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DAHIBEN

v.

ARVINDBHAI KALYANJI BHANUSALI

(GAJRA) (D) THR LRS & ORS.

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(Civil Appeal No. 9519 of 2019)

JULY 09, 2020

**[L. NAGESWARA RAO AND INDU MALHOTRA, JJ.]**

C *Code of Civil Procedure, 1908 – Or.VII, r. 11 (a) & (d) – Rejection of plaint, if suit is barred by Limitation and does not disclose cause of action – The plaintiffs sold the suit property to respondent no.1-purchaser vide registered sale deed dated 02.07.2009 – The respondent had issued 36 cheques for Rs.1,74,02,000/- towards payment of the sale consideration in favour of the plaintiffs, the details of which were set out in the sale deed dated 02.07.2009 – The respondent no.1 subsequently sold the suit property to respondent nos.2 and 3 vide registered sale deed dated 01.04.2013 – In 2014, the plaintiffs filed a suit against the respondent no.1 and also impleaded respondent nos.2 & 3 as defendants and sought cancellation of the sale deed dated 02.07.2009 as the sale consideration fixed was not paid in entirety by respondent no.1 – It was alleged that respondent no.1 had paid only Rs. 40,000/- through 6 cheques and remaining 30 cheques for Rs. 1,73,62,000 were ‘bogus’ cheques – Respondent Nos. 2 & 3 filed an application for rejection of plaint u/or.VII,r.11(a) & (d) of the CPC contending that the suit filed by the plaintiffs was barred by limitation and no cause of action was disclosed in the plaint – The Trial Court on perusal of the registered sale deed dated 02.07.2009 noted that the plaintiffs had in fact accepted and acknowledged the payment of the full sale consideration from respondent no.1, through cheques which were issued prior to the execution of the sale deed – The Trial Court held that period of limitation for filing the suit was 3 years from the date of execution of the sale deed dated 02.07.2009, however, the suit was filed on 15.12.2014, which was barred by limitation – The High Court affirmed the findings of the Trial Court and held that the suit was barred by Limitation – On appeal, held: In the Sale Deed dated*

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02.07.2009, the plaintiffs had expressly and unequivocally acknowledged that the entire sale consideration was 'paid' by defendant no. 1/respondent no. 1 herein to the plaintiffs – The conduct of the plaintiffs in not taking recourse to legal action for over a period of 5 and ½ years from the execution of the Sale Deed in 2009, for payment of the balance sale consideration, also reflects that the institution of the present suit was an after-thought – The plaintiffs by clever drafting of the plaint, attempted to make out an illusory cause of action and bring the suit within the period of limitation – The plaintiffs deliberately did not mention the date of the registered sale deed dated 02.07.2009 in the prayer, since it would have become evident that suit was barred by limitation – The omission was made to mislead the Court – Thus, plaintiffs failed to discharge the onus of proof that the suit was filed within the period of limitation – Besides, in view of the law laid down by the Supreme Court, even if averments of the plaintiffs are taken to be true that the entire sale consideration was not paid, it could not be a ground for cancellation of the sale deed – The Plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of the registered Sale Deed – Thus, the plaint was rightly rejected by the Trial Court u/Or. VII, r.11 CPC.

**Dismissing the appeal, the Court**

**HELD: 1.** If the case made out in the Plaint is to be believed, it would mean that almost 99% of the sale consideration i.e. Rs.1,73,62,000 allegedly remained unpaid throughout. It is, however inconceivable that if the payments had remained unpaid, the Plaintiffs would have remained completely silent for a period of over 5 and ½ years, without even issuing a legal notice for payment of the unpaid sale consideration, or instituting any proceeding for recovery of the amount, till the filing of the present suit in December 2014. [Para 15.2][712-D-E]

**2.1** In *Vidyadhar v. Manikrao & Anr.* this Court held that the words “price paid or promised or part paid and part promised” indicates that actual payment of the whole of the price at the time of the execution of the Sale Deed is not a *sine qua non* for completion of the sale. Even if the whole of the price is not paid,

