Emrald Co Operative Housing Society Ltd vs Decd. Gulamkadar S/O Gulam Husain ... on 18 June, 2019

Author: A.J. Shastri

Bench: A.J. Shastri

C/CRA/136/2019 CAV JUDGMENT

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CIVIL REVISION APPLICATION NO. 136 of 2019

With
R/CIVIL REVISION APPLICATION NO. 137 of 2019
With
R/CIVIL REVISION APPLICATION NO. 138 of 2019
With
R/CIVIL REVISION APPLICATION NO. 139 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE A.J. SHASTRI

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1 Whether Reporters of Local Papers may be allowed toYes see the judgment ?

2 To be referred to the Reporter or not ? Yes 3 Whether their Lordships wish to see the fair copy of the No judgment ?

4 Whether this case involves a substantial question of lawNo as to the interpretation of the Constitution of India or any order made thereunder ?

========== EMRALD CO OPERATIVE HOUSING SOCIETY LTD Versus DECD. GULAMKADAR S/O GULAM HUSAIN ABDULKADAR AND BAI SHAKARBU & 7 other(s) ========== Appearance:

MR DHAVAL C DAVE, SENIOR ADVOCATE WITH MR JIGAR M for the Opponent(s) No. 5,6,7,8 MR BB NAIK, SENIOR ADVOCATE WITH MR TEJAS S TRIVEDI(5692) for the Opponent(s) No. 1.1,1.2,2.1,2.2,2.3,3.1,3.2,3.3,3.4,3.5,3.6.1,3.6.2,3.6.3,4

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CORAM: HONOURABLE MR.JUSTICE A.J. SHASTRI Date : 18/06/2019

1. Rule. Learned advocate, Mr. Tejas S. Trivedi appearing for the respondents waives service of notice of rule.

2. This group of Civil Revision Applications is arising out of orders dated 28.8.2017 passed by the learned 4th Additional Civil Judge, Kalol, Gandhinagar, whereby the applications submitted by original defendant Nos.5 and 6 under Order 7 Rule 11(d) of the Civil Procedure Code in respective suits came to be rejected.

3. Since common questions of facts and law are arising in this group of matters, as per the submissions of the learned advocates, they were heard together and are being disposed of by present common judgment and order by treating Civil Revision Application No.136 of 2019 as a lead matter.

4. The facts emanating from Civil Revision Application No.136 of 2019 are that original defendant No.5-Emrald Co-

operative Housing Society Ltd., the present petitioner herein, entered into a transaction by purchasing the land, which is the subject matter of suit, by registered sale documents, four in number, on 12.5.1982 from the original land owners i.e. fathers of respondent Nos.15 to 17 namely, (1) Sursangji Aataji Thakor, (2) Shanaji Aataji Thakor (3) Virsangji Aataji Thakore and Manguben Aataji Thakor (respondent No.18). The sale deeds have been executed with respect to their 1/4 th share of the concerned parcel of lands. This transaction came to be mutated in the revenue record on 30.6.1983 and name of the petitioner was entered as the owner with respect to concerned parcel of lands vide Revenue Entry Nos.5597, 5598, 5599 and 6000. Since then, the petitioner is holding and occupying the land in question. It is further the case of the petitioner that after several years, by projecting differently, a civil suit came to be filed being Regular Civil Suit No. 83 of 2010 by the original plaintiffs. According to the petitioner, clear history has not been mentioned and by concealing material facts, a speculative litigation is generated by filing civil suit. According to the plaintiffs, the land was originally belonging to Bai Shakarbu, the predecessor of respondent Nos.1 to 4. Prior to 1963, one Aataji Chaturji Thakor was cultivating the parcel of land as a protected tenant but with respect to this very portion of land, the concerned Mamlatdar, Kalol(Agricultural Tribunal) initiated proceedings under section 32F of Bombay Tenancy and Agricultural Act, 1948 whereby Aataji Thakor was declared to be a deemed purchaser of the concerned parcel of land by passing an order on 31.12.1976 and the purchase price was fixed at Rs.7551/- with respect to the land in question. In the process, respondent Nos.1 to 4 were served with a notice of the aforesaid proceedings initiated by Mamlatdar under section 32F. The said notice was accepted by Gulamkadar Gulamhusain on behalf of Bai Shakarbu. Despite the fact that the notices were served of the aforesaid proceedings, during the life time, Bai Shakarbu never challenged the said order dated 31.12.1976 and since it was unassailed, Aataji Chaturji Thakor, who was declared as a deemed purchaser, made an application for putting the land to non-agricultural use to the Taluka Development Officer, Kalol on 20.4.1982 and vide order dated 27.4.1982, the Taluka Development

Officer granted non-agricultural permission with respect to the land in question subject to payment of a premium of Rs.34,425/- and the said order was also kept as it is and was never challenged by respondent Nos.1 to 4 or by Bai Shakarbu at the relevant point of time. In the meantime, Aataji Chaturji Thakor died intestate, leaving behind respondent Nos.5 to 8 as legal heirs, who inherited the concerned parcel of land but the concerned land was sold by fathers of respondent Nos.15 to 17 and respondent No.18 i.e. Manguben Aataji Thakor by registered sale document on 12.5.1982.

5. It is further the case of the petitioner that, all throughout this period, neither Bai Shakarbu nor Gulamkadar Gulamhusain, who accepted the notice on behalf of Bai Shakarbu, challenged the order dated 31.12.1976 for almost a period of 30 years and suddenly, on account of some speculative move, the said order came to be challenged by the legal heirs of Bai Shakarbu i.e. respondent Nos.1 to 4 by filing an appeal before the Deputy Collector being Appeal No.52 of 2006 whereby the original order dated 31.12.1976 which was passed prior to 30 years was attempted to be challenged.

6. It is further the case of the petitioner that said appeal came up for consideration before the Deputy Collector, who having found no merit, dismissed the Appeal No.52 of 2006 vide order dated 20.5.2008. Being aggrieved and dissatisfied, respondent Nos.1 to 4 carried the matter before the Gujarat Revenue Tribunal by way of preferring Revision Application No.130 of 2008. The Gujarat Revenue Tribunal vide order dated 27.8.2010 was pleased to dismiss the said revision application filed by respondent Nos.1 to 4 and as the said order has not been challenged or carried before the higher forum, it has attained finality. Since the challenge after 30 years failed, original order dated 31.12.1976 became final.

7. In respect of this very portion of land, having failed in the revenue proceedings right upto the stage of revision, respondent Nos.1 to 4 claiming to be legal heirs of Bai Shakarbu instituted the suit being Regular Civil Suit No. 83 of 2010 and challenged the sale deeds, which were executed and registered on 12.5.1982 in favour of present petitioner by the legal heirs of Aataji Thakor, who was a deemed purchaser declared several years ago. According to the petitioner, the suit has been filed by making smart pleadings in the plaint by suppressing certain material facts and with some unforeseen reason joined erst-while Chairman and Secretary of Emrald Co-Operative Housing Society by describing them to be the Chairman and Secretary of the petitioner Society. This move, according to the petitioner, is only with a view to see that the present petitioner did not participate in the proceedings in time and by that time, some orders can be obtained since the revenue proceedings have been lost concurrently right upto the revisional stage. The petitioner upon knowing the fact of institution of the suit immediately submitted an application for seeking condonation of delay caused in filing the reply in Regular Civil Suit No. 83 of 2010. The said application came to be filed on behalf of respondent Nos.5 and 6 and it was also submitted in the written statement that institution of suit after almost a period of nearly 28 years is patently time barred since the suit is filed in 2010 for challenging the registered sale documents of 1982. It was also contended in the said written statement as also in the application in question that having not given a statutory notice as required under section 167 of Gujarat Co-Operative Societies Act, 1961 prior to institution of suit, the suit itself was not maintainable in the eye of law. It was also submitted that there is no locus standi in favour of respondent Nos.1 to 4 since they have lost throughout in tenancy proceedings and suit has been filed at their instance. Drawing attention, it

was contended that respondent No.8 i.e. Manguben Aataji Thakor also filed such similar two suits i.e. Civil Suit Nos.67 and 68 of 2013 in the Court of learned Civil Judge, Kalol, challenging the validity of the very sale deeds and those suits have also been dismissed vide judgment and order dated 26.8.2016 passed in Civil Revision Application Nos.405 of 2015 and 406 of 2015 by the Gujarat High Court by exercising jurisdiction under Order 7 Rule 11(d) of CPC and as such, on account of that also, the plaint i.e. Regular Civil Suit No. 83 of 2010 requires to be rejected. An application, which has been filed by the petitioner under Order 7 Rule 11(d) numbered as application Exh.40 came to be contested by respondent Nos.1 to 4. However, by a brief order, without proper application of mind, the said application came to be rejected vide order dated 28.8.2017 by generalizing the principle that question of limitation is a mixed question of law and fact and as such, brushed aside all important contentions which have been raised in the application precisely and this order of rejection of application Exh.40 is made the subject matter of present Civil Revision Application No.136 of 2019.

8. Similarly, identical application under Order 7 Rule 11(d) also came to be rejected on the same day by passing order below Exh.39, which order is the subject matter of Civil Revision Application No.137 of 2019.

