and to accept the amounts received in lieu of sale consideration or the construction cost, further entitled to make signatures on such agreements, to issue the receipts of the receive

amounts, but for these, the vendor will have no liability.

16. For completion of the scheme on the lands mentioned in the appendix, if agreement/(s) are prepared and if necessity arises to get it registered, the purchaser will have right to register the same and for which the responsibility to complete all the formalities under the Indian Registration Act will be of the purchaser.

17. Whatever construction is made on the said lands mentioned in the appendix by the purchaser, the ownership right and direct possessory right will be of the purchaser only and the vendor will have no right of any kind on such construction and there shall be no liability of the vendor of the construction.

18. If the development work on the said lands mentioned in the appendix is not finished and/or is not complete, during that period, if any person intending to become a member of the society or a society registered under the Gujarat Cooperative Housing Society Limited, wishes to avail a financial loan from the authorized institution, authorized lenders or from the bank, in such eventuality, if necessity is arises to put the land on mortgage, then, the purchaser will become the applicant in the mortgage document and will sign in that capacity in such mortgage document, and it will be the obligation on the purchaser to remain personally present for getting registered such mortgage document under the Indian Registration Act and if need be the purchaser will have to sign on the securities and such securities will have to be registered under the Indian Registration Act. But under such security, only the said lands will fall and no other and personal properties of the purchaser will be involved.

19. We the vendors will have to obtain the all title clearance certificate and free marketable for the lands under this agreement and in that regard, title clearance certificate from M/s. H. Desai and company, Solicitors, Advocate and Notary, Ahmedabad, is to be obtained within a period of six months at our expenses.

20. The sale consideration for the lands mentioned in the Appendix calculated on the basis of each square meter, and as decided by the government if the sale documents are required to be prepared in one or more part, then the stamp duty, registration fee, typing charges, legal fee will have to be borne by you and further the stamp duty, registration fee and other legal fees for the construction made on the land, will also be borne by you.

21. As per the conditions mentioned hereinabove, if we the vendors fail to prepare the sale documents for the lands mentioned in this agreement in favour of you, then you will have a right to file a suit for specific performance before the court of law for getting the sale deed executed and you will be entitled to claim the loss/expenditure for filling of such suit from us.

22. During the existence of this agreement, if any further relaxation is declared by the government under the Urban Land Ceiling Act, 1976, or even if the Act is no more, this agreement will remain in force and during that period, the sale documents for the sale consideration as decided under the agreement is to be prepared by us in part(s) in your name or in the name suggested by you or in the

name of Co-operative Housing Society Limited.

23. On the land mentioned in this agreement, there is no charge or mortgage and further no case is pending before any court of law regarding the land mentioned in this agreement nor any injunction is operating nor any tenancy rights are created nor the land is in acquisition or requisition. And that the land mentioned in this agreement is in direct possession and occupation of the vendors and we the vendors have every legal right • to make this agreement, therefore the present agreement is prepared in your favour.

24. With regard to the land mentioned in this agreement, we the vendors have not prepared any banakhat or development agreement for the approved residential scheme as per section 21(1) in favour of any other party."

7 Thus, it appears from the recitals in the agreement that the land in question was granted agricultural exemption vide order dated 22nd May 1979 passed by the concerned authority under the provisions of the Urban Land Ceiling Act and the understanding arrived at was that the plaintiffs would construct houses for the people hailing from the poor strata of society. It is averred in the plaint that after the repeal of the U.L.C. Act with effect from 30th March 1999, the plaintiffs, time to time, requested the defendants Nos.1 to 5 for the execution of the registered sale deed. However, the defendants Nos.1 to 5 failed to perform their part of the contract, and in collusion with the defendant No.6, executed an agreement of sale dated 13th July 1994 with respect to the same property in favour of the defendant No.6, and thereafter, obtained a fraudulent consent decree in the Regular Civil Suit No.1400 of 1994 filed by the defendant No.6 against the defendants Nos.1 to 5.

8 The original defendant No.6 preferred an application Exhibit : 37 in the Court of the Civil Judge, Senior Division, Vadodara under the provisions of Order VII Rule 11 (a)(d) of the C.P.C. and prayed for the rejection of plaint. The Civil Court adjudicated the application Exhibit :

37 filed by the defendant No.6, and ultimately, allowed the same vide order dated 10th September 2007. The Civil Court rejected the plaint on the ground that the suit was barred by the law of limitation and there was no cause of action for the plaintiffs to file the suit. The relevant findings recorded by the Civil Court, while rejecting the plaint, are as under:

"(4) It is necessary to produce the development contract accompanied with the sale at Mark 4/3 out of the documentary evidences produced by the Respondent No. 6 in connection with the application while considering the arguments of Advocates appearing for both the sides, because on 2/6/1990, the Respondent Nos. 1 to 5 had executed the said contract to the Plaintiffs, wherein the amount paid by the Plaintiffs to the Respondents towards consideration has been mentioned. But thereafter, on 12/8/1994, the said Respondents had cancelled it. The Plaintiffs submit that the contract at Mark 4/3 has not been cancelled, which is not admissible. It cannot be believed that it came to the knowledge that the contract at Mark 4/3 was cancelled upon receipt of certified copy of the said contract. Even though the Plaintiffs were

aware of the fact that the said contract, a copy of which has been produced, had been cancelled in the year 1994 and even though there was no ground for filing the present suit in the year 2003, the Plaintiffs have wrongfully filed the present suit.

The said suit shall definitely be rejected as per Order 7 Rule 11(A). Moreover, as per the Judgments of M/s J. Patel & Company V/s National Federation of Industrial Co. Op. Company AIR 1996 Page No. 253 and AIR 2003 (S.C.) Page No. 759, Salimbhai and Others V/s State of Maharashtra, cited by Advocate Shri A.P. Shah, the Plaintiff has filed the said suit after a long delay of 12 years, which requires to be rejected as per the above Judgments of the Hon'ble Supreme Court.

Further, Shri M.K. Shah, Advocate for the Plaintiffs has raised such contention that the Respondents have not filed reply of the suit, therefore, application for cancellation of the suit made as per Order 7 Rule 11 is not sustainable, but as per the Judgment of AIR 1995 (Bombay) 227, the suit of the Plaintiff is liable to be rejected.

On reading the Judgment produced on behalf of the plaintiff reported in 1995 (2) G.L.R. Page No - 1497 in the case of Patel Meghjiabhai Viththalbhai Vs. Agricultural Produce Market Committees, the High Court held that, when the suit prima facie appears to be filed beyond the time limit, the court should consider it as time barred. This judgment does not appear to be helpful to the plaintiff. Because, the plaintiff has filed the suit after 12 years of cancellation of contract and therefore, it is not sustainable. The suit is liable to be rejected.

Thereafter, on reading the judgment reported in 1979 G.L.R. Page no 182, Shakti Motor Works and Others Vs. Virjibhai Becharbhai, it appears that the cause of the suit of the plaintiff is not found maintainable after the cancellation of the development contract at Mark - 4/2 in 1994. Therefore, the said judgment is also not applicable.

Thus, the suit of the plaintiff is time barred and no cause of action is found for institution of the present suit. Therefore, as the suit of the plaintiff is liable to be rejected as per order VII Rule XI (A)(B), the final order as below is passed.

:: Order ::

The application of the respondent no - 6 under Order - 7, Rule - 11 (A) (B) of C.P.C for rejecting the suit is, therefore, allowed. An order is passed to reject the suit of the plaintiff."

9 As the plaint came to be rejected, the plaintiffs, being dissatisfied with the same, preferred the Regular Civil Appeal No.143 of 2007 in the District Court at Vadodara. The lower Appellate Court dismissed the appeal and thereby affirmed the judgment and decree passed by the Trial Court rejecting the plaint. The lower Appellate Court, while dismissing the appeal filed by the plaintiffs, observed thus:

"9 It is a settled position of law that, while exercising the jurisdiction of Order 7 Rule 11 (a) (d), the Court has to look into the averments made in the plaint. It is not in dispute that, in the agreement dated 02.06.1990 no specific period for performance of agreement is fixed or stated. It is under these circumstances, the Court has to look into the said agreement and the contention raised in the plaint with regard to the fact as to how the suit is filed within a period of limitation. On going through the agreement dated 02.06.1990, it appears that, the original land owners□defendants no. 1 to 5 and original plaintiffs/appellant had entered into a development agreement. As per the agreement, it appears that, it were the plaintiffs/appellants who were to get the agriculture exemption cancelled and apply before the competent authority under Section 21 of the ULC Act for seeking permission to put the scheme and construct the houses for poor strata of the society. It is also specifically stated in Clause□3 of the agreement that, the procedure for application under Section 21, getting necessary permission from the Urban Ceiling Authority and to get the plan sanctioned, were to be performed by the plaintiffs/appellants and thereafter the land owners/defendants no. 1 to 5 will handover the possession and thereafter the original plaintiffs will be entitle for the construction.