A but the document is executed, and thereafter registered, the sale  
would be complete, and the title would pass on to the transferee  
under the transaction. The non-payment of a part of the sale price  
would not affect the validity of the sale. Once the title in the  
property has already passed, even if the balance sale consideration  
is not paid, the sale could not be invalidated on this ground. In  
B order to constitute a “sale”, the parties must intend to transfer  
the ownership of the property, on the agreement to pay the price  
either in *praesenti*, or in future. The intention is to be gathered  
from the recitals of the sale deed, the conduct of the parties, and  
the evidence on record. [Para 15.3][713-B-E]

C 2.2 In view of the law laid down by this Court, even if the  
averments of the Plaintiffs are taken to be true, that the entire  
sale consideration had not in fact been paid, it could not be a  
ground for cancellation of the Sale Deed. The Plaintiffs may have  
other remedies in law for recovery of the balance consideration,  
D but could not be granted the relief of cancellation of the registered  
Sale Deed. [Para 15.3][713-F-G]

3. This Court finds that the suit filed by the Plaintiffs is  
vexatious, meritless, and does not disclose a right to sue. The  
plaint is liable to be rejected under Order VII Rule 11 (a). [Para  
E 15.3][713-G-H]

4. The conduct of the Plaintiffs in not taking recourse to  
legal action for over a period of 5 and ½ years from the execution  
of the Sale Deed in 2009, for payment of the balance sale  
consideration, also reflects that the institution of the present suit  
F is an after-thought. The Plaintiffs apparently filed the suit after  
the property was further sold by Respondent No.1 to Respondent  
Nos. 2 and 3, to cast a doubt on the title of Respondent No.1 to  
the suit property. [Para 15.5][715-C-D]

5. The present case is a classic case, where the plaintiffs  
G by clever drafting of the plaint, attempted to make out an illusory  
cause of action, and bring the suit within the period of limitation.  
The Plaintiffs deliberately did not mention the date of the  
registered Sale Deed dated 02.07.2009 executed by them in  
favour of Respondent No.1, since it would be evident that the  
suit was barred by limitation. The prayer however mentions the  
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date of the subsequent Sale Deed i.e. 01.04.2013 when the suit property was further sold by Respondent No.1 to Respondent Nos. 2 & 3. The omission of the date of execution of the Sale Deed on 02.07.2009 in the prayer clause, was done deliberately and knowingly, so as to mislead the Court on the issue of limitation. [Para 15.7][716-B; F-H]

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6. The delay of over 5 and ½ years after the alleged cause of action arose in 2009, shows that the suit was clearly barred by limitation as per Article 59 of the Limitation Act, 1963. The suit was instituted on 15.12.2014, even though the alleged cause of action arose in 2009, when the last cheque was delivered to the Plaintiffs. The Plaintiffs have failed to discharge the onus of proof that the suit was filed within the period of limitation. The plaint is therefore, liable to be rejected under Order VII Rule 11 (d) of CPC. [Para 15.8][717-A-B]

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*Azhar Hussain v. Rajiv* (1986) Suppl. SCC 315 : [1986] 2 SCR 782; *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I & Anr.* (2004) 9 SCC 512 : [2003] 5 Suppl. SCR 851; *Swamy Atmanand v. Sri Ramakrishna Tapovanam* (2005) 10 SCC 51 : [2005] 3 SCR 556; *T. Arivandandam v. T.V. Satyapal & Anr.* (1977) 4 SCC 467 : [1978] 1 SCR 742 – relied on.

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*Maharaj Shri Manvendrasinhji Jadeja v. Rajmata Vijaykunverba w/o Late Maharaja Mahedrasinhji* (1998) 2 GLH 823; *Sopan Sukhdeo Sable v. Assistant Charity Commissioner* (2004) 3 SCC 137 : [2004] 1 SCR 1004; *Hardesh Ores (P.) Ltd. v. Hede & Co.* (2007) 5 SCC 614 : [2007] 6 SCR 608; *D. Ramachandran v. R.V. Janakiraman* (1999) 3 SCC 267 : [1999] 1 SCR 983; *Vijay Pratap Singh v. DukhHaran Nath Singh* AIR 1962 SC 941 : [1962] Suppl. SCR 675; *Saleem Bhai v. State of Maharashtra* (2003) 1 SCC 557 : [2002] 5 Suppl. SCR 491; *I.T.C. Ltd. v. Debt Recovery Appellate Tribunal* (1998) 2 SCC 170; *Madanuri Sri Ramachandra Murthy v. Syed Jalal* (2017) 13 SCC 174 : [2017] 5 SCR 294; *Khatri Hotels Pvt. Ltd. & Anr. v. Union of India & Anr.* (2011) 9 SCC 126 : [2011] 15