9. Same is the case with respect to Civil Revision Application No.138 of 2019 in which also, order of the very same date is under challenge whereby request for rejection of plaint under Order 7 Rule 11(d) came to be disallowed.

10. Likewise, order of the very same date passed below Exh.42 is the subject matter of Civil Revision Application No.139 of 2019.

11. Four registered sale deeds are questioned on the similar line and as such, civil suits are different but the contents are the same and hence, the Court, upon request of learned advocates appearing for the parties, has chosen to deal with and dispose of this group of Civil Revision Applications by present common judgment and order.

12. The Court, upon submission of learned advocates, has issued notice on 10.4.2019. Since this issue of rejection of plaint on the ground of limitation is extensively dealt with recently by Hon'ble Apex Court in a judgment delivered in Civil Appeal No.2960 of 2919 on 13.3.2019 and further, identical fact situation is also dealt with by a Coordinate Bench of this Court vide judgment dated 26.8.2016 delivered in Civil Revision Application Nos.405 of 2015 and 406 of 2015, the revision applications were entertained in which ultimately on 29.4.2019, learned Senior Advocate, Mr. Dhaval C. Dave appearing with Mr.Jigar M. Patel, learned advocate representing the petitioner and learned Senior Advocate, Mr.B.B.Naik with learned advocate, Mr. Tejas S. Trivedi representing the contesting respondents-original plaintiffs have argued the matters at length.

13. Mr. Dhaval C. Dave, learned Senior Advocate appearing on behalf of the petitioner has vehemently contended that this filing of civil suit i.e. Regular Civil Suit No. 83 of 2010 is nothing but a glaring example of abuse of the process of law since the suit has been filed after almost a period of more than 28 years challenging the registered sale transaction of 1982 and as such, the suit is

hopelessly time barred and to allow adjudication of such hopelessly time barred suit would tantamount to be an abuse of the process of law. It has been contended that the suit is based upon suppression of relevant material facts and having lost throughout in the revenue proceedings, which were also generated after more than 28 years, an attempt is made which is nothing but a speculative move which cannot be encouraged. It has further been contended that the chronology of events as stated in the revisions and the facts which are eloquent enough in the proceedings would not inspire any confidence in the genuineness of the proceedings generated by the contesting respondents. A careful and meaningful reading of the plaint itself would indicate a mala fide intent of the plaintiffs to out and out make an attempt to excavate something from the petitioner and with the ill-motive may not be allowed to be operated. At first point of time, the revenue proceedings have been launched and having lost upto the revisional stage and when realized that original order of Mamlatdar dated 31.12.1976 has attained finality, an attempt is made in the civil court to challenge the legality of the sale which took place in 1982. It is a settled position of law that registered sale documents are reflecting a deemed knowledge and for that purpose, even if a litigant is inclined to challenge the same, the said challenge has to be within the time stipulated by the Law of Limitation. Mr. Dave, learned Senior Advocate has submitted that clever drafting and the suppression of material fact would not be allowed to be encouraged to thwart the very object of Law of Limitation. By taking the Court to the averments contained in the plaint, it has been submitted that these averments made on oath are based upon misleading drafting and suppression of facts which are very relevant. Though there was a specific knowledge even from the year 2006, the proceedings have been launched in the year 2010 only on account of the fact that contesting respondents have lost the revenue proceedings upto the revisional stage. By referring to certain provisions of Transfer of Property Act, a contention is raised that the suit is hopelessly time barred and as such, no premium can be given to the original plaintiffs for remaining calculatively silent over the period of time. These proceedings frivolous in nature have to be curbed and for that purpose, the paper book has been brought to the notice of the Court consisting of documents attached with the plaint and the said documents have been then compared with the averments of plaint and by referring to these, an oblique motive is pointed out to the Court as to why at such a belated stage, an attempt is made to challenge the registered sale transaction.

14. Mr. Dave, learned Senior Advocate has further submitted that there is absolutely no right, title or interest in favour of the plaintiffs to challenge the sale documents and as such, in the absence of any locus, the proceedings at the instance of respondent No.4 are nothing but an abuse of the process of law. Mr. Dave, learned Senior Advocate has further submitted that this attempt was made by another party to the proceedings by filing separate suit as referred to above, but after perusal of the entire material, even the High Court in Revision Application Nos.405 and 406 of 2015 has considered and examined the case of almost similar nature and rejected the suit proceedings and even that order has also attained finality and as such, said circumstance is also relevant to decide the present controversy.

15. Mr. Dave, learned Senior Advocate further submitted that the petitioner is a Co-operative Housing Society which is meant and set up for housing purpose and so long as that housing purpose is in existence, the challenge to the sale deeds and the land purchase of the petitioner is touching to the business of housing society itself and as such, the suit ought not to have been entertained and

not maintainable without issuance of statutory notice under section 167 of the Gujarat Co-operative Societies Act which is a condition precedent and, therefore, the suit proceedings are not maintainable at all. Mr. Dave, learned Senior Advocate has further submitted that meaningful reading as held in one of the decisions of Hon'ble Apex Court has suggested that it becomes the duty of the Court to examine the tenability of the main proceedings and to find out whether any cause of action is arising or not and here is the case in which not only the suit proceedings are hopelessly time barred but are also hit by section 167 of the Gujarat Cooperative Societies Act and on the contrary, a combined reading of the averments contained in the plaint as well as the documents attached with the plaint would generate and reflect no cause of action at all and, therefore, irrespective of Order 7 Rule 11(d), even Order 7 Rule 11(a) is also attracted. It has further been referred to the statutory provision contained under section 3 of Transfer of Property Act which clearly suggests and attaches the deemed knowledge pursuant to the registered transaction and, therefore also, the case is not made out by the original plaintiffs to precipitate the suit proceedings any further. Mr. Dave, learned Senior Advocate has further submitted that law on exercise of power under Order 7 Rule 11 of CPC has amply clarified that irrespective of submission of the litigant about tenability of proceedings, even Courts are under an obligation to see as to whether the suit proceedings are tenable or not and, therefore, even suo motu also, the Court can look into the aspect whether the proceedings are tenable or not. Mr. Dave, learned Senior Advocate has submitted that meaningful reading of the plaint is clearly suggesting that the suit proceedings are not maintainable in the eye of law and deserves to be rejected at this stage of the proceedings itself. To substantiate these contentions, several decisions have been referred to and relied upon by learned Senior Advocate, Mr. Dave, which are as under:

i) AIR 1977 Supreme Court 2421 in the case of T.Arivandanam Vs. T.V.Satyapal and another;

ii) AIR 2010 Patna 189 in the case of Bhagirath Prasad Singh Vs. Ram Narayan Rai and Anr.;

iii) Civil Appeal No.2960 of 2019 decided on 13.3.2019(supreme Court)

iv) Letters Patent Appeal No.776 of 2013 decided on

29.12.2016 by a Coordinate Bench of this Court;

v) 1998(2) G.L.H. 823 in the case of Maharaj Shri Manvendrasinhji Ranjitsinhji Jadeja Vs. Rajmata Vijaykunverba, wd/o Late Maharaja Mahendrasinhji;

vi) 1981 G.L.H. 311 in the case of M.G.Patel & Co. Vs. Alka Co-operative Housing Society Ltd.;

vii) 2006(0)GLHEL-HC 217052 in the case of Sterling Centre Premises Owners Co-op.Societies Limited Vs. Nanubhai R. Shah Prop. of Dash publicity;

viii) (2000)7 Supreme Court Cases 702 in the case of Dilboo(Smt)Dead) by Lrs. and others Vs. Dhanraji (Smt)Dead) and others; and

ix) 2004(0) GLHEL-HC 206649 in the case of Kuok Oils and Grains Pte Ltd. Vs. Tower International Private Limited;

16. Mr.Dave, learned Senior Advocate has then submitted that despite all these contentions having been raised and despite having relied upon aforesaid decisions substantially, by a brief order, without dealing with the contentions at length, the principle is generalised and a laconic order is passed which exercise of discretion is also thoroughly uncalled for in the eye of law.

17. By referring to aforesaid judgments, learned Senior Advocate, Mr. Dave has requested the Court to set aside the impugned order as it is completely giving a go-by to the principles which are enunciated by the aforesaid decisions. Hence, revision applications are requested to be allowed.