9.1 Clause□6 of the agreement discloses that, the limitation for executing the sale deed of the land stated in the agreement is decided in that way that, if the application under Section 21 is made before the State Authority and when the sanction is granted for approving the scheme and thereafter when the construction is completed and necessary permission are granted from the competent authority and in the said permission whatever time period is fixed, in that time period the land owners shall execute the sale deed. In Clause□10 it is specifically stated that, if the plan is approved under Section 21 to complete the scheme, the responsibility lies upon the original plaintiffs. Clause□22 of the agreement states that, during the existence of this agreement if Government declares any relaxation or if the ULC Act gets repealed then also the agreement shall remain continued and the original owners shall have to execute the sale deed as per the price accepted by both the parties in the above referred agreement.

10 The plaintiffs in the suit have not specifically pleaded as to how the suit is within a period of limitation. All that plaintiffs have stated is to the effect that, on 01.01.2002 and thereafter many times and lastly on 09.02.2003 the plaintiffs had asked the defendants to execute the sale deed and the defendants did not execute the sale deed and therefore the cause of action has arisen for specific performance of the agreement. It is avered in the plaint that, as per Clause□22 of the agreement, it were the defendants/land owners who had to perform the agreement by getting the agricultural exemption canceled from the authority which is not done by the original land owners nor the defendants have filled up any form under Section 21 of the ULC Act and thereby they have failed to perform their part and therefore the agreement was in existence. The said contention raised by the appellants/plaintiffs is devoid of merits and is misguiding contention raised in the plaint. The agreement between the

parties dated 02.06.1990 (Mark:4/3) clearly states that, the procedure under Section 21 of the ULC Act with regard to putting the scheme, getting necessary permission, getting revised scheme approved and thereafter to construct houses for poor strata of the society were to perform by the appellants/plaintiffs. The contention with regard to the agreement is continued do not find merits and is contrary to the clause which are recorded in the agreement dated 02.06.1990. In the suit, plaintiffs contend that, the defendants/land owners had to get necessary permission under Section 21 of the ULC Act, the reading of the agreement and the clause makes it clear that, it was the plaintiffs who were to perform procedure under Section 21 of the ULC Act. It is a matter of record that, nothing is stated in the plaint or any material has been placed by the plaintiffs with regard to any steps taken by them during the period from date of agreement dated 02.06.1990 till filing of the suit in year 2003. This Court also finds that, nothing is stated in the plaint with regard to limitation except twisting the facts and by narrating illusive facts which are also not supported by any prima facie evidence which could satisfy the Court that, the agreement was continued and was in existence at the time of filing of the suit and the suit was well within the period of limitation.

10.1 The next contention which is raised by the appellant/plaintiffs is to the effect that, as per the Clause 22 even if the relaxation is made by the State Authority or if the ULC Act get repealed during the existence of the agreement then also the original land owners/defendants will have to execute the sale deed at the price agreed in the agreement and therefore considering the date of repealed of ULC Act I.e. 30.03.1999, the suit filed by the plaintiffs was within the limitation is also devoid of any merits. For the sake of arguments even if the said date of repeal of ULC Act I.e. 30.03.1999 is considered for calculating the period of limitation as argued by the plaintiffs, then also the suit will be barred by law as the suit is not filed within the limitation of 3 years, from the date of repeal.

10.2 The next contention raised by the learned Advocate for the appellant is to the effect that, the learned Trial Court committed error in recording the findings to the effect that, no cause of action arosed or existed at the time of filing of the suit. He has vehemently argued that, while deciding the impugned application (Exh:37) the learned Trial Court has taken into consideration the written statement filed by the defendants which is not permissible in the eye of law and it is only the averment in the plaint which are to be looked into by the Court at the time of deciding the application under Order 7, Rule 11 (a) (d) of the Civil Procedure Code. The learned Advocate for the appellant has drawn the attention of this Court to the finding recorded in Para:4 of the impugned order and has submitted that, the Trial Court has considered the arguments of the defendants for coming to the conclusion that, when the agreement was cancelled in the year 1994, there was no existence of the said agreement at the time of filing of the suit. This Court finds that, the Trial Court committed error to that extent in considering the written statement of the defendant and concluded that, at the time of filing of the suit no cause survived. However, at the same time, this Court being appellate Court can certainly concur with the final conclusion with regard to no cause of action on different grounds, if this Court finds that, there was no cause of action to file the suit. This Court has considered the development agreement (Mark:4/3) in its entirety. As per the agreement, it is clear that, the sale deed was to be executed after getting necessary permission under Section 21 of the

ULC Act and the said procedure under Section 21 of the Act were to be performed by the appellants/plaintiffs. It is a matter of record that, nothing is stated by the plaintiffs in the plaint with regard to any procedure even initiated by them in pursuance to the agreement. Nothing is stated in the plaint with regard to any application under Section 21 or any procedure with regard to putting up scheme for poor strata of society or seeking permission from the competent authority. In this set of circumstances, taking into consideration Clause 6 of the said development agreement wherein it is specifically stated that, after getting permission from the competent authority the original land owners shall execute the sale deed as per the limitation stated in the said permission granted by the competent authority. In the present case, no such permission is granted, much less to say no permission is even sought by the plaintiffs and therefore no cause of action can be said to have been arisen, and therefore this Court finds that, no cause of action had arisen at the time of filing of the suit."

10 Being dissatisfied with the judgment and order passed by the lower Appellate Court, the plaintiffs are here before this Court with this Second Appeal under Section 100 of the C.P.C.

11 The following questions have been formulated as the substantial questions of law in the memorandum of the Second Appeal:

"(A) Whether the Id. Appellate Court as well as the Id. Trial Court has committed a substantial error of law in failing to appreciate that time was not essence of contract considering clause - 22 of the agreement entered into between the parties on 02.06.1990;

(B) Whether the Id. Appellate Court as well as the Id. Trial Court has committed a substantial error of law in appreciating that as per Article 54 of the Limitation Act, the limitation starts from the date of refusal as in the present case appellants herein specifically averred in the plaint that respondent nos.1 5 herein refused to perform their part of contract lastly on 09.02.2003;

(C) Whether the Id. Appellate Court as well as the Id. Trial Court has committed a substantial error of law in going beyond the pleadings of the plaint and documents produced along with plaint and further considering the documents produced by the respondent no.6 below Exh.38, while deciding application below. 37 filed under the provisions of Order 7 Rule 11 of the Code of Civil Procedure?

(D) Whether the Id. Appellate Court as well as the Id. Trial Court has committed a substantial error of law in concluding that the suit filed by the appellants herein is barred. By law of limitation and without any cause of action, since such a conclusion was based upon an error of record and misappreciation and nonappreciation of the evidence on record?

(E) Whether the Id. Appellate Court has committed a substantial error in failing to frame proper points for determination as required by Order 41 Rule 31 of the Code of

Civil Procedure, 1908?"

□SUBMISSIONS ON BEHALF OF THE PLAINTIFFS:

12 Mr. Majmudar, the learned counsel appearing for the plaintiffs vehemently submitted that both the Courts below committed a serious error in taking the view that the suit filed by the plaintiffs was barred by limitation and also failed to disclose a genuine cause of action. Mr. Majmudar submitted that the law as regards the rejection of plaint is well settled. He would submit that the plaint can be rejected on the ground of limitation as well as the cause of action by reading only the contents of the plaint. He would submit that the defence of the defendants can never be taken into consideration for the purpose of rejecting the plaint. He would submit that the original defendants Nos.1 to 5 have played fraud with the plaintiffs by executing an agreement of sale in favour of the defendant No.6 dated 13th July 1994. According to Mr. Majmudar, this fact came to the notice of the plaintiffs just before the filing of the suit for the specific performance of the contract. The defendant No.6 is a 'builder'. Mr. Majmudar further submitted that fraudulently, a Regular Civil Suit No.1400 of 1994 was filed by the defendant No.6, in which, the defendants Nos.1 to 5 herein were impleaded as the defendants and a decree of specific performance was obtained from the Civil Court. He further submitted that the plea of limitation is a mixed question of law and facts. He also submitted that no time was fixed for the purpose of the agreement of sale, and in such circumstances, it is the second part of Article 54 of the Limitation Act, 1963 that would apply in the present case. Mr. Majmudar submitted that the plaint do disclose a cause of action. He would submit that the Courts below committed a serious error in taking the view that the suit was time barred. In the last, Mr. Majmudar submitted that the prayer in the suit is not just one for the relief of specific performance of contract, but there is also a prayer to quash and set aside the fraudulent decree obtained by the defendants in collusion with each other in the Regular Civil Suit No.1400 of 1994.