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- A **SCR 299; *State of Punjab v. Gurdev Singh* (1991) 4 SCC 1 : [1991] 3 SCR 663; *Vidyadhar v. Manikrao & Anr.* (1999) 3 SCC 573 : [1999] 1 SCR 1168; *Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead)* by LRs. [2019] 4 SCR 1069 – referred to.**

B **Case Law Reference**

- |   |                         |             |            |
|---|-------------------------|-------------|------------|
|   | [1986] 2 SCR 782        | relied on   | Para 12.1  |
|   | [2003] 5 Suppl. SCR 851 | relied on   | Para 12.3  |
|   | [2004] 1 SCR 1004       | referred to | Para 12.6  |
| C | [2007] 6 SCR 608        | referred to | Para 12.7  |
|   | [1999] 1 SCR 983        | referred to | Para 12.7  |
|   | [1962] Suppl. SCR 675   | referred to | Para 12.9  |
|   | [2002] 5 Suppl. SCR 491 | referred to | Para 12.9  |
| D | [2005] 3 SCR 556        | relied on   | Para 12.10 |
|   | [1978] 1 SCR 742        | relied on   | Para 12.10 |
|   | (1998) 2 SCC 170        | referred to | Para 13    |
|   | [2017] 5 SCR 294        | referred to | Para 13    |
| E | [2011] 15 SCR 299       | referred to | Para 14    |
|   | [1991] 3 SCR 663        | referred to | Para 13    |
|   | [1999] 1 SCR 1168       | referred to | Para 15.3  |
|   | [2019] 4 SCR 1069       | referred to | Para 15.8  |

- F **CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9519 of 2019.**

From the Judgment and Order dated 19.10.2016 of the High Court of Gujarat at Ahmedabad in First Appeal No. 2324 of 2016.

- G **Harin P. Raval, Sr. Adv., Gaurav Agrawal, Nipun Saxena, Kartikey Kanojiya, Ms. Sukanya Singh, Advs. for the Appellant.**

- H **Nakul Dewan, Sr. Adv., Pradhuman Gohil, Ms. Taruna Singh Gohil, Ms. Ranu Purohit, Shiva P., Sambit Nanda, Praveen Kumar Rai, Hemal Kiritkumar Sheth, P.S. Sudheer, Rishi Maheshwari, Ms. Mayuri Nayyar Chawla, Ms. Anne Mathew, Bharat Sood, Ms. Shruti Jose, Advs. for the Respondents.**

The Judgment of the Court was delivered by

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**INDU MALHOTRA, J.**

1. The present Civil Appeal has been filed to challenge the impugned Judgment and Order dated 19.10.2016 passed by a Division Bench of the Gujarat High Court, which affirmed the Order of the Trial Court, allowing the application filed by Defendant Nos. 2 and 3/Respondent Nos. 2 and 3 herein under Order VII Rule 11(d), CPC holding that the suit filed by the Appellant and Respondent Nos. 9 to 13 herein (hereinafter referred to as the “Plaintiffs”) was barred by limitation.

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2. The subject-matter of the present proceedings pertains to a plot of agricultural land of old tenure, admeasuring approximately 8701 sq.mtrs. in Revenue Survey No.610, Block No.573 situated in village Mota Varachha, Sub-District Surat (hereinafter referred to as the “suit property”) which was in the ownership of the Plaintiffs.

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3. The land was under restrictive tenure as per Section 73AA of the Land Revenue Code. The Plaintiffs filed an application dated 13.05.2008 before the Collector, Surat to obtain permission for selling the suit property to Respondent No.1/Defendant No.1, which was non-irrigated, and stated that they had no objection to the sale of the suit property.