18. To counter to the submissions made by learned Senior Advocate for the petitioner, learned Senior Advocate, Mr.B.B.Naik representing the contesting respondents i.e. respondent Nos.1 to 4, who are original plaintiffs, vehemently opposed the revision applications and submitted that there is no error committed by the court below in passing the order. It has been submitted by Mr. Naik, learned Senior Advocate that a bare reading of the applications is suggesting that except the issue of limitation and bar of section 167 of the Cooperative Societies Act, there are no other contentions raised and, therefore, the issues of locus standi and cause of action are not possible to be agitated by the petitioner at this stage of the proceedings. It has been submitted that the order which has been passed by the Deputy Collector in the year 2006 was against the dead person and, therefore, it can be assailed in a collateral proceedings by the original plaintiffs in view of the decision which has been delivered by this Court reported in 1970(11) GLR page 457 in the case of East India Co. Vs. Official Liquidator of Rajratna Naranbhai Mills Pvt. Ltd. (In Liquidation) and Anr. It has further been submitted that 2006 proceedings as tried to be projected are merely defenses which cannot be gone into while examining and testing the plaint for its rejection. It has been submitted that at the time when the suit came to be filed, the revision application was pending before the appropriate tribunal and, therefore, at the best, the knowledge can be attributed from the year 2008 and, therefore, the suit is within the period of limitation. The plaint whether time barred or not is an issue of mixed question of law and fact and, therefore, can be examined in a full-fledged trial. Learned Senior Advocate, Mr. Naik has further submitted that it may be that revenue proceedings have been lost by respondent Nos.1 to 4 but that would not preclude the plaintiffs from challenging the validity of sale deeds. It has been vehemently submitted that the judgments which have been relied upon by the petitioner are having different factual background and, therefore, if there is a slight change in the facts, the same would make a world of difference in applying the principle and, therefore also, the attempt which has been made by the petitioner to contend that suit is time barred is having no locus to stand. It has been submitted that only and only the averments contained in the plaint are to be looked into and as such, the bare reading of the plaint is suggesting that the

proceedings require a full-fledged trial. It has been submitted that so far as ban of section 167 of Cooperative Societies Act is concerned, the words "touching to the business of society" are clearly spelt out by series of decisions and, therefore, here is the case in which the challenge to the sale deed is not having even any indirect effect on touching to the business of the petitioner society and, therefore, there is no requirement of giving statutory notice under section 167 of the Cooperative Societies Act. It has further been submitted that limitation is a mixed question of law and fact and, therefore, has reiterated that such issue cannot be examined and the proceedings cannot be throttled on that count at this stage. Mr.Naik, learned Senior Advocate has further submitted that the recent decision of Hon'ble Supreme Court, which is tried to be relied upon delivered in Civil Appeal No.2960 of 2019 on 13.3.2019 is delivered by a Small Bench as compared to Three Judges' decision of 2018 of Hon'ble Apex Court and, therefore, the same is of no avail to the petitioner. Mr. Naik has further submitted that here in the plaint, all material aspects have been brought to the notice in the plaint itself and as such, there seems to be no material suppression in any form. Mr. Naik, learned Senior Advocate has further submitted that since the issue of cause of action is pleaded, the same cannot be agitated in the present revision applications. Mr. Naik has submitted that Bai Shakarbu expired on 9.4.1975 whereas the proceedings have been decided in the year 1976 and, therefore also, same is the nullity which ought not to have been capitalised by the person concerned and, therefore, the very same transaction even if registered is nothing but a nullity. It has further been submitted that looking to the provisions contained under the Tenancy Act, after having been declared as deemed purchaser, the certificate under section 32-M will have to be issued and only thereafter, the person concerned is to be declared as owner. Here, according to Mr. Naik, no such certificate is issued and no notice under section 135-D of Bombay Land Revenue Tribunal is served to the original land owner and all these issues can be gone into at the time when trial can take place in the suit. By referring to section 85 of the Tenancy Act, a contention is raised by learned Senior Advocate, Mr. Naik that if the original order itself is ultra vires, the same can be set at naught in a collateral proceedings. i.e. civil suit and as such, by referring to certain decisions delivered by various courts, a contention is raised that the suit proceedings require a long drawn adjudication. It has further been submitted that cause of action is nothing but a bundle of facts and, therefore, here is the case in which the facts are not inspiring any confidence which would clearly indicate that there is no cause of action and, therefore also, no power under Order 7 Rule 11 of CPC is to be exercised.

19. Learned Senior Advocate, Mr. Naik has further submitted that the present proceedings are the civil revision proceedings and, therefore, looking to the parameters which are prescribed under section 115 of CPC, unless conditions are satisfied, no revisional power can be exercised and here is the case in which no case is made out by the petitioner to call for any interference in the revisional proceedings. Mr. Naik, learned Senior Advocate has relied upon following decisions to substantiate and strengthen his case:

i) 44 Bombay Law Reporter 577 in the case of Abdullamiyan Abdulrehman Vs. The Government of Bombay;

ii) 2013(0) AIJEL-HC 228929 in the case of Banaskantha District Oil Seeds Growers Co-op. Union Vs. Krishna Oil Mills;

iii) 2016(0) AIJEL-SC 58175 in the case of M.K.Indrajeet Sinhji Cotton P.Ltd. Vs. Narmado Cotto Coop.Spg.Mills Ltd.;

iv) 2018(0) AIJEL-HC 239599 in the case of Gujarat Maritime Board Vs. Jogadia Polymers Pvt. Ltd.;

v) AIR 1954 Bombay 239 in the case of Husein Miya Dosumiya Vs. Chandubhai Jethabhai and another;

vi) 1970(11) GLR 457 in the case of East India Co. Vs. Official Liquidator of Rajratna Naranbhai Mills Pvt. Ltd. (In Liquidation) and Anr.,

vii) (2000)7 Supreme Court Cases 702 in the case of Dilboo(Smt)Dead) by Lrs. and others Vs. Dhanraji (Smt)Dead) and others.

viii) 2018(0) AIJEL-SC 62061 in the case of Chhotanben Vs. Kiritbhai Jalkrushnabhai Thakkar;

ix) 1968(0) AIJEL-SC 7980 in the case of Dhulabhai Vs. State of Madhya Pradesh; and

x) Civil Revision Application No.405 of 2018 decided on 8.4.2019 by this High Court.

20. By referring to aforesaid decisions, the contention is raised that present revision applications deserve to be dismissed by not granting any relief. No other submissions have been made.

21. Mr.D.C.Dave, learned Senior Advocate in counter to these submissions has reiterated and amplified the submission as a part of rejoinder and has contended that irrespective of raising contention, it is the duty of the Court to examine whether the proceedings are tenable or not. He has further asserted that if the case on hand is to be looked into at length, it is a case of rejection of plaint under Order 7 Rule 11(d) as also Order 7 Rule 11(a) as well. It has further been contended that by virtue of provisions contained under the Tenancy Act, the suit proceedings are not maintainable at all. It has further been contended that having miserably failed throughout in the revenue proceedings, another attempt is made to plug the land in question into litigation to achieve the oblique motive and, therefore, suppression is also a relevant ground for exercising power under Order 7 Rule 11(d). It has been submitted that for such examination and for meaningful reading of the plaint, the documents attached to the plaint are also to be gone into. If the facts are not disclosed, then it is illogical that despite knowledge of such suppression, the proceedings to be allowed to go on, but such illogicality may not be precipitated any further at the instance of persons who are guilty of such conduct. Mr. Dave has re-emphasized that this is not only a classic example of abuse of process of law but a proxy litigation generated to somehow plug the land in question into litigation for years to come. This attempt on the part of the original plaintiffs may not be allowed to be encouraged any further and hence, requested that with appropriate cost, the order be set aside by allowing the revision applications.

22. As a part of sur-rejoinder, Mr. Naik, learned Senior Advocate has submitted that defendant Nos.5 to 8 have been deleted and, therefore, the revision applications may not be entertained. Mr. Naik has substantially relied upon his submissions for making a request to dismiss revision applications.

23. Having exhaustively heard the learned Senior Advocates representing the respective sides, the Court found that, to ascertain three major contentions, whether justifiably pressed or not, few circumstances which are prevailing on record are not possible to be ignored by this Court and hence, the same are deduced hereinafter.

24. First of all, the paper book which has been supplied and the averments contained in the plaint are clearly indicating that sale deed has taken place on 12/13-5-1982. Said sale transaction is registered before the Office of Sub-Registrar, Kalol. It further indicates that the consideration of sale is passed on through cheque. So, the sale documents have taken place through bank transaction and the sale documents have been numbered in index at the office of Sub-Registrar. These documents, four in number, which are the subject matter of present proceedings are the documents on adequate stamp signed by the parties to the proceeding and the same have been registered before the competent authority way back in 1982 and sale has taken place through passing of consideration which has already been mentioned in the document. Secondly, this sale transaction has also been mutated in revenue record at a relevant point of time and the revenue entries have been effected in appropriate forms related to it. These documents which are part of the plaint itself are indicating that present petitioner company has become the registered owner of the land in question. Thirdly, from the plaint itself, an indication is emerging that there are some revenue proceedings going on prior to filing of the suit. Paragraph No.3 of the plaint itself postulates certain process which was carried out and then by making smart averments and projecting half truth, an attempt is made that only when Mamlatdar, Land Tribunal, Kalol has passed an order on 7.7.2008, the original plaintiffs came to know about the fact of execution of sale deed. Now these averments are indicating about the fact that proceedings under the Tenancy Act were going on and without serving notice, an order is passed and an impression is sought to be created that Aataji Chaturji was declared as deemed purchaser under section 32F on 31.12.1976 but by that time, Bai Shakarbu had expired on 9.4.1975. Now to understand and examine this bare assertion in the plaint, undisputedly the revenue proceedings which were carried out by the legal heirs of Bai Shakarbu are clearly suggesting that the plaint is based upon concealment of material fact and suppression of the facts which are touching to the root of controversy and this is in view of the fact that the revenue entry which has been effected pursuant to registered sale transaction appears to have been assailed after around 30 years by the legal heirs of deceased Bai Shakarbu and throughout the said revenue proceedings, the legal heirs of Bai Shakarbu have lost and this fact is clearly suppressed by the plaintiff in the suit. So, even for meaningful reading of the plaint and the cause of action, if these revenue proceedings are taken note of, it appears to be a clear attempt on the part of the plaintiff to abuse the process so much so that during the course of hearing, the attention is drawn to the appeal as well as revisional proceedings lost under the revenue law and this factum of sale in favour of the petitioner company was very much well within the knowledge of the legal heirs even prior to 2006 when the appeal was filed. The assertion is examined by the Deputy Collector (Appeals) and the said appeal undisputedly filed by legal heirs of Bai Shakarbu after almost a period of 31 years has been dismissed on 20.5.2008 and