13 In such circumstances referred to above, Mr. Majmudar prayed that there being merit in this Second Appeal, the same be allowed and the impugned orders be quashed and set aside.

14 Mr. Majmudar, in support of his submissions, has placed reliance on the following decisions:

[1] Exphar S.A. And another vs. Eupharma Laboratories Ltd and another reported in (2004) 3 SCC 688 (para 9) .

[2] Panchnan Dhara and otehrs vs. Monmatha Nath Maiti (dead) through Legal heirs and another reported in (2006) 5 SCC 340 (paras 20, 21, 22) [3] Ramesh B. Desai and others vs. Bipin Vadilal Mehta and others reported in (2006) 5 SCC 638 (para 14).

[4] Jageshwari Devi vs. Shatrughan Ram reported in (2007) 15 SCC 52. (para 3) [5] Munira Kasambhai Chhipaka vs. Abdul Raheman Ismail Yusuf Bhamji and others [Second Appeal No.85 of 2011 decided by this Court] (para 11 to 19).

[6] Rathnavati and another vs. Kavita Ganashamdas and others reported in (2015) 5 SCC 223 (paras 42, 43).

[7] P.V. Guru Raj Reddy and another vs. P. Neeradha Reddy and others reported in (2015) 8 SCC 331 (para 6).

[8] Amarben wd/o Ramjibhai Desai vs. Udaji Kanaji and others [First Appeal No.1845 of 2017 decided by this Court] (paras 11, 11, 12).

[9] Chhotanben and another vs. Kiritbhai Jaikrushnabhai Thakkar and others reported in 2018 SCC Online SC 353 (paras 11, 12, 13, 14, 16, 17).

15 On the other hand, this Second Appeal has been vehemently opposed by Mr. Anshin Desai, the learned senior counsel appearing with Mr. Jinesh Kapadia, the learned counsel for the defendants. Mr. Desai submitted that no error, not to speak of any error of law could be said to have been committed by the Courts below in rejecting the plaint on the ground of limitation and non-disclosure of a genuine cause of action to institute the suit.

16 Mr. Desai submitted that the specific performance has been prayed for of an agreement of the year 1990. The suit came to be instituted in the year 2003 i.e. after a period of thirteen years. Mr. Desai submitted that on 2nd July 1994, the defendant No.6 had published a 'public notice' intending to purchase the suit property pursuant to the registered agreement of sale dated 13th July 1994 executed by the defendants Nos. 1 to 5. It is submitted that as the agreement of sale dated 13th July 1994 is a registered document, the plaintiffs are deemed to have noticed about the same, and in such circumstances, should have filed the suit accordingly within the period of limitation. He further submitted that on 12th August 1994, the agreement to sale dated 2nd June 1990 came to be cancelled by the original land owners i.e. the defendants Nos.1 to 5 and the original copy of the agreement dated 2nd June 1990 was handed over to the defendant No.6. In such circumstances, the plaintiffs had no cause of action to institute the suit in the year 2003. Mr. Desai submitted that no steps were taken by the plaintiffs to perform their part of the obligations in accordance with the terms of the agreement. He submitted that even after the repeal of the U.L.C. Act, no steps were taken by the plaintiffs to get the sale deed executed in their favour.

17 Mr. Desai submitted that the Appellate Court has also taken into consideration the agreement in its entirety and has come to the conclusion that the agreement had outlived its life and was no longer in existence. He submitted that the plaintiffs have failed to set out a real cause of action in the plaint. According to Mr. Desai, something purely illusory has been stated in the plaint with a view to get out of the rigour of the provisions of Order VII Rule 11 of the C.P.C. Mr. Desai submitted that the clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint.

18 In such circumstances referred to above, Mr. Desai prayed that there being no merit in this Second Appeal, the same deserves to be dismissed.

19 Mr. Desai, in support of his submissions, has placed reliance on the following decisions:

[1] T. Arivandandam vs. T.V. Satyapal and others [(1977) 4 SCC 467] [2] Raj Narain Sarin (dead) through L.Rs. and others vs. Laxmi Devi and others [(2002) 10 SCC 501].

[3] Hardesh Ores (P) Ltd vs. Hede and company [(2007) 5 SCC 614].

[4] Fatehji and company and another vs. L.M. Nagpal and others [(2015) 8 SCC 390].

[5] ITC Limited vs. Debts Recovery Appellate Tribunal and others [(1998) 2 SCC 70].

[6] Smt. Dilboo (dead) by Lrs. others vs. Smt. Dhanraji (dead) and others [AIR 2000 SC 3146].

20 Having heard the learned counsel appearing for the parties and having gone through the materials on record, the only question that falls for my consideration is whether the two Courts below committed an error in rejecting the plaint on the ground of limitation and cause of action.

□ POSITION OF LAW:

21 It is a settled rule of law that the plea of rejection of plaint is

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

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

"It is well settled that a cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support the right to a judgment in his

favour. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the tenant. Negatively it does not comprise the evidence necessary to prove the bundle of facts and equally has no relation whatsoever to the defence, which may be set up by the defendant nor does it depend on the character of the relief prayed for by the plaintiff."

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

24 The above distinction was clearly stated by a Full Bench of Allahabad High Court in the case of Jagannath Prasad vs. Smt. Chandrawati [AIR 1970 All 309 (FB)].

25 In the case of State of Orissa vs. Klockner and Company, AIR 1996 SC 2140, the Supreme Court while approving the following view taken by the learned single Judge of the High Court dismissed the Special Leave Petition.

"From the discussions in the order it appears that the learned trial Judge has not maintained the distinction between the plea that there was no cause of action for the suit and the plea that the plaint does not disclose a cause of action. No specific reason or ground is stated in the order in support of the finding that the plaint is to be rejected under Order 7, Rule 11(a). From the averments in the plaint, it is clear that the plaintiff has pleaded a cause of action for filing the suit seeking the reliefs stated in it. That is not to say that the plaintiff has cause of action to file the suit for the reliefs sought that question is to be determined on the basis of materials (other than the plaint) which may be produced by the parties at appropriate stage in the suit. For the limited purpose of determining the question whether the suit is to be wiped out under Order 7, Rule 11(1) or not the averments in the plaint are only to be looked into. The position noted above is also clear from the petition filed by defendant No. 1 under Order 7, Rule 11 in which the thrust of the case pleaded is that on the stipulations in the agreement of 20□4□1982 the plaintiff is not entitled to file a suit seeking any of the reliefs stated in the plaint."

26 The Supreme Court, in T. Arivandandam (supra), has observed something very important and which should not be lost sight of while deciding a matter arising under the provisions of Order VII Rule 11 and 10 of the C.P.C. I may quote the relevant observations as under:

"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful □not formal □reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O. VII R. 11, C. P. C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O. X. C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch. XI) and must be triggered against them. In this case, the learned Judge to his cost realised what George Bernard Shaw remarked on the assassination of Mahatma Gandhi.

"It is dangerous to be too good."

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

27 Thus, if a meaningful - not formal reading of the complaint, it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the Trial Court should exercise its power under Order VII Rule 11, C.P.C. taking care to see that the grounds mentioned therein is fulfilled. If a clever drafting like one in the case on hand has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order 10 of the C.P.C. In my view, the aforesaid observations are squarely applicable to the conduct of the plaintiff herein.