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4. The Collector *vide* Order dated 19.06.2009, after carrying out verification of the title of the Plaintiffs, permitted sale of the suit property, and fixed the sale price of the suit property as per the *jantri* issued by the State Government @ Rs.2000/- per sq.mtr., which would work out to Rs.1,74,02,000/-. The Collector granted permission for the sale subject to the terms and conditions contained in Section 73AA of the Land Revenue Code. It was stipulated that the purchaser shall make the payment by cheque, and reference of the payment shall be made in the Sale Deed.

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5. After obtaining permission from the Collector, the Plaintiffs sold the suit property to Respondent No.1 herein *vide* registered Sale Deed dated 02.07.2009.

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Respondent No.1 - purchaser issued 36 cheques for Rs.1,74,02,000 towards payment of the sale consideration in favour of the Plaintiffs, the details of which were set out in the registered Sale Deed dated 02.07.2009.

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A           6. The Respondent No.1 subsequently sold the suit property to Respondent Nos. 2 and 3 herein *vide* registered Sale Deed dated 01.04.2013, for a sale consideration of Rs.2,01,00,000/-.

B           7. On 15.12.2014, the Plaintiffs filed Special Civil Suit No.718/2014 before the Principal Civil Judge, Surat against the original purchaser i.e. Respondent No. 1, and also impleaded the subsequent purchasers i.e. Respondent Nos. 2 and 3 as defendants. It was *inter alia* prayed that the Sale Deed dated 02.07.2009 be cancelled and declared as being illegal, void, ineffective and not binding on them, on the ground that the sale consideration fixed by the Collector, had not been paid in entirety by Respondent No. 1.

C           The Plaintiffs contended that they were totally illiterate, and were not able to read and write, and were only able to put their thumb impression on the Sale Deed dated 02.07.2009. The Sale Deed was obtained without payment of full consideration. The Respondent No.1 had paid only Rs. 40,000 through 6 cheques, and remaining 30 cheques for Rs.1,73,62,000 were “bogus” cheques. The Plaintiffs prayed for cancellation of the Sale Deed dated 02.07.2009, and also prayed that the subsequent Sale Deed dated 01.04.2013 be declared as illegal, void and ineffective; and, the physical possession of the suit property be restored to the Plaintiffs.

D           8. Respondent Nos.2 and 3 filed an Application for Rejection of the Plaint under Order VII Rule 11 (a) and (d) of the CPC, contending that the suit filed by the Plaintiffs was barred by limitation, and that no cause of action had been disclosed in the plaint.

E           It was *inter alia* submitted that the Plaintiffs had admitted the execution of the Sale Deed dated 02.07.2009 in favour of Respondent No.1 before the Sub-Registrar, Surat. The only dispute now sought to be raised was that they had not received a part of the sale consideration. This plea was denied as being incorrect.

F           It was further submitted that if the Sale Deed dated 02.07.2009 was being challenged, then the suit ought to have been filed within three years i.e. on or before 02.07.2012.

G           It was further submitted that pursuant to the execution of the registered Sale Deed dated 02.07.2009, the Plaintiffs had participated in the proceedings before the Revenue Officer for transfer of the suit property in the revenue records in favour of Respondent No.1. On that

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basis, the suit property had been transferred to Respondent No.1 *vide* Hakk Patrak Entry No. 6517 dated 24.07.2009. Before certifying the said entry, notice under Section 135D of the Land Revenue Code had been duly served on the Plaintiffs, and ever since, Respondent No. 1 had been paying the land revenue on the suit property, and taking the produce therefrom.

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Respondent Nos. 2 and 3 further submitted that they had purchased the suit property from Respondent No.1 after verifying the title, and inspecting the revenue records. The Respondent No.1 had sold the suit property *vide* a registered Sale Deed dated 01.04.2013, on payment of valuable consideration of Rs. 2,01,00,000/-. Pursuant thereto, the suit property was transferred in the name of Respondent Nos. 2 and 3 in the revenue records.

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It was further submitted that the Plaintiffs, with a view to mislead the Court, had deliberately filed copies of the 7/12 extracts dated 20.07.2009, which was prior to the mutation being effected in the name of Respondent No.1. It was submitted that the suit was devoid of any merit, and clearly time-barred, and liable to be rejected.