the revision application was also dismissed vide order dated 27.8.2010. Now in that revision application also, it was clearly examined by revisional authority as is appearing from the paper book which has been supplied to the Court that Bai Shakarbu was served with the notice and then in 1976, an order was passed wherein it has also been clearly observed that throughout the proceedings, one Gulamkadar Gulamhusain has represented and remained present on behalf of Bai Shakarbu and as such, if the relevant circumstances, which are material, are taken note of, it appears that after loosing in revenue proceedings lodged after unreasonable period of several years, this suit has been filed in the year 2010 for the purpose of challenging registered sale which has taken place way back in 1982. So, this circumstance cannot be ignored while examining the issue interwoven with exercise of power under Order 7 Rule

11. For the purpose of meaningful reading of the plaint, from the documents attached to the plaint and the half-hearted truth which was unearthed during the course of hearing, it appears to this Court that suit proceedings have been aimed at some speculation rather than genuinely agitating so-called legal rights. The prayers which have been made in the suit are made which can be said to be a part of smart pleading to somehow bring the suit within the limitation and as such, the grievance which has been voiced out by the petitioner deserves serious consideration, looking to the conduct of the original plaintiffs.

25. It further emerges from the record that from the beginning, the plaintiffs are aware about the fact that predecessor of land in question is a Co-Operative Housing Society Ltd. and the land has been purchased undisputedly for the purpose of carrying out housing purpose as the society is set up as a housing society. So, from the plaint itself, it appears that the petitioner is a Co-Operative Housing Society and as such, ban of section 167 of the Cooperative Societies Act deserves to be examined.

26. Yet another circumstance which is not possible to be ignored by the Court is that almost in an identical situation, a Coordinate Bench of this Court has dealt with a suit filed against the petitioner Cooperative Society and in that context has exercised the revisional jurisdiction while dealing with the application under Order 7 Rule 11(d). The said revision application came up for consideration at the instance of suit which was filed by Manguben Thakor, daughter of Aataji and the only difference here is that the present suits are filed by sons of the deceased Aataji. If the subject matter is to be looked into, the Court has analysed the sequence of events which took place and found that the suit proceedings, filed by the sister in the year 2013, which were lost, are found to be beyond the period of limitation and, therefore, the Coordinate Bench by exercising jurisdiction under Order 7 Rule 11(d) was pleased to the reject the plaint. The only difference here is that the sons have filed the present suits in the year 2010 and might not have obtained anything favourable. The sister of the present plaintiff and the daughter of Aataji has brought the suit separately in the year 2013 and in that context, the issue of Order 7 Rule 11(d) of CPC has been examined by the Coordinate Bench and has passed specific order after hearing both the sides at length which is reflecting on record on page 48 of Civil Revision Application No.136 of 2019. So, in the light of aforesaid undisputed factual background which is clearly emerging from the record, if the evaluation of the contention of both the sides is to be made, it would lead to a situation that case appears to have been made out by the petitioner. In that context, if the first contention of learned Senior Advocate, Mr. Dave is to be dealt

with about limitation in bringing the suit in 2010, the same deserves to be dealt with like this. Undisputedly, four registered sale transactions have taken place in May, 1982. The said registered sale transactions culminated into revenue entry and the transaction in question is with passing of a lawful consideration through cheque. In this context, it clearly emerges that the present petitioner has become the lawful owner of the land in question by virtue of registered sale transaction and registration of document is held to be a deemed knowledge from the date of registration and here is the case in which the registration is not only made in May, 1982 but for that, revenue entry was also mutated and, therefore, the suit suffers from the principle of delay and laches.

27. Additionally, knowing full well that this transaction appears to have been done in view of an order dated 31.12.1976 in which deceased Aataji Chaturji was held to be deemed purchaser and despite having knowledge about the same, after unreasonable period of almost 28 years, the said order was assailed unsuccessfully and that order dated 31.12.1976 has become final by virtue of dismissal of revision application and learned Senior Advocate appearing on behalf of contesting respondents has not been able to point out that any further proceeding till date has been carried out pursuant to attaining finality right upto the stage of revision application.

28. These are the circumstances which are not inspiring any confidence in accepting the principle that, in this peculiar set of circumstances, general principle that limitation is a mixed question of law and fact to justify this speculative litigation which has been generated and as such, learned Senior Advocate on behalf of the petitioner has made out the point of limitation successfully in assailing the impugned order. As against this, the attempt which has been made by learned Senior Advocate, Mr.Naik appearing on behalf of contesting respondents is not possible to be accepted. On the contrary, to allow such litigation to precipitate any further would be an example of allowing the abuse of the process of lawful machinery.

29. The next limb of the submission is related to section 167 of the Gujarat Cooperative Societies Act, which would be touching to the maintainability of the suit itself and to test such submission, the words "touching to the business of society" are to be understood in the context of its reliability to the extent of present petitioner society, which would reflect that present society is registered as a Cooperative Housing Society established with an object of providing housing accommodation as the name is reflecting. So, as a set up of society, main object is to purchase the land for housing, which tantamount to be the business of the society itself and as such, the petitioner being a housing society and the suit is filed for the purpose of setting aside the transaction about purchase of the land, the same would definitely be touching the main object of the society. Since the cause of action of assailing the sale transaction is directly relating to the purchase of the land of the petitioner society, which is a housing society, the common parlance of the word 'touching' connotes a 'concern'. Therefore, the challenge to the very transaction of the land purchased by the petitioner housing society is concerning the main object of the society and as such also, a statutory provision contained under section 167 of the Cooperative Societies Act has a role to play. This pre- requisite and a condition precedent before filing the suit against the Cooperative Housing Society, therefore, appear to have not been complied with. The clear reading of provisions of section 167 in the context of housing society definitely need not be much amplified since the suit has a direct bearing with the main object of the society.

30. To counter to this contention, an attempt made by the learned Senior Advocate, Mr.Naik appearing for the contesting plaintiffs to cite the decisions and thereby to dilute the effect of section 167 of Cooperative Societies Act is found to be of less significance since the decisions are related to different contextual factual data. Said decisions will be appropriately dealt with hereinafter.

31. So far as the cause of action issue which has been agitated has generated a debate amongst the learned Senior Advocates that such point has not been agitated before the court below and as such not available to the petitioner in the present proceedings. In this context, if the main object of Order 7 Rule 11 is to be looked into, this special power has been assigned to the court to curb the abuse of the process and ill-motive by launching litigation and to see that untenable proceedings may not waste public time and money. The very object of provision related to rejection of plaint is to curb such kind of litigation and it has been held by catena of decisions that irrespective of the mode of litigation, it is the duty of the Court itself to examine the tenability of such kind of litigation and as such, this hyper-technical plea which has been taken by learned Senior Advocate appearing for respondents that such point cannot be examined by the Court appears to be devoid of merit and non-dealing of such contention would rather defeat the very object of Order 7 Rule 11(d) of CPC. So, irrespective of objection, if the cause of action which has been stipulated in the plaint is examined as a part of smart pleading by concealing material facts, a bald assertion is made as if the plaintiffs came to know only in the year 2010, precisely on 24.2.2010, but the said bald assertion appears to be completely misleading since it is based upon suppression of material facts. Furthermore, the cause of action is to be ascertained from the surrounding circumstances and if the afore-mentioned circumstances in sequence are to be examined, the cause of action, which has been mentioned in paragraph No.4 of the plaint would clearly indicate that it is a part and parcel of a smart pleading and nothing else to bring the suit within the period of limitation. Such attempt in the considered opinion of the Court is not to be encouraged particularly in view of this peculiar set of circumstances. If all these issues analytically are to be examined, it would lead to a situation that impugned order which has been passed is absolutely laconic, based upon general principle just to evade exercise of jurisdiction which is vested in law and reflects a clear non-application of mind. The aforesaid circumstances, which are apparent on the record encircled with the averments of the plaint and the documents attached to it need not create a situation where evidence at length is to be led. It may be that limitation is a mixed question of law and fact but on the basis of aforesaid undisputed facts, which are reflecting on record, this general principle in the peculiar background of fact is not possible to be digested just to allow to go on with a speculative litigation which has been generated after loosing from revenue proceedings. The Court, therefore, is of the opinion that order impugned in the revision application is laconic, based upon ignorance of material reflecting on record and also based upon non-application of mind. No valid and effective reasons are reflecting to justify the conclusion in dismissing the application which has been filed by the petitioner and as such, the combined reading of aforesaid circumstances as a whole would lead to a situation where it is not possible for the Court to digest the order of rejection of application filed by the petitioner. Accordingly, the impugned order deserves to be set aside.