28 The Delhi High Court in M/s. Sakthi Sugars Limited vs. Union of India, AIR 1981 Delhi 212 relying upon the aforesaid observations of the Supreme Court held thus :□(Para 12) "12. But the law in this respect is laid down by the Supreme Court in T. Arivandandam v. T.V. Satyapal, AIR 1977 SC 2421. It is laid down that if on a meaningful and not formal reading of a complaint it is manifest that the complaint is vexatious or meritless in the sense of not disclosing a clear right to sue trial Court should exercise its power under Order VII, Rule 11. Code of Civil Procedure, and should reject the complaint. So it is meaningful reading of the complaint which is required. It is to be seen if actually according to law. On the allegations contained in the complaint, defendant No.2 was agent of the Union of India or not . Mere formal allegation of the plaintiff that defendant No.2 was agent of the Union of India is not to be accepted. In view of the Supreme Court authority, it is the duty of the Court to probe whether allegations made in the complaint make defendant No.2 as agent and the Union of India as the principal according to law. I have already held that according to law defendant No.2 was not agent of the Union of India and that being so complaint does not disclose any cause of action against the latter."

29 The Supreme Court in *Azhar Hussein vs. Rajiv Gandhi*, 1986 (supp) SCC 315 : (AIR 1986 SC 1253), though while dealing with the question relating to rejection of an election petition with reference to Order VII, Rule 11, CPC held that the purpose of conferment of power of rejection of plaint is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and the concerned litigants are relieved of the psychological burden of the litigation. The Apex Court observed that since the Court has the power to act at the threshold, the power must be exercised at the threshold itself in case the Court is satisfied that it is a fit case for the exercise of such power.

30 The Supreme Court in *ITC Limited (supra)*, while referring to its earlier judgment in *T. Arinandandam (supra)* observed, "the question is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7, Rule 11, CPC. Clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint."

31 In *Mohan Rawale vs. Damodar Tatyaba*, (1994) 2 SCC 392 :

(1994 AIR SCW 2028), the Supreme Court held that if some cause of action is disclosed, a pleading cannot be struck out merely because the case is weak and not likely to succeed. The Supreme Court drew distinction between the "material facts" and "full particulars" with reference to the provisions of Section 83 (1) (a) and (b) of the Representation of the People Act, 1951 and further held that the distinction between "material facts" and "full particulars" is not sharp, but is one of degree. The material facts are those which party relies upon and which, if he does not prove, he fails at that time.

32 In *William vs. Wiloox* (1838 (8) Ad and El 331), Lord Denman, C.J. said thus :

"It is an elementary rule in pleading that, when a state of facts is relied it is enough to allege it simply, without setting out the subordinate facts which are the means of providing it, or the evidence sustaining the allegations."

33 The learned single Judge of Rajasthan High Court in *Ranjeet Mal vs. Poonam Chand*, AIR 1983 Rajasthan 1, held, "what is to be determined by the Court at the stage of deciding as to whether the plaint discloses any cause of action or not, is to find out from the allegations of the plaint itself as to whether a bogus, wholly vexatious or frivolous litigation was sought to be initiated under the garb of ingenious drafting of the plaint and to guard against the mischief of a litigant misusing the process of the Court, by entering into a false litigation, merely for the purposes of harassing the other party and obtaining undue advantage of the process of the Court by adopting tactics and in starting sham and shady actions."

34 While dealing with provisions of order 33, Rule 5 clause (a), the Supreme Court in *Vijay Pratap Singh vs. Dukh Haran Nath Singh* [AIR 1962 SC 941], held in paragraph 9 of the report thus :

"(9).....By the express terms of R.5 Cl. (d), the Court is concerned to ascertain whether the allegations made in the petition show a cause of action. The Court has not to see whether the claim made by the petitioner is likely to succeed; it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the Court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defences which the defendant may raise upon the merits; nor is the Court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the Court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him. By the Statute, the jurisdiction of the Court is restricted to ascertaining whether on the allegations a cause of action is shown: the jurisdiction does not extend to trial of issues which must fairly be left for decision at the hearing of the suit."

35 Thus, the cause of action has a well defined legal connotation, though not defined, which means bundle of essential facts, if traversed, has to be proved by the plaintiff to entitle him to the relief. It reflects to the media upon which the plaintiff asks the Court to arrive at a conclusion in his favour. It does not comprise every piece of evidence which is necessary to prove each fact, but every fact which is necessary to be proved to entitle the plaintiff to the decree. The consistent legal position which is also mandatorily enacted by Order VII, Rule 11 (a) CPC is, that the Court must reject the plaint which does not disclose cause of action. Obviously there is a difference between the non-disclosure of cause of action in the plaint and the absence of cause of action for the suit. The ground for rejection of plaint is failure to disclose a cause of action and not that there is no cause of action for the suit. It is not competent for the Court to go into the correctness or otherwise of the allegations constituting the cause of action. In other words, the correctness or otherwise of the allegations constituting the cause of action is beyond the purview of Order VII, Rule 11(a), CPC. However, to find out whether the plaint discloses cause of action or not, the Court has to consider the allegations made in the plaint intelligently and meaningfully and need not be influenced by ingenious and clever drafting creating illusion of cause of action. The ritual of repeating a word or creation of an illusion in the plaint can certainly be unravelled and exposed by the Court while dealing with an application under Order VII, Rule 11(a). The Court must scan and scrutinise the allegations made in the plaint to find out whether forensic cleverness while drafting the plaint has been employed to get out of the clutches of Order VII, rule 11, C.P.C. and if on a careful scan and scrutiny of the pleading the conclusion of the Court is in affirmative, the consequence of rejection of plaint must follow. The Court has to see while exercising its power for rejection of plaint, which it must whether, the allegations in the plaint as they stand, fail to prove the cause of action. While considering the question whether the plaint discloses any cause of action or not, the Court has to find out from the allegations made in the plaint itself and not beyond it as to whether a bogus, wholly vexatious or frivolous litigation has been initiated by the plaintiff or that the claim made by the plaintiff is a legally recognisable claim. What is required to be disclosed by the plaintiff is a clear right to sue and

failure to do so must necessarily entail in rejection of the plaint.

36 The scope of Order VII, Rule 7, C.P.C. has been elaborately considered in *Sopan Sukhdeo Sable vs. Asstt. Charity Commissioner*, (2004) 3 SCC 137 : (AIR 2004 SC 1801), wherein the Supreme Court held as under:

"10. In *Saleem Bhai v. State of Maharashtra* ((2003) 1 SCC 557) :

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

37 The above *Sopan Sukhdeo Sable* case, (2004) 3 SCC 137 : (AIR 2004 SC 1801) has been referred to in the subsequent judgment *Popat and Kotecha Property vs. State Bank of India Staff Assn.*, (2005) 7 SCC 510. As held by the Supreme Court in *Popat and Kotecha Property vs. State Bank of India Staff Assn.*, (2005) 7 SCC 510, the real object of Order VII, Rule 11 of the Code is to keep out of courts irresponsible suits. Therefore, Order 10 of the Code is a tool in the hands of the courts by resorting to which and by searching examination of the party in case the court is prima facie of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7, Rule 11 of the Code can be exercised.

38 In *Balasaria Construction (P) Ltd. v. Hanuman Seva Trust*, (2006) 5 SCC 658, the Supreme Court considered the question whether words "... barred by law..." in Rule 11(d) would also include bar by the law of limitation. Referring to various judgments and conflict of views, the Supreme Court held as under:

"4. This case was argued at length on 30th 8th 2005. Counsel appearing for the appellant had relied upon a judgment of this Court in *N.V. Srinivasa Murthy v. Mariyamma* (2005) 5 SCC 548 : (AIR 2005 SC 2897) for the proposition that a plaint could be rejected if the suit is ex facie barred by limitation. As against this, counsel for the respondents relied upon a later judgment of this Court in *Popat and Kotecha Property v. SBI Staff Assn.* (2005) 7 SCC 510. in respect of the proposition that Order 7, Rule 11(d) was not applicable in a case where a question has to be decided on the basis of fact that the suit was barred by limitation. The point as to whether the words barred by law occurring in Order 7 Rule 11(d) CPC would include the suit being barred by limitation was not specifically dealt with in either of these two judgments, cited above. But this point has been specifically dealt with by the different High Courts in *Mohan Lal Sukhadia University v. Priya Soloman* AIR 1999 Raj 102, *Khaja Quthubullah v. Govt. of A.P.* AIR 1995 AP 43, *Vedapalli Suryanarayana v. Poosarla*

Venkata Sanker Suryanarayana (1980) 1 An LT 488 : (1980) 1 APLJ 173 (HC), Arjan Singh v. Union of India AIR 1987 Del 165, wherein it has been held that the plaint under Order 7 Rule 11(d) cannot be rejected on the ground that it is barred by limitation. According to these judgments the suit has to be barred by a provision of law to come within the meaning of Order 7 Rule 11 CPC. A contrary view has been taken in Jugolinija Rajia Jugoslavija v. Fab Leathers Ltd. AIR 1985 Cal 193, National Insurance Co. Ltd. v. Navrom Constantza AIR 1988 Cal 155, J. Patel and Co. v. National Federation of Industrial Co.op.Ltd. AIR 1996 Cal 25 and State Bank of India Staff Assn. v. Popat and Kotecha Property (2001) 2 Cal LT

34. The last judgment was the subject-matter of challenge in Popat and Kotecha Property v. SBI Staff Assn.(2005) 7 SCC 510. This Court set aside the judgment and held in para 25 as under: (SCC P.517) "25. When the averments in the plaint are considered in the background of the principles set out in Sopan Sukhdeo case (2004) 3 SCC 137 : (AIR 2004 SC 1801) the inevitable conclusion is that the Division Bench was not right in holding that Order 7, Rule 11, CPC was applicable to the facts of the case.

Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years needs evidence to be adduced. It is not a case where the suit from statement in the plaint can be said to be barred by law. The statement in the plaint without addition or subtraction must show that it is barred by any law to attract application of Order 7 Rule 11. This is not so in the present case."

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

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

39 However, it appears from what has been observed in para 6 by the Supreme Court in Balasaria Construction (supra) that as the question referred to the Larger Bench became academic, the case was, therefore, sent back to the Bench for disposal on merits based on the facts of the case. Para 6 in Balasaria Construction (supra) reads as under:

"..... It is not the case of either side that as an absolute proposition an application under Order 7 Rule 11 (d) can never be based on the law of limitation. Both sides state

that the impugned judgment is based on the facts of this particular case and the question whether or not an application under Order 7 Rule 11(d) could be based on law of limitation was not raised and has not been dealt with. Both sides further state that the decision in this case will depend upon the facts of this case."

40 Order VII Rule 11 of the C.P.C. casts a duty upon the Court to reject the plaint if the circumstances indicates therein are found to be existing. It cannot be the law that this power of the Court would be curtailed in any manner even if the Court proceeds with the suit to some length, without application of mind, on this point. The rule itself does not indicate anywhere that the power is to be exercised upon an application or, if such an application is filed, it should be at a particular stage. I may only add that an action under Order VII Rule 11 of the C.P.C. does not await an application by any party. It is the duty of the Court to reject the plaint if reasons, therefore, are found to be existing from a reading of the plaint itself and other documents relied upon by the plaintiff and annexed with the plaint.

41 I may also refer to and rely upon a decision of the Bombay High Court in the case of SNP Shipping Services Pvt Ltd and others vs. World Tanker Carrier Corporation and another [AIR 2000 Bombay 34]. His Lordship S.S. Nijjar, J. (as His Lordship then was) has observed as under:

"Order VI. Rule 16. Striking out pleadings : ☐The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading ☐

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b)

(c) which is otherwise an abuse of the process of the Court."

"Order VII. Rule 11 Rejection of plaint : ☐The plaint shall be rejected in the following cases : ☐

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

(b)

(c)

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

The aforesaid provisions have been subject ☐matter of discussion by the Indian Courts in a number of cases. Analogous provisions have also been examined by Courts in England. In India under Order 7, Rule 11 the plaint can be rejected where it does not disclose a cause of action or where the suit appears from the statement made in the plaint to be barred by any law. For the purpose of deciding that the plaint "does not disclose a cause of action", the Courts generally look only at the plaint.

However, there is a rider to this rule, that when the plaint is based on a document, the same can also be looked into. This proposition has been recognised by the Rajasthan High Court in the case of *Bhagwan Das v. Goswami Brijesh Kumarji*, (AIR 1983 Rajasthan 3). In paragraph 7 of the aforesaid judgment, it is observed as follows : "7. Learned counsel for the opposite party may be right in urging that if the plaint is based on a document, then such a document may be considered as forming part of the plaint itself and the document can also be looked into, while considering the averments of the plaint, for the purpose of deciding the question that the plaint discloses a cause of action or not. But it has to be remembered that the averments made in the plaint as well as the contents of the document which may constitute part of the plaint, can be looked into on the face value thereof and the question relating to the validity or invalidity of the document cannot be considered at the stage of deciding an application under O. 7, R. 11, CPC."

Similar proportion is laid down in the case of *Wenlock v. Moloney*, (1965) 2 All ER 871. In this case the observations of Lord Herschell in *Lawrance v. Lord Norreys* (1886-90) All ER rep. at p. 863) have been reproduced which are as under :

"It cannot be doubted that the Court has an inherent jurisdiction to dismiss an action which is an abuse of the process of the Court. It is a jurisdiction which ought to be very sparingly exercised, and only in very exceptional cases. I do not think its exercise would be justified merely because the story told in the pleadings was highly improbable, and one which it was difficult to believe could be proved."

There is a slight difference between the law in England and the law in India with regard to the rejection of the plaint at the initial stage. In India, plaint can only be rejected, inter alia, if it discloses no cause of action. On the other hand, in England the plaint can be rejected if it discloses no "reasonable cause of action". The provision is contained in RSC O. 18 R. 19, which is as under :

"(1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the indorsement of any writ in the action, or anything in any pleading or in the indorsement, on the ground that □

(a) it discloses no reasonable cause of action or defence, as the case may be; or

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

(d) it is otherwise an abuse of the process of the Court;

and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.

(2) No evidence shall be admissible on an application under paragraph (1)(a)....."

A perusal of the aforesaid provision would show that, literally speaking, the power is a little wider in England. But judicial interpretation has virtually equated the term "no reasonable cause of action" occurring in RSC Order 18, R. 19 to the phrase "no cause of action" occurring in Order VII, Rule 11(a) of the CPC. The Indian as well as the English Courts are very reluctant to reject the plaint at the threshold. Analysing the aforesaid provision in the case of *Drummond Jackson v. British Medical Association*, (1970) 1 All ER 1094 Lord Pearson observes :

"Over a long period of years it has been firmly established by many authorities that the power to strike out a statement of claim as disclosing no reasonable cause of action is a summary power which should be exercised only in plain and obvious cases....."

Similar views expressed by other Judges are also noticed, as follows :

In *Nagle v. Feilden* (1966) 1 All ER 689 at page 695) *Danckwerts Ltd.* observes :

"The summary remedy which has been applied to this action is one which is only to be applied in plain and obvious cases, when the action is one which cannot succeed or is in some way an abuse of the process of the Court."

Salmon LJ at page 697 observes :

"It is well settled that a statement of claim should not be struck out and the plaintiff driven from the judgment seat unless the case is unarguable".

Thus the Rule appears to be that the plaint can be rejected in plain and obvious cases when the action is one which cannot succeed or is in some way an abuse of the process of the Court. The plaint should not be struck out unless the case is unarguable. In the same judgment Sir Gordon Willmer at page 1105 observed as follows :□"The question whether a point is plain and obvious does not depend on the length of time it takes to argue. Rather the question is whether when the point has been argued, it has become plain and obvious that there can be but one result."

42 I may also refer to and rely upon one another Division Bench decision of this Court in the case of *Maharaj Shri Manvendrasinhji R. Jadeja vs. Rajmata Vijaykunverba Wd/o Maharaja Mahendrasinhji*, reported at 1999 (1) GLR 261 at paras 14, 15 and 16, which reads as under:

"14. Having noticed brief summary of the plaint and prayers earlier, it would be relevant to refer to the provisions of Order 7, Rule 11(a) of the CPC and the scope thereof. Order 7, Rule 11 (a) of the CPC provides that the plaint shall be rejected in case where it does not disclose a cause of action. Order 7, Rule 11 (a) of the CPC is mandatory and if it is found that the plaint does not disclose a cause of action, the Court has no option but to reject the plaint. To find out whether a plaint discloses a cause of action or not, the Court has to look only to the averments made in the plaint. When a plaint is based on a document filed along with the plaint, it can, however, be

considered to ascertain if plaint discloses any cause of action. Cause of action means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. The words "cause of action" mean the whole bundle of material facts which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit. What is to be done by the Court at the stage of deciding as to whether the plaint discloses any cause of action or not is to find out from the allegation of the plaint itself as to whether a bogus, wholly vexatious or frivolous litigation is sought to be initiated under the garb of ingenuous drafting of the plaint or not because it is the duty of the Court to guard against the mischief of a litigant misusing the process of court by entering into a false litigation merely for the purpose of harassing the other party and to nip in the bud the litigation which is sham and shabby in character. In order to find out whether the plaint discloses a cause of action or not, the averments made in the plaint and documents annexed thereto should be scrutinised meaningfully and if on such scrutiny it is found that the plaint does not disclose cause of action, it has got to be rejected in view of the provisions of Order 7, Rule 11(a) of the CPC. When it is said that the Court should take into consideration the averments made in the plaint for the purpose of deciding the question whether the averments made in the plaint disclose cause of action or not, it does not mean that the Court is precluded from applying the statutory provisions or case-law to the averments made in the plaint. If an assertion made in the plaint is contrary to statutory law or case-law, it cannot be considered as disclosing cause of action. In ITC Ltd., (AIR 1998 SC 634) (supra), bank had filed suit against the appellant and others and claimed relief for a sum of Rs. 52,59,639/66 ps. After the suit was filed, it was transferred to the Debt Recovery Tribunal. Before the Tribunal, an application was filed by the appellant under Order 7, Rule 11 of the CPC for rejecting the plaint, so far as appellant was concerned, on the ground that no valid cause of action had been shown against the appellant. That application was rejected by the Tribunal. Against the said order, an appeal was filed before the Debts Recovery Appellate Tribunal. The appeal was dismissed in limine. Thereupon a writ petition was filed by the appellant, which was dismissed holding that the question should be decided at the trial. Against that judgment, the appellant had filed an appeal before the Division Bench of the High Court, which was also dismissed. The matter was thereafter carried before the Supreme Court. After taking into consideration the decided cases on the point whether there was fraudulent movement of goods under which letter of credit was obtained which in turn entitled the bank to file the suit, the Supreme Court held that that point was already decided by decision of the Supreme Court in U.P. Co-operative Federation's case and, therefore, the allegation of non-supply of goods by the sellers to the buyers did not by itself amount, in law, to a plea of "fraud" as understood in this branch of the law and hence by merely characterising alleged non-movement of goods as "fraud", the bank was not entitled to claim that there was a cause of action based on fraud or misrepresentation. While allowing the appeal, what is emphasised by the Supreme Court is that the question whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order 7, R. 11 of the CPC has to be decided with

reference to averments made in the plaint and clever drafting creating illusions of cause of action are not permitted in law and a clear right to sue should be shown in the plaint. In view of this decision of the Supreme Court, it is evident that if something purely illusory has been stated with a view to get out of Order 7, Rule 11 of the CPC by resorting to clever drafting, it cannot be said that the plaint discloses a cause of action and if a clear right to sue is not shown in the plaint, it is liable to be rejected.

15. In the light of scope of Order 7, Rule 11 (a) of the CPC, we would now proceed to examine different submissions made on behalf of the appellant.

The submission that the plaint was presented on December 26, 1978, whereas issues for determination were framed by the learned Judge on July 21, 1981 and therefore the application filed by the respondent under Order 7, Rule 11(a) of the CPC on June 26, 1996 should not have been entertained at such a long distance of time, has no substance. As noted earlier, the provisions of Order 7, Rule 11(a) of the Code of Civil Procedure are mandatory in nature. It is the duty of the Court to reject the plaint which does not disclose cause of action. If a plaint can be rejected at threshold of the proceedings, we do not see any reason as to why it cannot be rejected at any subsequent stage of the proceedings. Even if after framing of issues, the basic defect in the plaint persists, namely, absence of cause of action, it is always open to the contesting defendants to insist that the plaint be rejected under Order 7, R. 11 of the CPC and the Court would be acting within its jurisdiction in considering such a plea. Order 7, Rule 11 of the CPC does not place any restriction or limitation on the exercise of the court's power. It does not either expressly or by necessary implication provide that power under Order 7, Rule 11 of the CPC should be exercised at a particular stage only. In the view we are taking, we are fortified by the judgment of the Supreme Court rendered in the case of ITC Ltd., (AIR 1998 SC 634) (supra). Therein, the suit was filed by the Bank in the year 1985. In 1995, it was transferred to Debt Recovery Tribunal and thereafter an application was filed by the appellant under the provisions of Order 7, Rule 11 of the CPC for rejection of the plaint as not disclosing any cause of action against the appellant. The application filed by the appellant was rejected not only by the Tribunal and Appellate Tribunal, but also by the High Court. When the matter reached before the Supreme Court in the year 1997, it was contended that the power under Order 7, Rule 11 of the CPC should not be exercised after such a long lapse of time, more particularly when issues were framed. That plea has been negatived by the Supreme Court in following terms: □
"13. We may state that in the context of Order 7, Rule 11, CPC, a contention that once issues have been framed, the matter has necessarily to go to trial has been clearly rejected by this Court in *Azhar Hussain v. Rajiv Gandhi*, (AIR 1986 SC 1253) (SCC p.324) as follows: (SCC para 12): (Para 12 of AIR) "In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial... is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court..."

The abovesaid judgment which related to an election petition is clearly applicable to suits also and was followed in Samar Singh v. Kedar Nath, (AIR 1987 SC 1926). We, therefore, hold that the fact that issues have been framed in the suit cannot come in the way of consideration of this application filed by the appellant under Order 7, Rule 11, CPC."

16. In view of settled legal position, plea that powers under Order 7, Rule 11 (a) of the CPC should not have been exercised after framing of issue cannot be upheld and is hereby rejected."

43 On the cause of action, I may refer to the decision of the Supreme Court in the case of Church of Christ Charitable Trust and Educational Charitable Society represented by its Chairman vs. Ponniamman Educational Trust represented by its Chairperson / Managing Trustee, reported in (2012) 8 SCC 706, wherein the Supreme Court has observed in paras 12 to 18 as under:

"12. It is also useful to refer the judgment in T. Arivandandam v. T.V. Satyapal and Anr., (1977) 4 SCC 467 : (AIR 1977 SC 2421), wherein while considering the very same provision, i.e. Order VII, Rule 11 and the duty of the trial Court in considering such application, this Court has reminded the trial Judges with the following observation:

"5. ...The learned Munsif must remember that if on a meaningful □for formal □ reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII, Rule 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And if clever drafting has created the illusion of a cause of action nip it in the bud at the first hearing by examining the party searchingly under Order X, C.P.C. An activist Judge is the answer to irresponsible law suits. The trial Courts would insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Cr.XI) and must be triggered against them"

It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII, Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code.

Cause of action:

13. While scrutinizing the plaint averments, it is the bounden duty of the trial Court to ascertain the materials for cause of action. The cause of action is a bundle of facts which taken with the law applicable to them gives the plaintiff the right to relief against the defendant. Every fact which is necessary for the plaintiff to prove to enable him to get a decree should be set out in clear terms. It is worthwhile to find out the meaning of the words "cause of action". A cause of action must include some

act done by the defendant since in the absence of such an act no cause of action can possibly accrue.

14. In *A.B.C. Laminart Pvt. Ltd. and Anr. v. A.P. Agencies, Salem* (1989) 2 SCC 163 : (AIR 1989 SC 1239), this Court explained the meaning of "cause of action" as follows:

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

15. It is useful to refer the judgment in *Bloom Dekor Ltd. v. Subhash Himatlal Desai and Ors.* (1994) 6 SCC 322, wherein a three Judge Bench of this Court held as under:

"28. By "cause of action" it is meant every fact, which, if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court, (*Cooke v. Gill*, 1873 LR 8 CP

107). In other words, a bundle of facts which it is necessary for the plaintiff to prove in order to succeed in the suit."

It is mandatory that in order to get relief, the plaintiff has to aver all material facts. In other words, it is necessary for the plaintiff to aver and prove in order to succeed in the suit.

Forms 47 and 48 of Appendix A of the Code

16. Mr. K. Parasaran, learned senior counsel by taking us through Form Nos. 47 and 48 of Appendix A of the Code which relate to suit for specific performance submitted that inasmuch as those forms are statutory in nature with regard to the claim filed for the relief for specific performance, the Court has to be satisfied that the plaint discloses a cause of action. In view of Order VII, Rule 11(a) and 11(d), the Court has to satisfy that the plaint discloses a cause of action and does not appear to be barred by any law. The statutory forms require the date of agreement to be mentioned to reflect that it does not appear to be barred by limitation. In addition to the same, in a suit for specific performance, there should be an agreement by the defendant or by a person duly authorized by a power of attorney executed in his favour by the owner.