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9. The Trial Court carried out a detailed analysis of the averments in the plaint alongwith the documents filed with the plaint, including the registered Sale Deed dated 02.07.2009, executed by the Plaintiffs. The undisputed facts which emerged from the averments in the plaint was that the suit property was of restrictive tenure under Section 73AA of the Land Revenue Code. Since the Plaintiffs were in dire need of money, and wanted to sell the suit property to Respondent No. 1, they had filed an application before the Collector, Surat on 13.05.2008 to obtain permission for sale of the suit property. The Collector *vide* Order dated 19.06.2009 granted permission to the Plaintiffs and fixed the sale price at Rs. 1,74,02,000/- which was to be paid through cheques. It was contended in the plaint that the Respondent No. 1 had in fact paid only Rs. 40,000/-, and false cheques of Rs. 1,73,62,000/- were issued, which remained unpaid.

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On a perusal of the registered Sale Deed dated 02.07.2009, [marked as Exhibit 3/9] it was noted that the Plaintiffs had in fact accepted and acknowledged the payment of the full sale consideration from Respondent No.1, through cheques which were issued prior to the execution of the Sale Deed, during the period 07.07.2008 to 02.07.2009.

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A As per the Plaintiffs, the Sale Deed was executed on 02.07.2009 in favour of Respondent No.1, which was registered before the Office of the Sub-Registrar, for which the Plaintiffs would have remained personally present. The transaction having been executed through a registered document, was in the public domain, and in the knowledge of the Plaintiffs right from the beginning.

B The Trial Court noted that there was no averment in the plaint that the cheques had not been received by them. Once the cheques were received by them, in the normal course, they would have presented the cheques for encashment within 6 months. The Court held that had the Plaintiffs not been able to encash 30 cheques, a complaint ought to have been filed, or proceedings initiated for recovery of the unpaid sale consideration. There was however, nothing on record to show that the Plaintiffs had made any complaint in this regard for a period of over 5 years.

C The Plaintiffs also failed to produce the returned cheques, their passbooks, bank statements, or any other document to support their averments in the plaint.

D A notice for transfer of the suit property in the revenue records under Section 135D was served on the Plaintiffs, to which no objection was raised. The name of Respondent No. 1 was entered into the revenue records, which was certified by the Revenue Officer.

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

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

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

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

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The Division Bench of the High Court took note of the fact that the Plaintiffs did not deny having executed the registered Sale Deed dated 02.07.2009 in favour of Respondent No.1. In the said Sale Deed, it was specifically admitted and acknowledged by the Plaintiffs that they had received the full sale consideration. The Sale Deed contained the complete particulars with respect to the payment of sale consideration by Respondent No. 1 through 36 cheques, the particulars of which were recorded therein. Since the execution of the Sale Deed was not disputed, and the conveyance was duly registered in the presence of the Plaintiffs before the Sub-Registrar, the Sale Deed could not be declared to be void, illegal, or ineffective.

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The suit property was subsequently sold by Respondent No. 1 in favour of Respondent Nos. 2 and 3 *vide* registered Sale Deed dated 01.04.2013 for a sale consideration of Rs. 2,01,00,000/-. Respondent Nos. 2 and 3 were *bona fide* purchasers for valuable consideration.

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

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Since the suit in respect of the Sale Deed dated 02.07.2009 was held to be barred by law of limitation, the High Court was of the view that the suit could not be permitted to be continued even with respect to the subsequent Sale Deed dated 01.04.2013. The Plaintiffs had not raised any allegation against Respondent Nos. 2 and 3, and there was no privity of contract between the Plaintiffs and Respondent Nos. 2 and 3.

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The High Court rightly affirmed the findings of the Trial Court, and held that the suit was barred by limitation, since it was filed beyond the period of limitation of three years.

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A        11. Aggrieved by the impugned Judgment and Order dated 12.08.2016 passed by the High Court, the original Plaintiff No.1 has filed the present Civil Appeal.

B        12. We have heard the learned Counsel for the parties, perused the plaint and documents filed therewith, as also the written submissions filed on behalf of the parties.