32. In the aforesaid situation, if the decisions which have been cited by the respective sides are analysed, the same would lead to a following situation which also requires little attention while arriving at an ultimate conclusion.

33. The first judgment which has been cited by learned Senior Advocate appearing for the petitioner is on the issue of meaningful reading of the plaint. The Hon'ble Supreme Court in a decision which is reported in AIR 1977 Supreme Court 2421(1) in the case of T.Arivandanam Vs. T.V.Satyapal and another has clearly pointed out that if on the basis of meaningful reading of the plaint it is found that plaint is manifestly vexatious and merit-less, in the sense of not disclosing a clear right to sue, then Order 7 Rule 11 of CPC deserves to be invoked with little care. The relevant observations contained in paragraph No.5 of the said decision reads 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 plaints. The learned Munsif must remember that if on a meaningful - not formal - reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O. VII R. 11, C. P. C. taking care to see that the ground mentioned therein is fulfilled. And, if clear drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under O. X. 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.""

On the basis of the aforesaid observation of the Hon'ble Supreme Court, if the facts which are analysed above are to be looked into, the same would clearly indicate that suit proceedings which have been generated in the year 2010 are nothing but frivolous litigation which cannot be ignored by the Court.

34. Yet another decision relied upon by learned Senior Advocate for the petitioner is reported in AIR 2010 Patna 189 in the case of Bhagirath Prasad Singh Vs. Ram Narayan Rai and Anr. which is essentially dealing with a situation about a litigation based upon suppression of material fact and clever omission and after relying upon several decisions of the Hon'ble Supreme Court, what has been laid down by the Patna High Court is that, if a real cause of action has not been set out in the plaint and some illusion is sought to be created on the basis of suppression of material fact, the same cannot be permitted. The relevant observations contained in paragraph Nos.12 and 13 deserve to be quoted hereinafter:

> "12. From the aforesaid decisions of the Apex Court rendered in T. Arivandandam v. T. V. Satyapal (supra) as well I. T. C. Limited v. Debts Recovery Appellate Tribunal (supra) it would emerge that the gross abuse of process of Court would be condemned. Further, the reading of plaint for the purposes of Order VII, Rule 11 of the Code of Civil Procedure would be meaningful reading and not only the formal

reading of the same. If real cause of action has not been set out in the plaint rather something illusionary has been stated with a view to get out the scope of Order VII, Rule 11 of the Code of Civil Procedure, such clever drafting and suppression of material facts are not permitted in law and hence such action should be nipped at the bud. Similar view has been taken by learned single Judge of this Court in Vikash Singh v. Sri Krishna Prasad Sinha (C.R. No. 1044 of 2006) disposed of on 27-9-2007.

13. In the present case it has to be held that in view of the suppression of the material fact by the plaintiffs by cleverly omitting to state regarding the factum of challenging the order dated 20-11-2006 in Civil Revision No. 16 of 2006, which has been dismissed by a reasoned order dated 1-5-2008, the subsequent suit challenging the same order on the ground of fraud is not at all maintainable and plaint was liable to be rejected on this ground. The Court below has committed serious error by holding that the suit is not barred by res judicata and, thus, the plaint is not required to be rejected rather the suit is to be tried after framing of issues. Continuance of the suit, for the aforesaid reasons, in my opinion, would amount to abuse of process of Court.
"

35. In a recent decision delivered by Hon'ble Apex Court in Civil Appeal No.2960 of 2019 on 13.3.2019, Hon'ble Apex Court, after relying upon its several decisions has clearly opined that if the plaint is found to be barred by Law of Limitation, the same can be rejected by resorting to power under Order 7 Rule 11(d). While dealing with the facts of the said case, Hon'ble Apex Court has held that the averments of the plaint and bundle of facts stated therein reflect clever drafting by the plaintiff just to bring the suit within the period of limitation, which is otherwise time barred. If the said proposition is to be looked into on the basis of available facts on hand, here as well, the same has a clear relevance which cannot be unnoticed by the Court.

36. So far as the cause of action part is concerned, learned Senior Advocate appearing on behalf of the original plaintiffs has also succinctly relied upon a decision in the case of Dilboo(Smt)Dead) by Lrs. and others Vs. Dhanraji (Smt)Dead) and others reported in (2000)7 Supreme Court Cases 702 in which, Hon'ble Apex Court has analysed the Law of Limitation and then has opined, which observations contained in paragraph No.20 since relevant, are reproduced in part hereinafter:

"20. ..... It is always for the party who files the Suit to show that the Suit is within time. Thus in cases where the suit is filed beyond the period of 12 years, the plaintiff would have to aver and then prove that the Suit is within 12 years of his/her knowledge. In the absence of any averment or proof, to show that the suit is within time, it is the plaintiff who would fall. Whenever a document is registered the date of registration becomes the date of deemed knowledge. In other cases where a fact could be discovered by due diligence then deemed knowledge would be attributed to the plaintiff because a party cannot be allowed to extend period of limitation by merely claiming that he had no knowledge."

37. The Court at this juncture would add one of the decisions of Hon'ble Apex Court reported in AIR 2014 Supreme Court 1612 in the case of Brijesh Kumar and others v. State of Haryana and others in which, object of prescription of limitation is re-emphasized and the Court would like to consider at this juncture some of the observations which are mentioned in paragraph Nos.8,9,12 and 14 of this decision. Of course, the said decision was related to sufficient cause for securing condonation of delay, but certain observations on the significance of Law of Limitation mentioned therein are relevant and hence, same are reproduced hereinafter:

> "8. The Privy Council in General Fire and Life Assurance Corporation Ltd. v. Janmahomed Abdul Rahim, AIR 1941 PC 6, relied upon the writings of Mr. Mitra in Tagore Law Lectures 1932 wherein it has been said that "a law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a limitation, it is to be enforced even at the risk of hardship to a particular party as the Judge cannot, on applicable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by law."

9. In P. K. Ramachandran v. State of Kerala and Anr., AIR 1998 SC 2276, the Apex Court while considering a case of condonation of delay of 565 days, wherein no explanation much less a reasonable or satisfactory explanation for condonation of delay had been given, held as under:-

> "Law of limitation may harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds."
>
> xxxx xxxx xxxx xxxx
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> 12. It is also a well settled principle of law that if some person has taken a relief approaching the Court just or immediately after the cause of action had arisen, other persons cannot take benefit thereof approaching the court at a belated stage for the reason that they cannot be permitted to take the impetus of the order passed at the behest of some diligent person.
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> xxxx xxxx xxxx xxxx
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> 14. Same view has been reiterated by this Court in Jagdish Lal and Ors. v. State of Haryana and Ors., AIR 1997 SC 2366, observing as under:-
>
> "Suffice it to state that appellants kept sleeping over their rights for long and elected to wake-up when they had the impetus from Vir Pal Chauhan and Ajit Singh's ratios?Therefore desperate attempts of the appellants to re-do the seniority, held by them in various cadre.... are not amenable to the judicial review at this belated stage. The High Court, therefore, has rightly dismissed the writ petition on the ground of delay as well.""

38. Yet another decision, which has been pointed out by learned Senior Advocate, Mr. Dave is delivered by a Division Bench of this Court on 29.12.2016 in Letters Patent Appeal No.776 of 2013 wherein the significance of power under Order 7 Rule 11(d) is re-emphasized and the Division Bench in terms has observed clearly that even if trial to some extent is over, the power under Order 7 Rule 11 can be exercised. The relevant observations contained in paragraphs 23.1 and 23.2 are reproduced hereinafter:

> "23.1. Now, so far as the defendants not availing the liberty by the learned Single Judge while disposing of the Appeal From Order No. 421 of 2002 and by not submitting any application to reject the plaint under Order VII Rule 11(a) of the Code of Civil Procedure is concerned, as observed herein above, as such, the duty is cast upon the learned trial Court to exercise the powers under Order VII Rule 11(a) of the Code of Civil Procedure and if it is found that case fall in any of the provisions of Order VII Rule 11, the plaint is required to be rejected. Therefore, merely because the defendants did not submit any application to reject the plaint under Order VII Rule 11, it cannot be said that learned trial Court cannot exercise the powers to reject the plaint, if the case is made out to reject the plaint under Order VII Rule 11 of the Code of Civil Procedure. In a given case, it may happen that the defendants for whatever reason may not submit any application to reject the plaint. However if on plain reading of the plaint, the Court finds that cause of action is not disclosed and/or suit is barred by any law, the Court may exercise the powers suo motu and reject the plaint. Under the circumstances, the learned Single Judge is not justified in issuing writ of certiorari / writ of prohibition on the aforesaid ground.
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> 23.2. Now, so far as the observations made by the learned Single Judge that the learned trial Court issued the show cause notice to exercise the powers under Order VII Rule 11 of the Code of Civil Procedure at belated stage is concerned, it is required to be noted that as such there are more than 300 witnesses to be examined and at the time when the learned trial Court issued the show cause notice, only 36 witnesses were examined. Therefore, substantial trial is yet to take place. As observed herein above and as held by the Hon'ble Supreme Court in the catena of decisions referred to herein above, the plaint can be rejected under Order VII Rule 11 of the Code of Civil Procedure at any stage, but before the trial is concluded. However it depends upon the facts and circumstances of the case at what stage the plaint can be rejected. In the facts and circumstances of the case, when number of witnesses are yet to be examined and only 36 witnesses are examined as on the date on which the learned trial Court issued the notice, it cannot be said that the learned trial Court has exceeded in its jurisdiction in issuing suo motu notice to reject the plaint under Order VII Rule 11 (a) of the Code of Civil Procedure. It is true that normally when the plaint is to be rejected under Order VII Rule 11 Code of Civil Procedure, such powers are required to be exercised at the earliest and normally before the issues are framed. However, in an appropriate case, the Court may even subsequently reject the plaint under Order VII Rule 11(a) of the Code of Civil Procedure, however it depends upon the facts and circumstances of the case. Therefore, on the aforesaid ground also, the

learned Single Judge is not justified in issuing writ of prohibition / writ of certiorari restraining the learned trial Court from passing any order below Exh.1.

23.2. Now, so far as observations made by the learned Single Judge that if the learned trial Court is permitted to pass order below Exh.1, it will give wrong signal to the society, more particularly, when the dispute is directly related to a particular religious is concerned, on the aforesaid ground the writ of certiorari / writ of prohibition cannot be issued. As observed herein above, the writ of prohibition/ writ of certiorari against the trial Court can be issued in an exceptional case only, more particularly, when the learned trial Court lacks total jurisdiction and / or is acting without jurisdiction not vested in it. Therefore, on the aforesaid ground, the learned Single Judge is not justified in issuing writ of certiorari/writ of prohibition restraining the learned trial Court from passing any order below Exh.1, which otherwise is vested in it as observed herein above."

This judgment would be an answer to the contention raised by learned Senior Advocate for the contesting respondents that issue of cause of action has not been agitated before the court and hence, cannot be taken in revision. In the aforesaid decision, the Division Bench has clearly propounded that even suo motu, the Court can examine the tenability of proceedings.

39. Yet another decision on the issue of cause of action which has been relied upon is delivered by the Coordinate Bench of this Court which is reported in 2004(0) GLHEL-HC 206649 in the case of Kuok Oils and Grains Pte Ltd. Vs. Tower International Private Limited and the relevant observations contained in paragraph No.14 are reproduced hereinafter:

"14. I have heard learned advocates appearing for the respective parties and I have gone through the plaint, documents attached therewith and the authorities relied on before me. After giving my anxious thoughts to the submissions made before me, I am of the view that the present application deserves to be allowed as the plaint does not disclose any cause of action against the present applicant. Simply because the defendant No. 3 entered into an understanding with the present applicant to send the Cargo through the defendant No. 1 vessel which is chartered by the present applicant, the original plaintiff cannot be permitted to raise any claim against the present applicant. There is no privity of contract between the applicant and the original plaintiff. Goods were purchased by the original plaintiff from the original defendant No. 3 and Contracts were also executed between them only. If the plaintiff has received 44 Mts less the quantity contracted for, in that case, the plaintiff may have some cause of action against the defendant No. 3 and even because of some technical difficulties, the original defendant No. 1 vessel could not discharge the full Cargo as a result of which the original plaintiff might have suffered some loss, in that case also, the original plaintiff may have a cause of action against the original defendant No. 1 vessel. but these facts by themselves did not establish any cause against the present applicant and as a matter of fact, nowhere in the plaint itself it is stated as to how the claim lies against the present applicant. The Court is, therefore, of the view that this

> is a fit case where the Court has to exercise its powers under O. 7, R. 11 of C.P.C. and reject the plaint so far as the present applicant is concerned. The authorities cited before me are also relevant for the purpose of taking this view as the Hon'ble Supreme Court has made it clear time and again that the purpose of conferment of powers under O. 7, R. 11 of C.P.C. is to ensure that litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court and the concerned litigations are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. Precisely for this reason, the Court rejected the plaint so far as the applicant is concerned."

40. The aforesaid decisions are meaningfully stipulating the impact and significance of power under Order 7 Rule 11 of CPC. In addition to these decisions, yet another decision relied upon by learned Senior Advocate, Mr. Dave has been delivered by another Coordinate Bench of this Court, which is reported in 2006(0)GLHEL-HC 217052 in the case of Sterling Centre Premises Owners Co-op.Societies Limited Vs. Nanubhai R. Shah Prop. of Dash publicity. Said judgment was dealing with a case related to the Cooperative Society which was a housing society and in that context, it has been analysed that simply because the plaintiff of the suit is a third party, he is not absolved from compliance of section 167 of Cooperative Societies Act. The relevant observations contained in paragraph Nos.6 and 7, as such, are reproduced hereinafter:

> "6. It is required to be noted that if any suit is filed against a Co-Operative Society in respect of any act touching the business of the Society, such suit is not maintainable without a statutory notice. It is not the requirement of section 167 that if a third party, who is not a member of the Society, institutes a suit, he is not required to give such notice. The learned Judge has confused the issue by referring to sections 96 and 97 of the Act. Those sections have nothing to do with the suit filed by the plaintiff against defendant No.2. It is irrelevant whether the plaintiff is a member of the Society or a third party. So far as section 96 of the Act is concerned, the same deals with a dispute which is required to be referred to the Nominee of the Registrar. The learned trial Judge has completely misread the provisions of section 167 of the Act, and on an erroneous ground, has rejected the application, and while doing so, has committed an error of jurisdiction in passing the impugned order. If a suit is instituted before a civil court against a cooperative society touching the business of the Society, then notice under section 167 of the Act is mandatory. Whether the plaintiff is a third party or not is absolutely irrelevant.
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> 7. Since the order passed by the learned trial Judge is based on a total misconception of law, this Revision Application is required to be allowed, and is allowed. The matter is remanded to the trial Court for reconsideration of the application filed by defendant No.2 at Exh. 26. The learned trial Judge shall now decide the application afresh in the light of the observations made hereinabove. While deciding the application, the trial Court shall consider whether the dispute raised in the plaint touches the business of the Society, and after considering the aforesaid aspect, the learned trial Judge shall take a fresh decision in accordance with law. The learned

> trial Judge is directed to decide application at Exh. 26 within a period of three months from the date of receipt of writ the from this Court."

41. A combined reading of the aforesaid decisions would lead to a situation that if the Cooperative Society is a Cooperative Housing Society, then compliance of section 167 deserves to be complied with as the same is touching to the business of society.

42. Yet another decision which has been relied upon by learned Senior Advocate, Mr. Dave is reported in 1981 G.L.H. 311 in the case of M.G.Patel & Co. Vs. Alka Co- operative Housing Society Ltd., which indicates and interprets the expression of words "touching to the business of society". To understand the proposition, paragraph Nos.14, 15 and 16 are very relevant which sounds the confidence in the submission of learned Senior Advocate for the petitioner on the issue of section 167 of Cooperative Societies Act. Here, undisputedly, no statutory notice was given under section 167 of Cooperative Societies Act prior to filing of the suit in 2010 and since the petitioner is a Cooperative Housing Society, such non-compliance is not possible to be ignored. Hence, the observations contained in paragraph Nos.14, 15 and 16 are required to be reproduced hereinafter:

> "14. Mr. R.N Shah, the learned advocate for the appellant M.G Patel & Co., however, had two-fold submissions to be made in this connection. He firstly stated that sec. 167 of the Act would not be attracted at all because the claim for money was not 'touching the business of the society'. The business of the society, as could be gathered from the Certificate of Registration, ex. 107, was to construct buildings on co-operative basis, to purchase lands, to sell lands, to hire lands, to develop lands and to prosecute other objects, which would ultimately ameliorate the physical, education and cultural well-being of its members. The purchase of land is one of the main objects of the society. Any cause of action that has got a direct bearing with the purchase of land has to be said as touching the business of the society. The word 'touching' from its common sense connotation is suggestive of 'concerning'. The plaintiffs claim for the unpaid amount of consideration is directly rooted in the defendant- society's purchase of land. The question of payment of consideration arose because the society was out to purchase the land in prosecution of its objects. So the question of consideration, its payment or non-payment. Is invariably associated with the purchase of land by this defendant-society. In our view, therefore. It is too spacious a plea to be urged that the present subject matter of the suit is not touching the business of the society. It vitally concerns itself with the business of the society as we are almost compelled to hold, despite our dislike for the rejection of an otherwise tenable claim, only on a technical plea.
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> 15. Mr. Shah, however, in this connection invited our attention to certain authorities which we are required to deal with at this stage. The authorities referred to are A.I.R 1969 S.C 1320, A.I.R 1972 S.C 1983, A.I.R 1967 Bombay 21 (sic) and this High Court's judgment reported in 20 G.L.R 71. In our opinion, they are not germane to the case on hand and so we do not propose to burden this judgment by referring to those authorities. We however, would like to say that one judgment of the Orissa High

Court reported at A.I.R 1975 Orissa page 137 (Rangalal Rameshwar Lal v. Utkal Rastrabhasa Prachar Co-op. Press & Publishers Society Ltd.) clearly helps Mr. Shah and the plaintiff of the civil suit no. 33/63 M.G Patel & Co. It is the judgment of a Single Judge of that court. The respondent-co-operative society was running a press on co-operative basis and had purchased certain papers the essential material for carrying out the purpose of the society. A suit was filed by the plaintiffs there against the society for the balance of the purchase price. There is the Orissa Co-operative Societies Act, 1962 having sec. 127, which we would like to reproduce here. Said section 127 reads as follows:--

"127. No suit shall be instituted against a society or any of its officers in respect of any act touching the constitutions, management or the business of the society until the expiration of two months after notice in writing has been delivered to the Registrar, or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims and the plaint shall contain a statement that such notice has been so delivered or left."