17. In the case on hand, the plaintiff—respondent to get a decree for specific performance has to prove that there is a subsisting agreement in his favour and the second defendant has the necessary authority under the power of attorney. Order VII, Rule 14 mandates that the plaintiff has to produce the documents on which the cause of action is based, therefore, he has to produce the power of attorney when the plaint is presented by him and if he is not in possession of the same, he has to state as to in whose possession it is. In the case on hand, only the agreement between the plaintiff and the second defendant has been filed along with the plaint under Order VII, Rule 14(1). As rightly pointed out by the learned senior counsel for the appellant, if he is not in possession of the power of attorney, it being a registered document, he should have filed a registration copy of the same. There is no such explanation even for not filing the registration copy of the power of attorney. Under Order VII, Rule 14(2) instead of explaining in whose custody the power of attorney is, the plaintiff has simply stated 'Nil'. It clearly shows non—compliance of Order VII, Rule 14(2).

18. In the light of the controversy, we have gone through all the averments in the plaint. In paragraph 4 of the plaint, it is alleged that the 2nd defendant as agreement holder of the 1st defendant and also as the registered power of attorney holder of the 1st defendant executed the agreement of sale. In spite of our best efforts, we could not find any particulars showing as to the documents which are referred to as "agreement holder". We are satisfied that neither the documents were filed along with the plaint nor the terms thereof have been set out in the plaint. The above—mentioned two documents were to be treated as part of the plaint as being the part of the cause of action. It is settled law that where a document is sued upon and its terms are not set out in the plaint but referred to in the plaint, the said document gets incorporated by reference in the plaint. This position has been reiterated in *U.S. Sasidharan v. K. Karunakaran and another* (1989) 4 SCC 482 : (AIR 1990 SC 924) and *Manohar Joshi v. Nitin Bhaurao Patil and another* (1996) 1 SCC 169 : (AIR 1996 SC 796 : 1996 AIR SCW 145)."

The Supreme Court has further reminded the Trial Judges' of the observations in *T. Arivandandam* (supra) observing as under:

"It is clear that if the allegations are vexatious and meritless and not disclosing a clear right or material(s) to sue, it is the duty of the trial Judge to exercise his power under Order VII, Rule 11. If clever drafting has created the illusion of a cause of action as observed by Krishna Iyer J., in the above referred decision, it should be nipped in the bud at the first hearing by examining the parties under Order X of the Code."

44 In *Chhotanben and another vs. Kiritbhai Jaikrushnabhai Thakkar and others* reported in 2018 (3) GLR 2308, the Supreme Court has observed as under:

"15. What is relevant for answering the matter in issue in the context of the application under Order VII Rule 11(d), is to examine the averments in the plaint. The plaint is required to be read as a whole. The defence available to the defendants or the plea taken by them in the written statement or any 14 application filed by them, cannot be the basis to decide the application under Order VII Rule 11(d). Only the averments in the plaint are germane. It is common ground that the registered sale

deed is dated 18th October, 1996. The limitation to challenge the registered sale deed ordinarily would start running from the date on which the sale deed was registered. However, the specific case of the appellants (plaintiffs) is that until 2013 they had no knowledge whatsoever regarding execution of such sale deed by their brothers □ original defendant Nos.1 & 2, in favour of Jaikrishnabhai Prabhudas Thakkar or defendant Nos.3 to 6. They acquired that knowledge on 26.12.2012 and immediately took steps to obtain a certified copy of the registered sale deed and on receipt thereof they realised the fraud played on them by their brothers concerning the ancestral property and two days prior to the filing of the suit, had approached their brothers (original defendant Nos.1 & 2) calling upon them to stop interfering with their possession and to partition the property and provide exclusive possession of half (1/2) portion of the land so designated towards their share. However, when they realized that the original defendant Nos.1 & 2 would not pay any heed to their request, they had no other option but to approach the court of law and filed the subject suit within two days therefrom. According to the appellants, the suit has been filed within time after acquiring the knowledge about the execution of the registered sale deed. In this context, the Trial Court opined that it was a triable issue and declined to accept the application filed by respondent No.1 (defendant No.5) for rejection of the plaint under Order VII Rule 11(d). That view commends to us.

16. The High Court on the other hand, has considered the matter on the basis of conjectures and surmises and not even bothered to analyse the averments in the plaint, although it has passed a speaking order running into 19 paragraphs. It has attempted to answer the issue in one paragraph which has been reproduced hitherto (in paragraph 7). The approach of the Trial Court, on the other hand, was consistent with the settled legal position expounded in *Saleem Bhai and Others Vs. State of Maharashtra and Others* [(2003) 1 SCC 557], *Mayar (H.K.) Ltd. and Others Vs. Owners & Parties, Vessel M.V. Fortune Express and Others* (2006) 3 SCC 100 and also *T. Arivandandam Vs. T.V. Satyapal and another* (1977) 4 SCC 467.

17. These decisions have been noted in the case of *Church of Christ Charitable Trust and Educational Charitable Society Vs. Ponniamman Educational Trust* (2012) 8 SCC 706, where this Court, in paragraph 11, observed thus:

"11. This position was explained by this Court in *Saleem Bhai vs. State of Maharashtra*, in which, while considering Order 7 Rule 11 of the Code, it was held as under: (SCC p. 560, para 9) "9. A perusal of Order 7 Rule 11 CPC makes it clear that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial court can exercise the power under Order 7 Rule 11 CPC at any stage of the suit--before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Rule 11 of Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to

file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but be procedural irregularity touching the exercise of jurisdiction by the trial court."

It is clear that in order to consider Order 7 Rule 11, the court has to look into the averments in the plaint and the same can be exercised by the trial court at any stage of the suit. It is also clear that the averments in the written statement are immaterial and it is the duty of the Court to scrutinise the averments/pleas in the plaint. In other words, what needs to be looked into in deciding such an application are the averments in the plaint. At that stage, the pleas taken by the defendant in the written statement are wholly irrelevant and the matter is to be decided only on the plaint averments. These principles have been reiterated in *Raptakos Brett & Co. Ltd. v. Ganesh Property* (1998) 7 SCC 184 and *Mayar (H.K.) Ltd. v. Vessel M.V. Fortune Express* (2006) 3 SCC 100".

18. The High Court has adverted to the case of *Church of Christ Charitable Trust and Educational Charitable Society* (supra), which had occasion to consider the correctness of the view taken by the High Court in ordering rejection of the plaint in part, against one defendant, on the ground that it did not disclose any cause of action qua that defendant. The High Court has also noted the decision relied upon by the contesting respondents in the case of *Mayur (H.K.) Ltd. and Ors.* (supra), which has restated the settled legal position about the scope of power of the Court to reject the plaint under Order VII Rule 11(d) of CPC.

19. In the present case, we find that the appellants (plaintiffs) have asserted that the suit was filed immediately after getting knowledge about the fraudulent sale deed executed by original defendant Nos.1 & 2 by keeping them in the dark about such execution and within two days from the refusal by the original defendant Nos.1 & 2 to refrain from obstructing the peaceful enjoyment of use and possession of the ancestral property of the appellants. We affirm the view taken by the Trial Court that the issue regarding the suit being barred by limitation in the facts of the present case, is a triable issue and for which reason the plaint cannot be rejected at the threshold in exercise of the power under Order VII Rule 11(d)."

□ ANALYSIS:

45 Under Order VII Rule 11 of the C.P.C., the Court has jurisdiction

to reject the plaint where it does not disclose a cause of action, where the relief claimed is undervalued and the valuation is not corrected within a time as fixed by the Court, where insufficient court fee is paid and the additional court fee is not supplied within the period given by the Court, and where the suit appears from the statement in the plaint to be barred by any law. The Court should also be careful while reading the contents of the plaint. 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, the Court should exercise its power under Order VII Rule 11 of the C.P.C.

46 From the various decisions referred to above and discussed, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an application for rejection of the plaint. The Court has to read the entire plaint as a whole to find out whether it discloses a cause of action and if it does, then the plaint cannot be rejected by the Court

exercising the powers under Order VII Rule 11 of the C.P.C. Essentially, whether the plaint discloses a cause of action, is question of fact which has to be gathered on the basis of the averments made in the plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated, but not the evidence. So long as the plaint discloses some cause of action, which requires determination by the Court, the mere fact that in the opinion of the Judge, the plaintiff may not succeed in seeking specific performance of contract, cannot be a ground for rejection of the plaint.