12.1 We will first briefly touch upon the law applicable for deciding an application under Order VII Rule 11CPC, which reads as under:

C        ***"11. Rejection of plaint.— The plaint shall be rejected in the following cases:—***

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

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

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

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

*(e) where it is not filed in duplicate;*

*(f) where the plaintiff fails to comply with the provisions of rule 9*

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

H        (emphasis supplied)

The remedy under Order VII Rule 11 is an independent and special remedy, wherein the Court is empowered to summarily dismiss a suit at the threshold, without proceeding to record evidence, and conducting a trial, on the basis of the evidence adduced, if it is satisfied that the action should be terminated on any of the grounds contained in this provision.

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

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

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*“12. ...The whole purpose of conferment of such power is to ensure that a litigation which is meaningless, and bound to prove abortive should not be permitted to occupy the time of the Court, and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even if an ordinary civil litigation, the Court readily exercises the power to reject a plaint, if it does not disclose any cause of action.”*

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

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12.3 Under Order VII Rule 11, a duty is cast on the Court to determine whether the plaint discloses a cause of action by scrutinizing the averments in the plaint<sup>2</sup>, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

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<sup>1</sup> 1986 Supp. SCC 315

Followed in *Maharaj Shri Manvendrasinhji Jadeja v. Rajmata Vijaykunverba w/o Late Maharaja Mahedrasinhji*, (1998) 2 GLH 823

<sup>2</sup> *Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I & Anr.*, (2004) 9 SCC 512.

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- A 12.4 Order VII Rule 14(1) provides for production of documents, on which the plaintiff places reliance in his suit, which reads as under :

*“Order 7 Rule 14: **Production of document on which plaintiff sues or relies.**—*

- B *(1)Where a plaintiff sues upon a document or relies upon document in his possession or power in support of his claim, he shall enter such documents in a list, and shall produce it in Court when the plaint is presented by him and shall, at the same time deliver the document and a copy thereof, to be filed with the plaint.*
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*(2)Where any such document is not in the possession or power of the plaintiff, he shall, wherever possible, state in whose possession or power it is.*

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

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

*(emphasis supplied)*

- F Having regard to Order VII Rule 14 CPC, the documents filed alongwith the plaint, are required to be taken into consideration for deciding the application under Order VII Rule 11 (a). When a document referred to in the plaint, forms the basis of the plaint, it should be treated as a part of the plaint.
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- 12.5 In exercise of power under this provision, the Court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.

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12.6 At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.<sup>3</sup> A

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

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

In *Hardesh Ores (P.) Ltd. v. Hede & Co.*<sup>5</sup> the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint *prima facie* show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact.<sup>6</sup> E

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

12.9 The power under Order VII Rule 11 CPC may be exercised by the Court at any stage of the suit, either before registering G

<sup>3</sup> *Sopan Sukhdeo Sable v. Assistant Charity Commissioner*, (2004) 3 SCC 137

<sup>4</sup> (2004) 9 SCC 512.

<sup>5</sup> (2007) 5 SCC 614.

<sup>6</sup> *D. Ramachandran v. R.V. Janakiraman*, (1999) 3 SCC 267; See also *Vijay Pratap Singh v. Dukh Haran Nath Singh*, AIR 1962 SC 941. H

A the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of *Saleem Bhai v. State of Maharashtra*.<sup>7</sup> The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in *Azhar Hussain* (supra).

B 12.10 The provision of Order VII Rule 11 is mandatory in nature. It states that the plaint “shall” be rejected if any of the grounds specified in clause (a) to (e) are made out. If the Court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the Court has no option, but to reject the plaint.

C 13. “Cause of action” means every fact which would be necessary for the plaintiff to prove, if traversed, in order to support his right to judgment. It consists of a bundle of material facts, which are necessary for the plaintiff to prove in order to entitle him to the reliefs claimed in the suit.

D In *Swamy Atmanand v. Sri Ramakrishna Tapovanam*<sup>8</sup> this Court held:

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

(emphasis supplied)

G In *T. Arivandandam v. T.V. Satyapal & Anr.*<sup>9</sup> this Court held that while considering an application under Order VII Rule 11 CPC what is

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<sup>7</sup> (2003) 1 SCC 557.

<sup>8</sup> (2005) 10 SCC 51.