In that case, the learned Judge held that the suit was not one in respect of an act touching the business of the society within the meaning of the section. Said section 127 quoted above is almost identical with sec. 167 of the Gujarat Co-operative societies Act. We, however, feel constrained to record our respectful disagreement with the view expressed by the learned Single Judge of the Orissa High Court. We have already stated above that the word 'touching' is synonymous with 'concerning' and whatever is directly concerned with the business of the society is the cause of action touching the business of the society. Payment of money by the society is pursuant to its fulfilment of its object. Non-payment is the other side of that coin and will be equally associated with or touching the business of the society. We, therefore, hold that the present suit is the suit touching the business of the society and so a notice under sec. 167 of the Act was compulsory and after service of the notice, waiting for the period of full two months was the mandate of the legislature which the plaintiff unfortunately failed to comply with, due to hurry of one day.

16. The next submission of Mr. Shah, however, in this connection was that on the earlier occasion before the very Registrar of full-fledged plaint ex. 75, dated 31-8-67 was there and so he was apprised of a dispute between the plaintiff and the defendant-society. According to Mr. Shah, the purpose of sec. 167 of the Act is to apprise the Registrar of the pendency of such a dispute, so that he may exercise his supervisory jurisdiction and bring an end to the threatened action. According to Mr. Shah, the plaint, ex. 75, therefore, should be interpreted to be a notice under sec. 167 of the Act. It is difficult for us to agree. When the plaint, ex. 75, was presented to the Registrar, it would not be evident to his mind that his supervisory jurisdiction, is invoked. It would not put him to notice that it is one of his public duties to see that an impending civil litigation is averted. The only attention which would be focussed at him on receipt of ex. 75 is to decide whether there is a dispute or not and the moment he finds that the dispute is not within his cognizance, he would take his hands off the matter. The paramount idea underlying the provisions of section 167 of the Act is to pointedly bring to the notice of the Registrar, a public functionary, that he is under a legal duty to see that a litigation between a co-operative society on one hand and a private party on the other hand is

averted so as far as possible by exercise of his supervisory powers. Unless his pointed attention is drawn to this duty of his by means of notice, which would clearly purport to be one under sec. 167 of the Act, though it may not specifically bear that label, he will not be prompted or inspired to invoke his supervisory jurisdiction and intervane to arrest the future filing of the litigation. It is possible that a party who unsuccessfully presents a 'dispute' to the Registrar under sec. 96 of the Act may not be prompted to pursue the matter in the civil court for a variety of possible reasons like limitation. Despite our sympathies for the plaintiff, which we have already indicated above, we feel that the plaint ex. 75, cannot be interpreted as a notice under sec. 167 of the Act."

43. The law is developed on Order 7 Rule 11 of CPC to the extent that it becomes rather a duty of the Court to invoke Order 7 Rule 11 and not to permit illusory cause of action to be precipitated any further and in that context, the observations which have been made by yet another Division Bench of this Court reported in 1998(2) G.L.H. 823 in the case of Maharaj Shri Manvendrasinhji Ranjitsinhji Jadeja Vs. Rajmata Vijaykunverba wd/o Late Maharaja Mahendrasinhji contained in paragraph Nos.13,14 and 15 deserve to be reproduced hereinafter:

> "13. Having noticed brief summary of the plaint and prayers earlier, it would be relevant to refer to the provisions of Order 7, R.11(a) of the CPC and the scope thereof. Order 7, R.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, R.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, R.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. (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, R.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, R.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.

14. In the light of scope of Order 7, R.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, R.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, R.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, R.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, R.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. (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, R.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, R.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 (SCC p.324) as follows: (SCC para 12) "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. 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."

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

15. Placing reliance on the observations made in para 16 of the impugned judgment, it was argued by the learned Advocate General that the trial Court has taken into consideration the defence raised by the respondent in the written statement and as the application filed under Order 7, R.11(a) of the CPC is not decided on well-settled principle, namely, that only averments made in the plaint should be looked into, the impugned order should be set aside. In paragraph 16 of the impugned judgment, it is held by the learned Judge that the appellant is a member of the branch of family of Harbhamji and on the death of Mayurdhvajsinhji, the hurdle of applicability of Section 4 of the Hindu Succession Act was removed and thereafter the family of deceased Mayurdhvajsinhji was a coparcenery Hindu family of which the appellant is not a member. It is further held therein that under Section 8 of the Hindu Succession Act, the original defendant is entitled to inherit properties

of deceased Mayurdhvajsinhji, being Class I heir as per Schedule. On close scrutiny of the plaint and the written statement, we find that the learned Judge while deciding the present application has not taken into consideration the different pleas raised in the written statement. The learned Judge was aware of the limitations placed on the power of the Court while deciding an application filed under Order 7, R.11(a) of the Code of Civil Procedure, namely, that averments made in plaint and documents produced along with the plaint can be looked into to find out whether the plaint discloses a cause of action or not. This is quite apparent from what is held by the learned Judge in paragraphs 5 and 7 of the impugned judgment. In paragraph 9 of the plaint, the appellant has averred that deceased Mayurdhvajsinh had died intestate and had no right to make any will and his four sisters and two step- mothers have no right at law to claim any of his properties, rights or interest. It is also stated in the said paragraph that the defendant claims to be the heir of deceased Mayurdhvajsinhji as his mother under the Hindu Succession Act, 1956 and as such she claims to have ownership and be in possession of the estate of the deceased. Again, in paragraph 23A of the plaint, it is asserted that the estate left by deceased Mayurdhvajsinhji was impartible and as custom of primogeniture was consistently followed both before and after former ancestor Thakore Shri Rawaji, it was not competent to any holder thereof to make any valid will in respect of either the whole or any part of the said estate. It is further emphasised in the said paragraph that if any will is found to have been made either by late Lakhdhirji or Mahendrasinhji, the same is not binding on the plaintiff and the properties affected thereby continue to form part and parcel of the impartible estate. We find that in the light of the assertions made in these paragraphs, findings have been recorded by the learned Judge in paragraph 16 of the impugned judgment. While recording findings in paragraph 16, the learned Judge has taken into consideration the averments and assertions made in the plaint. Therefore, it is not correct to say that the learned Judge while deciding the application filed under Order 7, R.11(a) of the CPC has taken into account the defence raised by the respondent in the written statement. The learned Judge has not decided any legal question raised in the written statement and therefore ratio laid down in case of Ranjeet Mal (supra) does not apply to the facts of the case. Under the circumstances, the impugned order cannot be assailed on the ground that while deciding application in question, the trial Court took into consideration the different defenses raised by the respondent in her written statement."

44. From aforesaid proposition of law which has been pointed out by the petitioner's side, it becomes clear that here is the proceeding launched by the original plaintiffs not only after unreasonable period of approximately 30 years but there is a non-compliance of section 167 of Cooperative Societies Act and additionally, cause of action is also illusory and the entire plaint is found to be filed with an attempt of suppressing material fact and sounding an impression that it is nothing but tantamount to be an abuse of the process of law and is merely a speculative litigation. Hence, this is a fit case in which the learned trial Judge ought to have invoked and exercised power under Order 7 Rule 11 of CPC. However, be that as it may, since an error is committed in not exercising jurisdiction, which is otherwise vested in it, the Court is of the considered opinion that case is made out by the revision petitioner.

45. In the wake of aforesaid several decisions, the judgments, which have been relied upon by learned Senior Advocate appearing for contesting respondents are found to be different on factual and contextual situations and, therefore, keeping in mind the well propounded proposition of law on

the law of precedent that if there is a slight change in the fact, the same would make a world of difference in applying the principle and, therefore, while closely examining the decisions which have been relied upon, an impression is generated that same are not of much avail to the respondents.