47 In the case on hand, I need to consider whether the averments made in the plaint do disclose the cause of action and whether the suit could be said to be barred by law of limitation. I also need to consider whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the C.P.C.

48 The case, as put forward by the defendants herein as regards the cancellation of the registered agreement dated 2nd June 1990, is in the form of defence. The defendants have put forward their case stating that the defendants Nos.1 to 5 executed a registered agreement of sale dated 13th July 1994 in favour of the defendant No.6 i.e. the builder, and in such circumstances, the agreement of sale dated 2nd June 1990 automatically came to an end. This is nothing, but a defence of the defendants.

49 It also appears prima facie that surreptitiously, the Regular Civil Suit No.1400 of 1994 was instituted by the defendant No.6 against the defendants Nos.1 to 5 for the specific performance of the agreement of sale of the year 1994, and in the said suit, settlement was arrived at between the defendants and a decree was obtained by the defendant No.6 in its favour. This fact, which has come on record, is also by way of defence.

50 I take notice of the fact that in the agreement dated 2nd June 1990, no time period has been fixed for the execution of the sale deed. In such circumstances, the second part of Article 54 of the Limitation Act would apply. When the case is not covered by the first limb of Article 54 of the Limitation Act, ordinarily, the question of limitation should be dealt with only after the evidence is taken unless it is admitted in the plaint that the plaintiffs had knowledge that the performance was refused by the defendants. At this stage, I should deal with the contention canvassed by Mr. Desai, the learned senior counsel as regards the deemed notice of the registered agreement dated 13th June 1994 i.e. the registered agreement of sale executed by the defendants Nos.1 to 5 in favour of the defendant No.6 and also the public notice published in the news paper at the instance of the defendant No.6. The submission of Mr. Desai is that once a document is registered, the plaintiffs are deemed to have the requisite knowledge, and in such circumstances, the plaintiffs should have filed the suit within three years from the date of the registered agreement of sale i.e. 13th July 1994. Mr. Desai tried to substantiate this contention by placing reliance on Section 3 of the Transfer of Property Act. Mr. Desai, in support of this contention has also placed reliance on the decision of the Supreme Court in the case of Dilboo (Smt) (Dead) by Lrs. and others vs. Dhanraji (Smt) (dead) and others reported in (2000) 7 SCC 702, in which, the Court discussed the issue of deemed knowledge to the general public upon registration of a document.

51 I am not impressed by the aforesaid submission as canvassed by Mr. Desai as regards the deemed notice. At the cost of repetition, I state that so far as the issue of limitation is concerned, the same would be governed by the second part of Article 54 of the Limitation Act, 1963. Indisputably, no time for performance was fixed. In such circumstances, the two Courts below should have tried to ascertain the date on which the plaintiffs had noticed that the performance was refused and on finding that date, to see whether the suit was filed within three years thereof. Both the Courts below have not dealt with this issue in accordance with law. The only thing considered by the two Courts below is the time period of thirteen years in preferring the suit for specific performance. In a case this type, the question of limitation could be decided only after taking evidence and recording a finding as to the date on which the plaintiffs had such notice. There is no admission of any nature on the part of the plaintiffs in the plaint that they had noticed that the performance was declined by the defendants. I take notice of the fact that the Courts below have gone more into the correctness of the averments made in the plaint or to put it in other words, the truthfulness of the averments. Normally, a plaint has to be rejected not by taking evidence, or reading the written statement, but by finding out what is contained in the plaint itself. For the purpose of verifying whether a plaint is within time or not, every allegations of the plaint has to be assumed correct unless the Court on the basis of some materials on record is able to reach to a conclusion that the suit is frivolous and illusion has been created through a clever drafting.

52 In such circumstances, I have reached to the conclusion that the plaint could not have been rejected on the ground of limitation. It is altogether a different matter whether at the conclusion of the trial, any case is made out by the plaintiffs for the grant of the discretionary relief of specific performance or not. However, at the threshold, without any evidence being recorded, the Courts below ought not to have rejected the plaint on the ground that the suit is barred by limitation. The bar of limitation has so many ingredients. If a party to the litigation sets up a contention that the suit is barred by limitation, the Court has first of all to examine : (1) the cause of action in the suit, (2) when the cause of action commences, (3) when the parties act in a particular fashion as to fix the cause of action, and (4) ultimately, what is a result flowing from such cause of action.

53 I am also not convinced with the submission on behalf of the defendants that the suit was based on vague and unclear averments. Having regard to the averments made in the plaint, it is difficult for me to take the view that the plaint created an illusion of the cause of action by clever drafting.

54 The frivolity of suit and creation of an illusion through a clever drafting must appear on the face of it in order to enable the Court to strike at the very threshold and reject the plaint without any further trial. Howsoever strong prima facie the defendants grounds for opposing the ultimate prayer made in the suit, they cannot be the reason for exercising the powers under Order VII Rule 11 of the C.P.C.

55 The case of the plaintiffs is plain and simple. They came before the Court with their suit based on the registered agreement of sale. In the registered agreement of sale, time has not been made the essence of the contract. To put it in other words, no time period has been fixed. The cause of action, which has been pleaded in the suit, is also plain and simple. At the cost of repetition, I may reproduce the averments made in the plaint as regards the cause of action, which reads thus:

"9. Cause of action to file the Suit.

Since 2.6.1999 i.e. the date on which the defendants got prepared the banakhat for the suit property and thereafter on 30.03.1999 when the Urban Land Ceiling Act got repealed and thereafter on 1.1.2003 and thereafter, from time to time they were informed and ultimately on 9.2.2003 they were informed, but the defendants failed to discharge their liability to execute the sale deed, therefore the cause has arisen for filing the present suit."

56 In para 7 of the plaint, it is specifically averred that the defendants Nos.1 to 5, in collusion with the defendant No.6, facilitated the defendant No.6 in obtaining a decree in his favour on the strength of the subsequent agreement of sale of the year 1994. This, according to the plaintiffs, was done only with a view to defeat their rights under the registered agreement of sale of the year 1990. The plaintiffs are very clear in their pleadings and have specifically averred that the defendants Nos.1 to 5 had agreed to execute the sale deed on 9th February 2003, but, on that date, they declined saying that it was not possible for them now to execute the sale deed, as the defendant No.6 had already obtained a decree in his favour. It cannot be said that there is a failure to disclose a cause of action. The ground for rejection of plaint is failure to disclose a cause of action and not there is no cause of action for the suit. As stated above, it is not competent for the Court to go into the correctness or otherwise of all the allegations constituting the cause of action. The correctness or otherwise of the allegations constituting the cause of action is beyond the purview of Order VII Rule 11(a) of the C.P.C. However, to find out whether the plaint discloses cause of action or not, the Court has to consider the allegations made in the plaint intelligently and meaningfully and need not be influenced by ingenious and clever drafting creating illusion of the cause of action. While considering the question whether the plaint discloses any cause of action or not, the Court has to find out from the allegations made in the plaint itself and not beyond it as to whether a bogus, wholly vexatious or frivolous litigation has been initiated by the plaintiff or that the claim made by the plaintiff is a legally recognisable claim.

57 In my opinion, the plaintiffs' right to sue is clearly disclosed, and in such circumstances, the Court ought not to have rejected the plaint. I find it difficult to accept the submission of Mr. Desai as regards the frivolity in the litigation and the abuse of the process of law. Ultimately, it would all depend upon the individual facts of each case.

58 In the result, the appeal is allowed. The impugned judgment and decree of the Trial Court is quashed and set aside. The judgment and order passed by the lower Appellate Court is also quashed and set aside. The Special Civil Suit No.308 of 2003 is revived and placed back before the Trial Court for disposal in accordance with law. I clarify that I have otherwise not expressed any opinion on the merits of the suit. All issues which may arise during the course of the trial shall be decided uninfluenced by any of the observations made by this Court. Any observations touching the merits of the case are relevant only for the purpose of deciding the issue as regards the rejection of the plaint and shall not be construed in any manner as an expression of the final opinion in the main matter.

59 In view of the final disposal of the main matter, the connected civil application also stands disposed of.

(J. B. PARDIWALA, J) FURTHER ORDER After the judgement is pronounced, Mr. Jinesh Kapadia, the learned counsel appearing for the respondents - original defendants made a request to stay the judgement from its operation, implementation and execution for a period of four weeks from today. In view of what has been stated in the judgement, the request is declined.

(J. B. PARDIWALA, J) CHANDRESH