<sup>9</sup> (1977) 4 SCC 467.

required to be decided is whether the plaint discloses a real cause of action, or something purely illusory, in the following words :- A

*“5. ...The learned Munsiff must remember that if on a meaningful – not formal – reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under O. VII, R. 11, C.P.C. taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing ...”* B

(emphasis supplied)

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

If, however, by clever drafting of the plaint, it has created the illusion of a cause of action, this Court in *Madanuri Sri Ramachandra Murthy v. Syed Jalal*<sup>11</sup> held that it should be nipped in the bud, so that bogus litigation will end at the earliest stage. D

The Court must be vigilant against any camouflage or suppression, and determine whether the litigation is utterly vexatious, and an abuse of the process of the court. E

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

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

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<sup>10</sup> (1998) 2 SCC 170.

<sup>11</sup> (2017) 13 SCC 174.



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

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

C In *Khatri Hotels Pvt. Ltd. & Anr. v. Union of India & Anr.*,<sup>12</sup> this Court held that the use of the word ‘first’ between the words ‘sue’ and ‘accrued’, would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. That is, if there are successive violations of the right, it would not give rise to a fresh cause of action, and the suit will be liable to be dismissed, if it is beyond the period of limitation counted from the date when the right to sue first accrued.

E A three-Judge Bench of this Court in *State of Punjab v. Gurdev Singh*,<sup>13</sup> held that the Court must examine the plaint and determine when the right to sue first accrued to the plaintiff, and whether on the assumed facts, the plaint is within time. The words “right to sue” means the right to seek relief by means of legal proceedings. The right to sue accrues only when the cause of action arises. The suit must be instituted when the right asserted in the suit is infringed, or when there is a clear and unequivocal threat to infringe such right by the defendant against whom the suit is instituted.

Order VII Rule 11(d) provides that where a suit appears from the averments in the plaint to be barred by any law, the plaint shall be rejected.

### 15. Analysis and Findings

G We have carefully perused the averments in the plaint read with the documents relied upon.

15.1 On a reading of the plaint and the documents relied upon, it is clear that the Plaintiffs have admitted the execution of

<sup>12</sup> (2011) 9 SCC 126.

H <sup>13</sup> (1991) 4 SCC 1.

the registered Sale Deed dated 02.07.2009 in favour of Defendant No.1/Respondent No.1 herein. A

Para 5 of the plaint reads as :

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

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

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

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

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

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A                   (4) *We the party of Second part i.e. Vendors of the sale deed since received full consideration on the above facts, the physical possession, occupancy of the land or the property mentioned in this sale deed has been handed over to you the Vendee of this sale deed, and that has been occupied and taken in possession of the*

B                   *land or property mentioned in this sale deed by you the Vendee of this sale deed by coming at the site and therefore, we the Vendors of this sale deed have not to raise any dispute in the future that the possession of the land or the property has not been handed over to*

C                   *you. ...”*

(emphasis supplied)

D                   The Sale Deed records that the 36 cheques covering the entire sale consideration of Rs.1,74,02,000 were “paid” to the Plaintiffs, during the period between 07.07.2008 to 02.07.2009.

E                   15.2 If the case made out in the Plaint is to be believed, it would mean that almost 99% of the sale consideration i.e. Rs.1,73,62,000 allegedly remained unpaid throughout. It is, however inconceivable that if the payments had remained unpaid, the Plaintiffs would have remained completely silent for a period of over 5 and ½ years, without even issuing a legal notice for payment of the unpaid sale consideration, or instituting any proceeding for recovery of the amount, till the filing of the present suit in December 2014.

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

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

“54. ‘Sale’ defined.—‘Sale’ is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.”

H                   The definition of “sale” indicates that there must be a transfer of ownership from one person to another i.e.

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

In *Vidyadhar v. Manikrao & Anr.*<sup>14</sup> this Court held that the words “price paid or promised or part paid and part promised” indicates that actual payment of the whole of the price at the time of the execution of the Sale Deed is not a *sine qua non* for completion of the sale. Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a “sale”, the parties must intend to transfer the ownership of the property, on the agreement to pay the price either in *praesenti*, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.

In view of the law laid down by this Court, even if the averments of the Plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the Sale Deed. The Plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of the registered Sale Deed.

We find that the suit filed by the Plaintiffs is vexatious, meritless, and does not disclose a right to sue. The plaint is liable to be rejected under Order VII Rule 11 (a).