46. The first judgment which has been relied upon is the decision delivered by the Bombay High Court reported in 44 Bombay Law Reporter 577 in the case of Abdullamiyan Abdulrehman Vs. The Government of Bombay. If the proposition of law which has been laid down therein is looked into, it gives an impression that where an authority purports to pass an order is acting without jurisdiction, the purported order is a mere nullity and it is not necessary for anybody to apply to set it aside. To apply the ratio of this decision, the point which has been tried to be canvassed about the original order of Aataji Chaturji whereby he was declared as deemed purchaser, the said order undisputedly is agitated at various forums unsuccessfully by the plaintiffs and the said order has attained finality and, therefore, the situation on hand is not permitting the Court to accept the proposition as suggested by learned Senior Advocate for the respondents.

47. Another decision which has been relied upon learned Senior Advocate for the respondents is on the issue of jurisdiction of civil court in the context of Section 85(2) of Bombay Tenancy Act. Here is the case in which what has been challenged in the suit is the validity of registered sale deed and not the original order of Mamlatdar in favour of Aataji Chaturji and, therefore, outrightly this decision is of no assistance to the respondents herein.

48. The learned Senior Advocate for the respondents has then relied upon a decision reported in 2013(0) AIJEL-HC 228929 in the case of Banaskantha District Oil Seeds Growers Co-op. Union Vs. Krishna Oil Mills delivered by the learned Single Judge of this Court on the issue of touching to the business of society. The learned Single Judge was dealing with a Cooperative Society which is not a registered Cooperative Housing Society and the issue was related to purchase and sale of castor oil and that being not a Cooperative Housing Society, the very base of interpretation of the words "touching to the business of society" deserve to be viewed differently and, therefore also, with a salutary observation which has been made in the said decision, the same is not possible to be taken in aid for deciding the present controversy in favour of the respondents.

49. On the issue of section 167 of Cooperative Societies Act, learned Senior Advocate for the contesting respondents has relied upon a decision reported in 2016(0) AIJEL-SC 58175 in the case of M.K.Indrajeet Sinhji Cotton P.Ltd. Vs. Narmado Cotto Coop.Spg.Mills Ltd., but the facts of the said decision are totally different wherein a Private Limited Company entered into a lease transaction for a period of five years and the controversy was not akin to what is on hand presently in the present group of revision applications. On the contrary, it has been observed by Hon'ble Apex Court that to attract section 167 of Cooperative Societies Act, the nature of the suit has to be viewed and again the facts in the said decision are relating to winding up of a society and, therefore, the bar contained under statutory provision was to be looked into and, therefore also, the said decision will have no application as a straight-jacket formula.

50. Learned Senior Advocate for the respondents has then relied upon another decision delivered by the Division Bench of this Court which is reported in 2018(0) AIJEL-HC 239599 in the case of

Gujarat Maritime Board Vs. Jogadia Polymers Pvt. Ltd. and has made an attempt to indicate that in a situation of those facts, how Order 7 Rule 11 of CPC will have an application. The learned Court found on the basis of pleadings that the plaintiff in that case did place proper cause of action with material facts and, therefore, the averments contained in a plaint as a whole are to be looked into and in a peculiar set of circumstances, the Court was of the opinion that contents of the controversial letter at mark 4/10 do not establish a promise to pay the debt and, therefore, if the said judgment is to be looked into as a whole, the Court found that there was an acknowledgement of debt by the defendants which gives a fresh lease to the limitation whereas here, the facts are altogether different and as such, this Court is not in a position to allow the respondents to place the said judgment as an assistance.

51. Yet another decision which has been heavily relied upon by learned Senior Advocate for the respondents is reported in 2018(0) AIJEL-SC 62061 in the case of Chhotanben Vs. Kiritbhai Jalkrushnabhai Thakkar and by referring to certain paragraphs of the said judgment, the ultimate contention is raised that plea taken by the defendants in written statement or an application cannot be the basis of deciding application under Order 7 Rule 11(d) of CPC and only averments in the plaint are germane. This Court cannot dispute even remotely said proposition of law laid down by Hon'ble Apex Court but if the background of facts, which are undisputed in the present case, is to be viewed, it would lead to a conclusion that the plaint as a whole is not inspiring any germane cause of action and there is no remote circumstance found by virtue of which even delay of 30 years in bringing the suit can be ignored. The Court, on the contrary, is of the opinion that here is the plaintiffs, who are coming out with a vexatious litigation by suppressing material facts and thereby made a speculative attempt to generate a litigation after unreasonable period of approximately 30 years. The cause of action which has been projected in the present case on hand itself is illusory and if this Court would go by undisputed circumstances, then it would lead to a situation whereby even if suit is based upon abuse of the process, the same can be allowed. For that purpose, this Court is unable to accept such a situation and even after reading the relevant paragraphs of the judgment which has been cited, the present background of case on hand is suggesting a quite different situation and, therefore, the combined co-related examination of the proposition with background of facts would clearly suggest that the learned trial Judge has not exercised the discretion justifiably in passing the impugned order.

52. Yet another decision which has been delivered is also based upon tenability of suit proceedings in which Hon'ble Apex Court in the case of Dhulabhai Vs. State of Madhya Pradesh reported in 1968(0) AIJEL-SC 7980 has held that in the background of said facts, the jurisdiction of civil court is not excluded. Upon reading paragraph No.32 of the said decision, an ultimate analysis is no doubt very specific but the relevance is unable to be accepted in peculiar background of present facts and hence, this Court is of the opinion that the judgment which has been cited is of no avail to the respondents.

53. The last judgment in line which has been relied upon by learned Senior Advocate for the original plaintiffs is delivered by this Court in Civil Revision Application No.405 of 2018 on 8.4.2019 wherein also, the facts are quite different which are clearly emerging from paragraph Nos.4 and 5 of the said decision and the Court has observed that the allegations which are made by the defendant

in that proceedings are forming part of the written statement and, therefore, cannot be looked into. Here, the case on hand, as stated and elaborated above, is quite different and the meaningful reading of the plaint and the documents attached with that are clearly suggesting that there is a concealment of undisputed litigation generated in which the original owner in favour of Aataji Chaturji has become final and after around 30 years, an attempt is made to launch the proceedings and hence, the background of facts is not permitting the Court to just observe the said proposition as a straight jacket formula. Each case is dependent upon its own background situation and hence, the decisions which have been relied upon and referred to are of no assistance to the respondents herein.

54. In the wake of the aforesaid situation which is prevailing and emerging from the record, as far as the last contention about deletion of respondent Nos.5 to 8 from the proceedings is concerned, this Court is of the opinion that the same is of no consequence or significance since the contesting original plaintiffs themselves have come out with a frivolous and vexatious litigation after almost 30 years and, therefore, they must independently stand on their own instead of reflecting technicality. The Court is of the considered opinion that here in the present background, the plaintiffs themselves are unable to stand on their own to maintain their litigation and such a plea is not possible to be accepted in substance. Accordingly, the combined reading of the background of facts at length and in co-relation with the proposition of law laid down by series of decisions which have been discussed hereinabove, it appears to this Court that case is made out by the revision petitioners to set aside the impugned orders and consequently, found that it is a fit case to invoke jurisdiction under Order 7 Rule 11(d) of CPC.

55. Lastly, this very issue at length has been dealt with by a Coordinate Bench of this Court in a similar litigation with respect to the very same land but the said litigation was at the instance of daughter of Aataji Chaturji Thakore namely, Manguben Aataji Thakor, but in that case also, the Court on the basis of evaluation of material on record found that the proceedings initiated by the said petitioner deserve rejection of plaint under Order 7 Rule 11(d) of CPC. The Court in a situation like this would not like to deviate from the said proposition and would rather re-emphasize that case is made out by the present petitioners. The relevant observations contained paragraph No.7 onwards of the said decision are also very relevant. The Court has considered the same.

56. As a result, the impugned orders dated 28.8.2017 passed by the learned 4th Additional Civil Judge, Kalol, Gandhinagar, below application Exh.40 in Regular Civil Suit No.83 of 2010, application Exh.39 in Regular Civil Suit No.84 of 2010, application Exh.39 in Regular Civil Suit No.109 of 2010 and application Exh.42 in Regular Civil Suit No.45 of 2010 filed by the petitioner under Order 7 Rule 11(d) of the Civil Procedure Code are quashed aside and consequently the respective application Exh.40 in Regular Civil Suit No.83 of 2010, application Exh.39 in Regular Civil Suit No.84 of 2010, application Exh.39 in Regular Civil Suit No.109 of 2010 and application Exh.42 in Regular Civil Suit No.45 of 2010 filed by the petitioner under Order 7 Rule 11(d) of CPC are allowed. The plaints in Regular Civil Suit Nos.83 of 2010, 84 of 2010, 109 of 2010 and 45 of 2010 are rejected. Civil Revision Applications are accordingly allowed. Rule is made absolute with no order as to costs.

(A.J. SHASTRI, J) RADHAKRISHNAN K.V. FURTHER ORDER After pronouncement of the judgment, learned advocate appearing on behalf of the opponents has requested to suspend operation of the order. But in the peculiar set of circumstances, the Court is not inclined to accept the request. Hence, the request is rejected.

(A.J. SHASTRI, J) RADHAKRISHNAN K.V.