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<sup>14</sup> (1999) 3 SCC 573.

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

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

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

H (emphasis supplied)

The plea taken in the plaint that they learnt of the alleged fraud in 2014, on receipt of the index of the Sale Deed, is wholly misconceived, since the receipt of the index would not constitute the cause of action for filing the suit. A

On a reading of the plaint, it is clear that the cause of action arose on the non-payment of the bulk of the sale consideration, which event occurred in the year 2009. The plea taken by the Plaintiffs is to create an illusory cause of action, so as to overcome the period of limitation. The plea raised is rejected as being meritless and devoid of any truth. B

15.5 The conduct of the Plaintiffs in not taking recourse to legal action for over a period of 5 and ½ years from the execution of the Sale Deed in 2009, for payment of the balance sale consideration, also reflects that the institution of the present suit is an after-thought. The Plaintiffs apparently filed the suit after the property was further sold by Respondent No.1 to Respondent Nos. 2 and 3, to cast a doubt on the title of Respondent No.1 to the suit property. C D

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

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

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

Clause 6 of the Order provided that : G

*“(6) On making violation of any of the aforesaid terms, the permission shall automatically be treated as cancelled and, separate proceeding shall be taken up for the violation of the terms and conditions.”* H

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

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

B

Prayer 1 of the plaint reads as :

C

*“1) The suit property being agricultural land of old tenure of Revenue Survey No.610 whose block Number is 573 situated at village Mota Varachha, Sub-district : Surat city, Dis : Surat has been registered by the opponent No.1 of this case in office of the Sub-Registrar (Katar Gam) at Surat vide Serial No.5158 in book No.1. Since, the same is illegal, void, in-effective and since the amount of consideration is received by the plaintiffs, and by holding that it is not binding to the plaintiffs and to cancel the same, and since the sale deed as aforesaid suit property has been executed by the opponent No.1 to the opponent No.2,3, it is registered in the office of Sub-registrar, Surat (Rander) on 01/04/2013 vide serial No.443 which is not binding to we the plaintiffs. Since, it is illegal, void, in-effective and therefore, this Hon’ble Court may be pleased to cancel the same and this Hon’ble Court may be pleased to send the Yadi in that regard to the Sub-registrar, Surat (Karat Gam) and the Sub-Registrar (Rander) in regard to the cancellation of both the aforesaid documents.”*

D

E

F

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

G

H

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

15.8 The delay of over 5 and ½ years after the alleged cause of action arose in 2009, shows that the suit was clearly barred by limitation as per Article 59 of the Limitation Act, 1963. The suit was instituted on 15.12.2014, even though the alleged cause of action arose in 2009, when the last cheque was delivered to the Plaintiffs.

A

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

B

Reliance is placed on the recent judgment of this Court rendered in *Raghwendra Sharan Singh v. Ram Prasanna Singh (Dead) by LRs.*<sup>15</sup> wherein this Court held the suit would be barred by limitation under Article 59 of the Limitation Act, if it was filed beyond three years of the execution of the registered deed.

C

15.9 The Plaintiffs have also prayed for cancellation of the subsequent Sale Deed dated 01.04.2013 executed by Respondent No.1 in favour of Respondent Nos. 2 and 3; since the suit in respect of the 1<sup>st</sup> Sale Deed dated 02.07.2009 is rejected both under clauses (a) and (d) of Order VII Rule 11, the prayer with respect to the 2<sup>nd</sup> Sale Deed dated 01.04.2003 cannot be entertained.

D

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16. The present suit filed by the Plaintiffs is clearly an abuse of the process of the court, and bereft of any merit.

The Trial Court has rightly exercised the power under Order VII Rule 11 CPC, by allowing the application filed by Respondent Nos. 2 & 3, which was affirmed by the High Court.

F

In view of the aforesaid discussion, the present Civil Appeal is dismissed with costs of Rs. 1,00,000/- payable by the Appellant to Respondent Nos. 2 and 3, within a period of twelve weeks from the date of this Judgment.

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Pending applications, if any, are accordingly disposed of.

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<sup>15</sup> Civil Appeal No.2960/2019 decided on 13.03.2019.